

STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

FILED

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OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES



APPEAL NO. 14F-09284
14F-09285

PETITIONER,

Vs.

CASE NO. 

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 01 Okaloosa
UNIT: 55143

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing telephonically in the above-referenced matter on November 24, 2014 at 10:05am.

APPEARANCES

For the Petitioner:



For the Respondent:

June Jones, ACCESS Supervisor
Teresa Nadeau, Economic Self-Sufficiency
Specialist II

STATEMENT OF ISSUE

Petitioner is appealing the decrease in her Food Assistance Program benefits from three separate actions. Petitioner is also appealing the Department's action of June 27, 2014 denying her application for Adult Related Medicaid due to not meeting the disability requirement. Retroactive Medicaid for the prior three months was requested.

PRELIMINARY STATEMENT

The Department submitted information prior to the hearing in two parts. The part received on November 17, 2014 was entered as Respondent Exhibit #1. The part received on November 14, 2014 was entered as Respondent Exhibit #2. The record was held open for additional information due no later than December 1, 2014.

Additional information was received from the Department on November 29, 2014 and entered as Respondent Exhibit #3.

Lauren Coe, Program Operations Manager, Division of Disability Determinations was present as a witness for the Department in the Medicaid appeal. Sylvia Figgers-Cole, Division of Disability Determinations, was present as an observer with no objections from the petitioner.

FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following findings of fact are made:

1. The petitioner submitted an application to recertify her Food Assistance Benefits and apply for Medicaid for herself on May 13, 2014. The household does not contain any children under 18. The Department explained the Food Assistance benefits were already open through July 31, 2014 and not reviewed at this time.

2. The petitioner submitted an application to recertify her Food Assistance and Medicaid on July 28, 2014. At the time of this application, the household consisted of the petitioner, her boyfriend, and their mutual son, age 18, and the boyfriend's son, age 19. Under the Expense Summary, the application shows Housing Expense "N/E"

and "Heating and Cooling Costs" answered "yes". There are no separate entries regarding rent or utilities included on the printed application.

3. The petitioner is not employed. Petitioner submitted her boyfriend's paystubs for the pay periods ending July 1, 2014 through July 22, 2014 as well as a letter from his employer advising the hours do fluctuate based on the work load for each day. "Some days are long, 12 – 15 hours, however, our days can be much shorter, with all scheduled work being completed before mid-day. On those days, in order to keep expenses down, we release them as the situation allows." The Department counted all pays as representative based on the employer's statement. The total gross pay for each week is as follows: week ending July 1, 2014 - \$830.31; week ending July 8, 2014 - \$228.13; week ending July 15, 2014 - \$579.69 and week ending July 22, 2014 - \$456.25.

4. The Department included \$685 for rent and allowed a utility standard of \$270 in the FAP budget.

5. The petitioner incurs a heating/cooling expense using electricity. She further stated they have always incurred the electric expense.

6. The Department issued a Notice of Case Action on August 20, 2014 approving Food Assistance (FAP) for the household (four individuals) in the amount of \$165 per month beginning August 2014.

7. The Department explained the FAP benefit decreased effective August 2014 due to an increase in the boyfriend's income amount. The income included for months prior to this recertification was \$1,720.00. The verified average monthly income used effective August 2014 and ongoing is \$2,294.46.

8. The petitioner reported her boyfriend's income has actually decreased over time, but she has not reported these changes previously to the Department.

9. The petitioner submitted a change on August 22, 2014 reporting the 19 year old child has left the home.

10. The Department issued a Notice of Case Action on August 25, 2014 which informed the petitioner of a decrease in her FAP allotment effective October 2014 due to a household member leaving the home. The allotment is now for a three member household.

11. The petitioner reported a change to the Department on October 8, 2014 reporting her boyfriend no longer wished to be included on the FAP case. He still pays all utilities and rent.

