

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

FILED

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DEPT. OF CHILDREN & FAMILIES

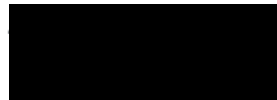


APPEAL NO. 14F-03020

PETITIONER,

Vs.

CASE NO.



FLORIDA DEPT OF
CHILDREN AND FAMILIES
CIRCUIT: 09 Orange
UNIT: 66292

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on June 4, 2014 at 8:30 a.m.

APPEARANCES

For the Petitioner:



pro se

For the Respondent:

Gail Crews, ACCESS Supervisor

STATEMENT OF ISSUE

At issue is Respondent's action in denying Petitioner's application for SSI-Related Medicaid.

PRELIMINARY STATEMENT

The Florida Department of Children and Families (Department or DCF) determines eligibility for SSI-Related Medicaid programs. In addition to other technical requirements, an individual must be disabled, blind, or aged (65 years or older) to be eligible for SSI- Related Medicaid. The Department of Health's Division of Disability

Determinations (DDD) conducts disability reviews regarding medical eligibility for individuals applying for disability benefits under the federal Social Security and Supplemental Security Income programs and the state Medically Needy program. Once a disability review is completed, the claim is returned to DCF for a final determination of non-medical eligibility and effectuation of any benefits due.

Witness for the Respondent was Rebecca Sills, Operations Service Manger with DDD.

Respondent's exhibits 1 through 12 were entered into evidence. Petitioner submitted no exhibits into evidence.

FINDINGS OF FACT

1. Petitioner is a 49 year-old male who alleges eye problems, heart problems, high cholesterol, mental problems, and back pain. Petitioner is ambulatory and is not engaging in substantial gainful activity (SGA or work activity).
2. Petitioner has 12 years of educational experience and past relevant work history as a tire warehouse loader.
3. On January 13, 2014, Petitioner submitted an application with DCF for SSI-Related Medicaid on the basis of disability.
4. On March 26, 2014, DCF informed Petitioner of a denial of his application for Medicaid. Reasons for the denial indicate no household member met the disability requirement.
5. On March 25, 2014, DDD completed a disability review which resulted in an unfavorable decision (N32). Decision code N32 indicates Petitioner has the capacity for

substantial gainful activity, specifically other work in the national economy. Petitioner's primary diagnosis is listed as Disorders of the Spine.

6. DDD Case Analysis Form, SSA-416, dated March 24, 2014 states in part:

1. Is claimant engaging in SGA? NO
2. Is impairment severe? YES
3. Does impairment meet or equal a Listing? NO
4. Can claimant perform PRW? NO
5. Can claimant perform other work? YES

49 year old with a 12th grade education alleging eyes, heart and mental problems, high cholesterol, and back pain.

Claimant was last seen by a mental health professional about 2 years ago, Dr. Herndon. He was last seen by his PCP about 2 years ago, Dr. Brouillette. He states he was diagnosed with ADHD and was on adderrall. He is not on any medications right now. Claimant states he was seen recently by a doctor due to his back spasms but he could not remember any contact information for the doctor.

....
ADLS: Claimant lives alone. He uses public transportation. He can make his own meals. He has no problems taking care of his personal needs. He can do his household chores such as laundry and dishes. He does not have problems walking. Claimant states that due to his ADHD he forgets things a lot. For example, after making a meal he will forget to turn off the stove and may not turn it off for another hour. Claimant stated he can not watch a 2 hour movie. He becomes disinterested very fast. He does not have problems getting along with people. He is told he has a very outgoing personality.

Mental: Consultative exam done 03/18/2014 states there were no signs of major depression or psychosis. PRT indicates mental illness is not severely limiting.

Summary/Decision:

49 year old claimant with LIGHT RFC due to lumbar paravertebral spasms. Claimant can perform other work. Claimant is denied-N32. Voc Rule 202.21.

7. Psychiatric Review Technique Form (PRTF), dated March 24, 2014, completed by Thomas L. Clark, Ph.D. shows impairment(s) not severe and a coexisting

nonmental impairment(s) that requires referral to another medical specialty. The PRTF states:

48 yo male with significant stable work hx prior to being fired 5 years ago. 3/14 mental status exam is completely benign with consistent report of adaptive functioning. Euthymic with appropriate affect and normal thought process/content. Reports using public transit, shopping, preparing meals, and socializing with friends and family. No signs of depression or anxiety.

Depression indicated at 8/12 visit. Enjoys volunteering at VA and hospice. "He works in the construction business." Intact attention/concentration and memory. Mood euthymic. Affect bright. Complains of problems staying organized and reports his tool shed is not as organized as it used to be. ADD affirmed but no other ex affirmed. 1/12 visit indicates depression with Rx for many years. 3/12: Mood and affect normal.

ADLs and persistence/pace are adequate with physical tolerance. He relates effectively as needed. Mental illness is not severely limiting.

8. A Physical Residual Functional Capacity Assessment ("RFC") was completed by DDD, which indicates Petitioner has the functional capacity to perform light physical exertion. Light physical exertion entails being able to lift 20 lbs occasionally and 10 lbs frequently as well as standing, walking, and sitting about six hours in an eight hour work day. The DDD examiner noted the March 18, 2014 consultative exam indicated lumbar parvertebral spasms. Negative straight leg raise test. He is able to bend to the floor. Motor strength was 5/5 proximally distally and for grip strength.

