

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

**FILED**

NOV 16 2015

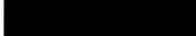
OFFICE OF APPEAL HEARINGS  
DEPT OF CHILDREN & FAMILIES



APPEAL NO. 15F-06184

PETITIONER,

Vs.

CASE NO. 

FLORIDA DEPARTMENT OF  
CHILDREN AND FAMILIES  
CIRCUIT: 12 Manatee  
UNIT: 883CF

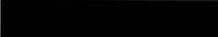
RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned telephonically convened an administrative hearing in the above-referenced matter on October 5, 2015 at 8:31 a.m. All parties appeared from different locations. One continuance was granted for both the petitioner and the respondent.

**APPEARANCES**

For Petitioner:  pro se

For Respondent: Ed Poutre, Economic Self Sufficiency Specialist II

**STATEMENT OF ISSUE**

At issue is whether respondent's action to deny petitioner's application for SSI-Related Medicaid is correct. The burden of proof is assigned to the petitioner.

**PRELIMINARY STATEMENT**

Petitioner was present and testified; however, petitioner was represented by



testified. Petitioner

submitted five exhibits, which were accepted into evidence and marked as Petitioner's Exhibits "1" through "5". Respondent was represented by Ed Poutre with the Department of Children and Families (hereafter "DCF", "Respondent" or "Agency"). Respondent provided one witness who testified: Lauren Coe, Program Office Administrator with Department of Health's Division of Disability Determinations (hereafter "DDD"). Respondent submitted eight exhibits, which were accepted into evidence and marked as Respondent's Exhibits "1" through "8". The record closed on October 5, 2015.

#### FINDINGS OF FACT

1. On October 15, 2013, the petitioner applied for Supplemental Security Income (SSI) benefits from the Social Security Administration (SSA). On April 15, 2014, SSA denied petitioner's SSI application using the code N32. N32 means "Non-pay-Capacity for substantial gainful activity – other work, no visual impairment". Petitioner is currently appealing the denial of his SSI application.
2. Petitioner is a [REDACTED] male who had his first [REDACTED] in 2005; furthermore, he had [REDACTED] one in 2005 and the other in 2012, to place [REDACTED]
3. On May 15, 2015, the petitioner was admitted to the hospital and required [REDACTED] [REDACTED] during his hospital stay.
4. On May 22, 2015, the petitioner submitted an application for SSI-Related Medicaid benefits on the basis that he was disabled.

5. On June 4, 2015, the respondent reviewed petitioner's request for SSI-Related Medicaid benefits and submitted the necessary paperwork to DDD to determine if petitioner is disabled and eligible for SSI-Related Medicaid benefits.

6. On June 2015, DDD received the Disability Determination and Transmittal form along with medical evidence and other documentation. DDD determined it required additional information from petitioner to determine if he was disabled.

7. On several occasions, DDD tried contacting petitioner to inform him he was required to speak with a representative from DDD. The representative wanted to speak with petitioner to "see how he was doing after the operation"; to discuss his work history; and to discuss his ability to complete his Activities of Daily Living (ADLs).

8. Petitioner never contacted DDD, so on July 13, 2015, DDD determined petitioner not disabled as there was insufficient evidence in the file to make an independent determination. Petitioner's application with DDD resulted in an unfavorable decision of N36. Decision code N36 indicates there is insufficient evidence to assess claimant's allegations.

9. On July 16, 2015, the respondent mailed petitioner a Notice of Case Action indicating his May 22, 2015 Medicaid application was denied as "you or a member(s) of your household do not meet the disability requirement".

10. Petitioner received a [REDACTED] and never attended college.

11. Petitioner is currently unable to work and last worked in 2013. He worked as a [REDACTED] was self employed (doing manual labor) from June 2009 through January 2012; and worked as a [REDACTED]

[REDACTED]

12. Petitioner asserted he could not return to work as a [REDACTED] as those jobs require lifting, which he is unable to perform due to his medical condition.

13. Petitioner is able to complete some ADLs, such as bathing, grooming, and brushing his teeth. He does not cook or complete chores around the home. Petitioner's surgery has not affected his ability to socialize outside of the home.

14. Petitioner asserted some days are better than others as some days he has trouble breathing and cannot walk and other days he can breathe and walk.

#### **CONCLUSIONS OF LAW**

15. 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.

16. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code R. 65-2.056.

17. The Fla. Admin. Code R. 65A-1.705(7)(c) Family-Related Medicaid General Eligibility Criteria, in part states:

If assistance is requested for the parent of a deprived child, the parent and any deprived children who have no income must be included in the SFU. Any deprived siblings who have income, or any other related fully deprived children, are optional members of the SFU. If the parent is married and the spouse lives in the home, income must be deemed from the spouse to the parent. For the parent to be eligible, there must be at least one child under age 18, with or without income, in the SFU, or who would be in the SFU if not receiving SSI...

18. According to the above authority, to be eligible for Family-Related Medicaid, petitioner must have a minor child under age 18 living in the household with him. Since

petitioner does not have any children under the age of 18 living in the home, he does not meet the technical requirement to be eligible for Family-Related Medicaid benefits.

19. 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 which 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.

20. Pursuant to the above authority, to be eligible for SSI-Related Medicaid, petitioner must be determined disabled as he is under the age of 65 and not considered disabled by the Social Security Administration.

21. 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.

22. Federal Regulation 20 C.F.R. § 416.920, Evaluation of Disability of Adults, explains the five-step sequential evaluation process used in determining disability; however, DDD did not complete the five-step evaluation process as it determined the petitioner's medical evidence was insufficient to be able to complete an independent

determination. Since petitioner never contacted DDD, it (DDD) determined he was not disabled as there was insufficient evidence to support his allegation of disability.

23. In careful review of the cited authorities and evidence, the undersigned concludes the petitioner has not met his burden of proof in establishing the respondent incorrectly denied his application for SSI-Related Medicaid benefits.

24. The respondent was correct in denying petitioner's application for SSI-Related Medicaid benefits effective May 2015 and ongoing. Petitioner and his representative are encouraged to submit a new application for SSI-Related Medicaid benefits as petitioner is now available to speak with DDD.

#### **DECISION**

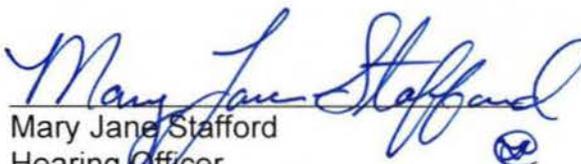
Based upon the foregoing Findings of Fact and Conclusions of Law, the SSI-Related Medicaid appeal is DENIED.

**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.

DONE and ORDERED this 16<sup>th</sup> day of November, 2015,

in Tallahassee, Florida.



Mary Jane Stafford  
Hearing Officer  
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Tallahassee, FL 32399-0700  
Office: 850-488-1429  
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Copies Furnished To: [REDACTED] Petitioner  
Office of Economic Self Sufficiency  
[REDACTED]