12. The Department received a written statement from the petitioner's boyfriend on October 8, 2014. "I no longer wish to remain or be included on the food stamp case of ..." The statement continues to inform that his 18 year old son, the petitioner and himself reside in the home and he pays all of the rent, utilities and miscellaneous household expenses.

13. The Department determined since the boyfriend continues to reside in the home with his child under age 22, he must continue to be included in the FAP budget.

14. The Department determined an error as the household is entitled to the Standard Utility Allowance (SUA) rather than the lower deduction previously given. The Department increased the amount allowed for utilities at this time from \$270 to \$337.

15. The Department issued a Notice of Case Action on October 30, 2014 which shows the boyfriend remains in the home and the utility increased. The benefit allotment effective December 2014 is \$61.

16. The petitioner's boyfriend is attempting to get a job out of state as an over-the-road truck driver. He has not obtained the out of state job or left the home as of the hearing.

17. The Department reported this household is not a categorically eligible household for FAP, but does meet the criteria for Broad-Based Categorical Eligibility.

18. The Department advised if the income decreases for the household, the petitioner needs to report it and supply the last four weeks paystubs to have the benefit adjusted.

19. The Department attempted to complete the intake interview for Adult Related Medicaid on May 14, 2014, but the call dropped. The intake interview was completed with the petitioner on May 20, 2014.

20. The petitioner is 44 years old (date of birth [REDACTED]) and has not been established as disabled by Social Security. She has a GED and has taken one course in phlebotomy, but not completed college.

21. The petitioner's most recent application for Social Security Disability was denied in July 2014 as a financial denial.

22. Because the Social Security Disability denial was financial and not medical, a disability determination through the Division of Disability Determinations was pursued.

23. The petitioner has herniated discs in her back, degenerative disc disease, arthritis, radiating pain in her legs, and weakness in her left arm. The petitioner cannot sit very long. The petitioner experiences pain, numbness swelling and tingling in her legs/feet and arms/hands as a result of these conditions. She had surgery in August of 2013 which did not resolve her problems. She believes she needs another MRI to determine what the next course of treatment should be, but she cannot afford an MRI.

24. The petitioner described her abilities to lift as "about as much as a loaf of bread." She requires assistance to get things like flour and sugar from the cabinet as she cannot lift or carry that weight. She requires help putting on her shoes. The petitioner is unable to walk or stand very long because this causes more pain. The 22 minute car ride to Destin to see her doctor causes the swelling in her extremities and pain. She typically spends two days in bed recovering.

25. The Department forwarded the disability information to the Division of Disability Determinations (DDD) on May 27, 2014 for evaluation.

26. DDD returned the Disability Determination and Transmittal to the Department on June 30, 2014. The disability was denied by DDD with a reason code N32 which means Non-pay – Capacity for substantial gainful activity, other work, no visual impairment.

27. DDD representative, Ms. Coe, explained that the Federal Five Step Sequential Evaluation to determine if the petitioner meets the disability requirement:

Step One: DDD found that the petitioner is not engaged in substantial gainful activity (working) and passed this step.

Step Two: DDD reviewed the severity of the petitioner's condition and affirmed the petitioner's condition is severe.

Step Three: DDD reviewed the petitioner's condition and medical evidence and determined the petitioner's impairment does not meet or equal a listing cited in the federal regulation.

Step Four: Included in the evidence (R2, pages 28 through 35) is the Physical Residual Functional Capacity Assessment (RFC) (form #SSA-4734-BK) DDD used to review the petitioner's remaining capacity for work. DDD used this assessment tool to determine the petitioner is now only able to perform work with a light RFC. The petitioner's previous work was determined to be a medium RFC. DDD determined the petitioner is unable to perform her past work as a Factory Worker or Machine Operator.

Step Five: DDD considered the petitioner's age, (44 years old), education (GED), and ability to do work with a light RFC using the federal rules as a guideline to determine the petitioner is not disabled (Voc. Rule 202.21).