9. March 18, 2014 exam by [REDACTED] M.D. shows right eye 20/15, left eye 20/15, and both eyes 20/13. Pupils equal, round, and reactive to light accommodation. Extraocular movements intact. Intact red reflex and peripheral visual fields. Height is 5'6", weight 198 lbs, and blood pressure 151/95. Cardiovascular system shows regular rate and rhythm, no murmur, +2/4 distal pulses. Full range of motion of the musculoskeletal system. Lumbar paravertebral spasms. No assistive devices for

ambulation. Neurological system within normal limits. Gait was normal. Diagnostic Impressions: Chronic Back Pain, Depression/ Anxiety: no signs of major depression or psychosis, Hypertension, and Impaired Glucose Tolerance. Dr. [REDACTED] noted claimant is expected to bend, stand, walk, sit, carry, handle objects, hear, speak, write, and travel six to eight hours out of an eight-hour workday (with regular breaks). Dr. [REDACTED] further noted Petitioner is expected to be able to perform work-related mental activities.

10. Petitioner asserts he has worked all his life and is not asking for anything that is not his. He asserts his disability has gotten worse. For example, his left hand is throbbing with pain and he has poor memory.

11. DDD determined Petitioner not disabled at step five of the five-steps of sequential evaluation process based on the available medical records. Ms. Sills asserts Petitioner maintains the functional capacity to perform light physical exertion and a full range of light work. This is consistent with vocational code 202.21. Such jobs include a survey worker, traffic checker, and a mail clerk.

CONCLUSIONS OF LAW

12. 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. § 120.80. This order is the final administrative decision of the Department of Children and Families under Fla. Stat. § 409.285.

13. This hearing was held as a de novo proceeding pursuant to Fla. Admin. Code R. 65-2.056.

14. The burden of proof was assigned to the Petitioner pursuant to Fla. Admin. Code R. 65-2060(1).

15. The standard of proof needed to be met for an administrative hearing is by a preponderance of the evidence, as provided by Fla. Admin. Code R. 65-2.060(1).

16. Fla. Admin. Code R. 65A-1.710 sets forth the rules of eligibility for SSI-Related Medicaid Coverage Groups. The MEDS-AD Demonstration Waiver is a coverage group for aged and disabled individuals (or couples), as provided in 42 U.S.C. § 1396a(m). For an individual less than 65 years of age to receive benefits, he or she must meet the disability criteria of Title XVI of the Social Security Act appearing in 20 C.F.R. § 416.905. The regulation states in part:

(a) The law defines disability as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. To meet this definition, you must have a severe impairment(s) that makes you unable to do your past relevant work (see § 416.960(b)) or any other substantial gainful work that exists in the national economy.

17. Federal Regulation 42 C.F.R. § 435.541 provides that a state Medicaid determination of disability must be in accordance with the requirements for evaluating evidence under the SSI program specified in 20 C.F.R. §§ 416.901 through 416.998.

18. Federal Regulation 20 C.F.R. § 416.920, Evaluation of Disability of Adults, explains the five-step sequential evaluation process used in determining disability. The regulation states in part:

(a) General—(1) Purpose of this section. This section explains the five-step sequential evaluation process we use to decide whether you are disabled, as defined in § 416.905.

(2) Applicability of these rules. These rules apply to you if you are age 18 or older and you file an application for Supplemental Security Income disability benefits.

(3) Evidence considered. We will consider all evidence in your case record when we make a determination or decision whether you are disabled.

(4) The five-step sequential evaluation process. The sequential evaluation process is a series of five "steps" that we follow in a set order. 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 at 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 § 416.909, 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 to subpart P of part 404 of this chapter 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 paragraph (f) of this section and § 416.960(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 paragraph (g) of this section and § 416.960(c).)

19. In evaluating the first step, it was determined Petitioner is not engaging in SGA. The first step is considered met.

20. In evaluating the second step, it was determined Petitioner has a medically determinable impairment or combination of impairments considered severe. The second step is considered met.

21. The third step requires determining whether Petitioner's impairments meet or equal the "Listing of Impairments" indicated in Appendix 1 to subpart P of section 404 of the Social Security Act. Based on the cumulative and objective medical evidence, Petitioner's impairments fail to meet or equal the "Listing of impairments", which includes sections 1.00 Musculoskeletal System, 2.00 Special Senses and Speech, 4.00 Cardiovascular System, and 12.00 Mental Disorders.

22. As far as mental impairments, the evidence fails to show a severe mental impairment that would preclude Petitioner from engaging in a 40-hour work week. As far as physical impairments, the evidence shows Petitioner is ambulatory and has full range of motion of his musculoskeletal system.

23. At step four, the undersigned must determine whether Petitioner has the residual functional capacity to perform the requirements of his/her past relevant work. Based on the evidence submitted, the Petitioner's past relevant work is that of a tire warehouse loader. According to DDD's analysis, the Petitioner would be unable to do past work as a tire warehouse loader. The undersigned is in agreement with this analysis. Therefore, it is appropriate to move on to step five.

24. The fifth step requires the undersigned to determine whether Petitioner is able to do any other work considering his/her residual functional capacity, age, education, and work experience.

25. The cumulative evidence shows Petitioner is a 49 year-old male with 12 years of educational experience and past relevant work history as a tire warehouse loader. The objective medical evidence shows Petitioner should be capable of performing light exertional activity and even sedentary exertional activity, in accordance with medical-vocational guideline 202.21. See 20 C.F.R. Part 404, Subpart P, Appendix 2. Light exertional activity jobs include survey worker, traffic checker, and a mail clerk.

26. While Petitioner may have some medically determinable impairments, these impairments should not preclude him from performing other work in the national economy, specifically light and sedentary exertional activity jobs. The undersigned concludes Petitioner is found not disabled at step-five, in accordance with the objective medical evidence.

27. After careful review of the evidence submitted and the relevant laws set forth above, the undersigned finds the Department's action was proper, and the Petitioner's burden was not met.

DECISION

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.

DONE and ORDERED this 9th day of July, 2014,

in Tallahassee, Florida.

La Toya Jackson

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Copies Furnished To: [REDACTED] Petitioner
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