28. The petitioner questioned how DDD completed the Physical Residual Functional Capacity Assessment and if DDD relied solely on the medical visit with Dr. VanBrocklin on April 28, 2014. She explained she had only seen him once. In addition, she again stated she cannot lift or carry the amounts listed as "occasionally" or "frequently". She also disagrees with the assessment response indicating she could sit or stand about six hours in an eight hour workday. She believes this is highly unlikely. The petitioner also questioned why there were no medical records from her surgery in

August of 2013 at Fort Walton Beach Medical Center by Dr [REDACTED] from [REDACTED] Center in the evidence.

29. DDD explained the medical records were obtained from the provider the petitioner named in her application for disability. DDD received medical records from White Wilson Medical Center (R2, pages 38 to 50) for three visits (April 28, 2014, April 11, 2014, and February 12, 2014) the petitioner had at this facility. The RFC Assessment form does not allow room to include documentation from all of the visits. DDD sent all medical documentation considered in this determination to the Department for inclusion in the evidence. In specific discussion of the surgery records from August 2013, DDD explained that the records of her current medical visits are more accurate of her condition now. The surgery records would be more telling of how she was prior to the surgery.

30. The petitioner applied for disability in 2011 with Social Security Administration. The petitioner was denied in 2011 and appealed that decision. The reconsideration was denied as well in January 2012.

CONCLUSIONS OF LAW

31. The Department of Children and Families, Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties, pursuant to Fla. Stat § 409.285. This order is the final administrative decision of the Department of Children and Families under § 409.285, Fla. Stat.

32. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code § 65-2.056.

FOOD ASSISTANCE

33. In accordance with Fla. Admin. Code § 65-2.060 (1), the burden of proof was assigned to the respondent.

34. Federal Food Stamp Regulations found at 7 C.F.R. § 273.9 Income and Deductions states in relevant part concerning Income: "(b) Definition of income Household income shall mean all income from whatever source excluding only items specified in paragraph (c) of this section. (1) Earned income shall include: (i) All wages and salaries of an employee."

35. 7 C.F.R. § 273.10 "Determining household eligibility and benefit levels" states in relevant part:

(c) Determining income...

(2) Income only in month received. (i) Income anticipated during the certification period shall be counted as income only in the month it is expected to be received, unless the income is averaged. Whenever a full month's income is anticipated but is received on a weekly or biweekly basis, the State agency shall convert the income to a monthly amount by multiplying weekly amounts by 4.3 and biweekly amounts by 2.15, use the State Agency's PA conversion standard, or use the exact monthly figure if it can be anticipated for each month of the certification period. Nonrecurring lump-sum payments shall be counted as a resource starting in the month received and shall not be counted as income.

...

(e) Calculating net income and benefit levels—(1) Net monthly income. (i) To determine a household's net monthly income, the State agency shall:

(A) Add the gross monthly income earned by all household members and the total monthly unearned income of all household members, minus income exclusions, to determine the household's total gross income. Net losses from the self-employment income of a farmer shall be offset in accordance with §273.11(a)(2)(iii).

(B) Multiply the total gross monthly earned income by 20 percent and subtract that amount from the total gross income; or multiply the total gross monthly earned income by 80 percent and add that to the total monthly unearned income, minus income exclusions. If the State agency has chosen to treat legally obligated child support payments as an income

exclusion in accordance with §273.9(c)(17), multiply the excluded earnings used to pay child support by 20 percent and subtract that amount from the total gross monthly income.

(C) Subtract the standard deduction.

...

(H) Total the allowable shelter expenses to determine shelter costs, unless a deduction has been subtracted in accordance with paragraph (e)(1)(i)(G) of this section. Subtract from total shelter costs 50 percent of the household's monthly income after all the above deductions have been subtracted. The remaining amount, if any, is the excess shelter cost. If there is no excess shelter cost, the net monthly income has been determined. If there is excess shelter cost, compute the shelter deduction according to paragraph (e)(1)(i)(I) of this section.

(I) Subtract the excess shelter cost up to the maximum amount allowed for the area (unless the household is entitled to the full amount of its excess shelter expenses) from the household's monthly income after all other applicable deductions. Households not subject to a capped shelter expense shall have the full amount exceeding 50 percent of their net income subtracted. The household's net monthly income has been determined.

...

(2) Eligibility and benefits...

(ii)(A) Except as provided in paragraphs (a)(1), (e)(2)(iii) and (e)(2)(vi) of this section, the household's monthly allotment shall be equal to the maximum food stamp allotment for the household's size reduced by 30 percent of the household's net monthly income as calculated in paragraph (e)(1) of this section. If 30 percent of the household's net income ends in cents, the State agency shall round in one of the following ways:

(1) The State agency shall round the 30 percent of net income up to the nearest higher dollar; or

(2) The State agency shall not round the 30 percent of net income at all. Instead, after subtracting the 30 percent of net income from the appropriate Thrifty Food Plan, the State agency shall round the allotment down to the nearest lower dollar.

36. 7 C.F.R. § 273.9 "Income and Deductions" at (d) Income Deductions (6)

Shelter Costs (iii) explains the Standard Utility allowances as follows:

(iii) Standard utility allowances. (A) With FNS approval, a State agency may develop the following standard utility allowances (standards) to be used in place of actual costs in determining a household's excess shelter deduction: an individual standard for each type of utility expense; a standard utility allowance for all utilities that includes heating or cooling costs (HCSUA); and, a limited utility allowance (LUA) that includes

electricity and fuel for purposes other than heating or cooling, water, sewerage, well and septic tank installation and maintenance, telephone, and garbage or trash collection. The LUA must include expenses for at least two utilities. However, at its option, the State agency may include the excess heating and cooling costs of public housing residents in the LUA if it wishes to offer the lower standard to such households. The State agency may use different types of standards but cannot allow households the use of two standards that include the same expense. In States in which the cooling expense is minimal, the State agency may include the cooling expense in the electricity component. The State agency may vary the allowance by factors such as household size, geographical area, or season. Only utility costs identified in paragraph (d)(6)(ii)(C) of this section must be used in developing standards.

37. The Department Program Policy Manual (165-22) Appendix A-1 "Food Assistance Income Eligibility Standards and Deductions" lists the following standards for a household of four effective October 2013: Standard Deduction is \$163. Standard Utility Allowance is \$335. Basic Utility Allowance is \$270. Also listed is the maximum benefit allotment effective November 1, 2013 for a household of four as \$632.

38. The findings show at recertification the Department averaged the boyfriend's earned income from the previous four weeks. The undersigned concludes the Department correctly averaged the petitioner's income as \$2,294.46.

39. In accordance with the above controlling authorities, the undersigned reviewed the budget calculations for the July 28, 2014 recertification for the household of four. The earned income deduction is \$458.89 ($\$2,294.46 * 20\% = \458.89). The Standard deduction is \$163. The adjusted income for the household is \$1,672.57 ($\$2,294.46 - \$458.89 - \$163 = \$1,672.57$). The Shelter Standard for the household is \$836.28 ($\$1,672.57 * 50\% = \836.28).

40. In reviewing the shelter costs allowed for the household, the undersigned concludes the Department allowed the Basic Utility Allowance (BUA) of \$270 in the

budget. The findings show the petitioner incurs an electric bill which is how she heats/cools her home. In review of the above controlling authorities, the undersigned concludes the petitioner should have been allowed the Standard Utility Allowance (SUA) of \$335 at this recertification. The totaled shelter costs of the rent of \$685 plus the SUA of \$335 equals a total Shelter/Utility cost of \$1020. The total Shelter/Cost less the Shelter Standard leaves an Excess Shelter Deduction of \$183.72 ($\$1,020 - \$836.28 = \183.72). The Excess Shelter Deduction is then subtracted from the adjusted income to reach a Food Stamp Adjusted income of \$1,488.85 ($\$1,672.57 - \$183.72 = \$1,488.85$).

41. The Food Stamp Adjusted income of \$1,488.85 multiplied by 30 percent is \$446.66 ($\$1,488.85 * 30\% = \446.66). In accordance with the above controlling authority, this is rounded up to the next dollar to become the Benefit Reduction amount of \$447. The undersigned concludes the correct allotment beginning August 2014 should be \$185 ($\632 maximum allotment - $\$447$ benefit reduction = $\$185$). The undersigned concludes the correct allotment for August and September 2014 is \$185. The findings show the Department approved \$165. The undersigned concludes the petitioner is due an additional \$20 ($\$185 - \$165 = \20) for the months of August and September 2014. In the event that the Department has already taken this corrective action, this increase is not to be duplicated.

42. The Department's Policy Manual section 810.0200 "Simplified Reporting" (FS) states:

Effective November 1, 2009 all food stamp households are simplified reporting.

Simplified Reporting households must report a change when the total household income exceeds 130% of the federal poverty level for the AG size or when an able-bodied adult subject to time limits has a change in work hours below twenty hours per week. Households in all programs must report any changes in the household living and/or mailing address. The SFU must report the change by the 10th day of the month following the month of change.

Process beneficial changes, sanction actions and data exchange responses that are considered verified upon receipt: Social Security (Bendex), State Data Exchange (SDX), Unemployment Compensation Benefit (DEUC), Vital Statistics Death Match (DEDT), and Numident (DENU). ACCESS Integrity staff will process prison incarceration information received directly from the Department of Corrections. Review responses from other data exchanges as part of the next review. Food stamp AGs that also receive TCA and/or Medicaid must report changes according to TCA and/or Medicaid Program requirements. **Act on changes reported for TCA and/or Medicaid and make the change to affect all three programs.** For beneficial changes, if the household fails to verify the information, leave the food stamp benefits the same. Do not act on reported adverse changes in food stamp only cases unless the change is the total household income exceeds 130% of the federal poverty level for the AG size. **In combination cases with food stamps, TCA, and/or Medicaid, process adverse changes based on the information provided by the household.** (emphasis added)

43. The Department's Policy Manual 810.0501 "Decrease in Benefits (FS)" states: "When an adverse change is reported that contains sufficient information for households that also receive TCA and/or Medicaid, act on the change to affect all three programs. Obtain verification at the next eligibility review."

44. The findings show the petitioner reported a change of a household member leaving the home on August 22, 2014. As the household received Medicaid for the 18 and 19 year old children, the undersigned concludes the Department correctly followed the above controlling authority making the change to both the FAP and the Medicaid programs. The undersigned notes the change was made effective October 2014 which allowed a 10 day advance notice to the petitioner of the change about to

take place. The undersigned concludes the calculation of the benefits was flawed due to the incorrect Utility Allowance continuing in the budget.

45. The Department Policy Manual Appendix A-1 "Food Assistance Income Eligibility Standards and Deductions" are updated annually. The following standards are effective October 2014: Standard Utility Allowance is \$337. Basic Utility Allowance is \$270. For a household of three the Standard Deduction is \$155 and Maximum Benefit allotment for three is \$511. For a household of four the Standard Deduction is \$165 and the Maximum Benefit allotment is \$649.

46. In review of the above controlling authority, the undersigned concludes the Standard Deduction, Standard Utility Allowance and Maximum Benefit amount changed in the calculation of the benefit. Total income of \$2,294.46 less the 20 percent disregard of \$458.89 and the Standard Deduction for three people of \$155 brings the net income to \$1,680.57. Fifty percent of the net income of \$1,680.57 is \$840.28. The rent of \$685 and SUA of \$337 now total \$1,022. The total shelter costs \$1,022 less the shelter standard of \$840.28 leaves an excess shelter standard of \$181.72. The net income of \$1,680.57 less the excess shelter standard of \$181.72 leaves the Food Stamp Adjusted Income of \$1,498.85. Thirty percent of the Food Stamp Adjusted Income of \$1,498.85 leaves a Benefit Reduction amount of \$450. The Maximum Allotment for a household of three effective October 2014 is \$511. The Maximum Allotment of \$511 less the Benefit Reduction amount of \$450 is \$61. The undersigned concludes this should be the benefit beginning October 2014. The Department has previously issued \$41 for October 2014 and November 2014. The undersigned concludes the petitioner is due an additional \$20 for each month ($\$61 - \$41 = \20).

Again if the Department has taken this corrective action, the benefits are not to be duplicated.

47. The undersigned then looked to the second change reported by the petitioner. In this change the petitioner reported her boyfriend was no longer in the home. However, the statement provided indicates he is still in the home, but does not wish to be included in the benefit calculations.

48. 7 C.F.R. § 273.1 "Household Concept" states in relevant part:

a) General household definition. A household is composed of one of the following individuals or groups of individuals, unless otherwise specified in paragraph (b) of this section:

- (1) An individual living alone;
- (2) An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others; or
- (3) A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

(b) Special household requirements—(1) Required household combinations. The following individuals who live with others must be considered as customarily purchasing food and preparing meals with the others, even if they do not do so, and thus must be included in the same household, unless otherwise specified.

(i) Spouses;

(ii) A person under 22 years of age who is living with his or her natural or adoptive parent(s) or step-parent(s); and

(iii) A child (other than a foster child) under 18 years of age who lives with and is under the parental control of a household member other than his or her parent. A child must be considered to be under parental control for purposes of this provision if he or she is financially or otherwise dependent on a member of the household, unless State law defines such a person as an adult. (emphasis added)

49. The findings show the mutual son, age 18, continues to reside in the home. In accordance with the above controlling authority, the undersigned concludes the boyfriend cannot opt to be removed from the Food Assistance group as long as he and the 18 year old both reside in the home. The undersigned notes the Notice of Case

Action dated October 30, 2014 does show the updated benefit allotment effective December 2014 for FAP benefits to include the SUA rather than the BUA (as calculated in #46). Therefore, the undersigned concludes no update to the benefits is required beginning with December 2014.

MEDICAID FOR PETITIONER

50. In accordance with Fla. Admin. Code § 65-2.060 (1), the burden of proof was assigned to the petitioner.

51. Fla. Admin. Code § 65A-1.711 SSI-Related Medicaid Non-Financial Eligibility Criteria:

To qualify for Medicaid an individual must meet the general and categorical requirements in 42 C.F.R. Part 435, subparts E and F (2007) (incorporated by reference), with the exception that individuals who are neither aged nor disabled may qualify for breast and cervical cancer treatment, and the following program specific requirements as appropriate. Individuals who are in Florida temporarily may be considered residents of the state on a case-by-case basis, if they indicate an intent to reside in Florida and can verify that they are residing in Florida.

(1) For MEDS-AD Demonstration Waiver, the individual must be age 65 or older, or disabled as defined in 20 C.F.R. § 416.905 (2007) (incorporated by reference).

52. The Department's Program Policy Manual (165-22) section 1440.1204 Blindness/Disability Determinations (MSSI, SFP) states in relevant part: "If the individual has not received a disability decision from SSA, a blindness/disability application must be submitted to the Division of Disability Determinations (DDD) for individuals under age 65 who are requesting Community Medicaid under community MEDS-AD, Medically Needy, and Emergency Medicaid for Alien Programs."

53. The findings show the petitioner is under age 65 and there is not a favorable disability decision from SSA. The Department correctly referred the case for disability determination by DDD.

54. Federal Regulations at 20 C.F.R. § 404.1520 discusses the evaluation of disability in general.

(a) (4) The five-step sequential evaluation process. The sequential evaluation process is a series of five "steps" that we follow in a set order. See paragraph (h) of this section for an exception to this rule. If we can find that you are disabled or not disabled at a step, we make our determination or decision and we do not go on to the next step. If we cannot find that you are disabled or not disabled at a step, we go on to the next step. Before we go from step three to step four, we assess your residual functional capacity. (See paragraph (e) of this section.) We use this residual functional capacity assessment at both step four and step five when we evaluate your claim at these steps. These are the five steps we follow:

(i) At the first step, we consider your work activity, if any. If you are doing substantial gainful activity, we will find that you are not disabled. (See paragraph (b) of this section.)

(ii) At the second step, we consider the medical severity of your impairment(s). If you do not have a severe medically determinable physical or mental impairment that meets the duration requirement in §404.1509, or a combination of impairments that is severe and meets the duration requirement, we will find that you are not disabled. (See paragraph (c) of this section.)

(iii) At the third step, we also consider the medical severity of your impairment(s). If you have an impairment(s) that meets or equals one of our listings in appendix 1 of this subpart and meets the duration requirement, we will find that you are disabled. (See paragraph (d) of this section.)

(iv) At the fourth step, we consider our assessment of your residual functional capacity and your past relevant work. If you can still do your past relevant work, we will find that you are not disabled. See paragraphs (f) and (h) of this section and §404.1560(b).

(v) At the fifth and last step, we consider our assessment of your residual functional capacity and your age, education, and work experience to see if you can make an adjustment to other work. If you can make an adjustment to other work, we will find that you are not disabled. If you

cannot make an adjustment to other work, we will find that you are disabled. See paragraphs (g) and (h) of this section and §404.1560(c).

55. Step one of the sequential analysis for disability: the undersigned must determine whether the petitioner is engaging in substantial gainful activity (20 C.F.R. § 404.1520(b) and 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. The undersigned concurs with the analysis of the DDD office that the petitioner is not engaged in SGA as she is not working.

56. Step two of the sequential analysis for disability: the undersigned must determine whether the claimant has medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 C.F.R § 404.1520(c) and 416.920(c)). An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. According to the DDD decision, the claimant's impairments are severe. The undersigned concurs and the analysis continues to step three.

57. Step three of the sequential analysis for disability: the undersigned must determine whether the claimant's impairment or combination of impairments meets or medically equals the criteria of an impairment listed in Appendix 1 of 20 C.F.R. Part 404, Subpart P (20 C.F.R. § 404.1520(D)). The petitioner's diagnosis of degenerative disc disease falls under the Musculoskeletal System 1.04 "Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord." The undersigned

concludes that based on the evidence, the petitioner's condition does not meet or equal a listing. The analysis continues to step four.

58. Step four of the sequential analysis for disability: the undersigned must consider the petitioner's residual functional capacity (20 C.F.R § 404.1520(e) and 416.920 (e)) which is the ability to do physical and mental work activities on a sustained basis despite limitations from impairments. In addition, the undersigned must determine whether the claimant's residual functional capacity is enough to perform the requirements of her past relevant work.

59. The petitioner's prior relevant work as a Machine Operator is listed in the Dictionary of Occupational Titles 649.685-070 as work having a Medium RFC. DDD determined the petitioner can no longer perform work with a Medium RFC, but assigned the petitioner a Light RFC. The undersigned refers to the physical exertion requirements listed in 20 C.F.R § 416.967 to ensure the correct RFC was assigned.

60. 20 C.F.R. §416.967 "Physical exertion requirements" states in relevant part:

To determine the physical exertion requirements [*sic*] of work in the national economy, we classify jobs as sedentary, light, medium, heavy, and very heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor. In making disability determinations under this subpart, we use the following definitions:

(a) Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

(b) Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

(c) Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work.

61. The undersigned reviewed the medical records provided, the RFC assessment and the petitioner's testimony of her current abilities to determine if the correct RFC was assigned. The undersigned concurs with DDD in that the petitioner cannot perform Medium work as described in the above controlling authority. The undersigned concludes that the petitioner's testimony regarding her lack of ability to lift or carry certain items is compelling and Light work as described above is unlikely for the petitioner to perform. The petitioner stated she is unable to sit, stand or walk for six hours of a eight hour day as determined by the DDD examiner in the RFC. The medical record states "Pain is constant throughout the day. It is alleviated by lying down, standing, sitting, walking, medication, and rest. The patient states the pain is aggravated by lying down, standing, sitting, walking, travel, ice, heat, coughing/sneezing, lifting/bending over, climbing stairs, rest, turning, and straightening up"(R2, page39). The above definition of sedentary explains that "Jobs are sedentary if walking and standing are required occasionally..." Occasionally is defined as the

activity existing up to 1/3 of the time. The undersigned concludes the RFC of light (requiring more exertion than sedentary) is incorrect.

62. In the fifth step of sequential analysis, undersigned must determine whether the individual's impairment(s) prevent her from performing other work. The petitioner's ability to adjust to other work is determined by the RFC, and the vocational factors of age, education, and work experience. The burden shifts to the Department to prove the petitioner can perform other work in the national economy. Based on the conclusion that the RFC of light is incorrect, the vocational rule 202.21 applied by DDD is not applicable as a guideline. The undersigned reviewed the petitioner's testimony and medical records thoroughly. The petitioner's statements of how her conditions affect her capabilities are consistent in both the testimony and the statements included in the medical records. Based on the petitioner's testimony regarding her inabilities and capabilities, which was uncontested by DDD, the petitioner's medical records that are included in evidence and the controlling law, it does not appear the petitioner can be gainfully employed at sedentary work. The undersigned concludes the Department did not meet its burden at step five. Therefore, the petitioner cannot do any other work in the national economy and is to be considered disabled with an onset date of February 2014.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the Food Assistance appeal is granted in part. The Department is to increase the petitioner's Food Assistance Allotment \$20 per month for August through November 2014 as

described in paragraphs #41 and #46 (unless corrective action has already been taken).

There is no additional amount due beginning December 2014.

The appeal of the Medicaid denial is granted and the denial is reversed. The disability is granted. The Department is to determine eligibility on all other factors and issue a written notice of its decision to include the retroactive months of February, March and April 2014. If Medicaid is approved, a disability review date of one year from this decision is to be established.

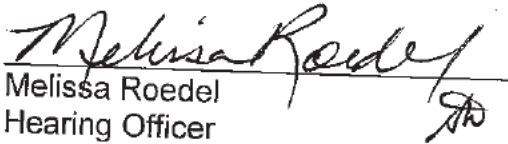
ANY FOOD STAMP BENEFITS DUE APPELLANT PURSUANT TO THIS ORDER MUST BE AVAILABLE WITHIN (10) TEN DAYS OF THIS DECISION OR WITHIN (60) SIXTY DAYS OF THE REQUEST FOR THE HEARING. ANY BENEFITS DUE WILL BE OFFSET BY PRIOR UNPAID OVERISSUANCES.

NOTICE OF RIGHT TO APPEAL

This decision is final and binding on the part of the Department. If the petitioner disagrees with this decision, the petitioner may seek a judicial review. To begin the judicial review, the petitioner must file one copy of a "Notice of Appeal" with the Agency Clerk, Office of Legal Services, Bldg. 2, Rm. 204, 1317 Winewood Blvd., Tallahassee, FL 32399-0700. The petitioner must also file another copy of the "Notice of Appeal" with the appropriate District Court of Appeal. The Notices must be filed within thirty (30) days of the date stamped on the first page of the final order. The petitioner must either pay the court fees required by law or seek an order of indigency to waive those fees. The petitioner is responsible for any financial obligations incurred as the Department has no funds to assist in this review.

FINAL ORDER (Cont.)
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DONE and ORDERED this 30th day of January, 2014,
in Tallahassee, Florida.


Melissa Roedel
Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
Office: 850-488-1429
Fax: 850-487-0662
Email: Appeal_Hearings@dcf.state.fl.us

Copies Furnished To  Petitioner
1 DPOES: Reg Altazan