

FILED

Dec 29, 2015

Office of Appeal Hearings
Dept. of Children and Families

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



APPEAL NO. 15F-08267

PETITIONER,

Vs.

CASE NO. 

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 12 Sarasota
UNIT: 88326

RESPONDENT.

_____ /

FINAL ORDER

The undersigned convened a telephonic administrative hearing in the above-referenced matter on October 26, 2015 at 2:02 p.m.

APPEARANCES

For Petitioner: 

For Respondent: Signe Jacobson, Economic Self Sufficiency Specialist II

STATEMENT OF ISSUE

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

PRELIMINARY STATEMENT

 (hereafter "petitioner") was present and testified; however, petitioner was represented by his mother,  who testified. Petitioner

submitted no exhibits at the hearing. Respondent was represented by Signe Jacobson with the Department of Children and Families (hereafter "DCF", "Respondent" or "Agency"). Ms. Jacobson testified. Respondent presented one witness who testified: Lauren Coe, Program Operations Administrator with the Department of Health, Division of Disability Determination (hereafter "DDD"). Respondent submitted seven exhibits, which were accepted into evidence and marked as Respondent's Exhibits "1" through "7". The record closed on October 26, 2015.

FINDINGS OF FACT

1. On July 20, 2015, the petitioner submitted an application for SSI-Related Medicaid on the basis of disability. The application listed petitioner as [REDACTED] as a [REDACTED] year old male; and as not currently employed.
2. Petitioner does not have a current application pending with the Social Security Administration (SSA).
3. On July 27, 2015, the respondent submitted the Disability Determination and Transmittal form along with petitioner's medical records to the Department of Health, Division of Disability Determinations (DDD) to complete an independent disability review on petitioner.
4. On September 16, 2015, [REDACTED] reviewed petitioner's medical records and determined petitioner's mental allegations as not severe. [REDACTED] also reviewed petitioner's ability to complete his Activities of Daily Living (ADL) and determined his medical conditions do not affect his ability to complete his ADLs as petitioner has no physical limitations; is able to drive; is able to complete grooming and other related activities; and is able to complete household chores.

5. [REDACTED] determined petitioner's Medical Diagnosis as [REDACTED] [REDACTED] and [REDACTED]. Furthermore, [REDACTED] determined the petitioner's disorders are a direct result of his [REDACTED] [REDACTED] and as long as he receives medication maintenance, his disorders are not severe.

6. DDD listed the petitioner's primary diagnosis as [REDACTED] with [REDACTED] and listed his secondary diagnosis as [REDACTED]

7. On September 18, 2015, DDD determined petitioner not disabled using code (N30). Decision code N30 indicates petitioner has a [REDACTED] meaning it is not severe. Furthermore, DDD determined petitioner was not disabled at step two of the five-steps of the sequential evaluation process.

8. On September 25, 2015, the respondent mailed petitioner a Notice of Case Action indicating his SSI-Related Medicaid application dated July 20, 2015 was denied as "you or a member(s) of your household do not meet the disability requirement and no household members are eligible for this program".

9. Petitioner alleged he also suffers from [REDACTED] and [REDACTED]. Furthermore, he has suffered years from his medical conditions. DDD did not consider the aforementioned Disorders in petitioner's independent disability review.

10. Petitioner currently receives [REDACTED] and treatment for his medical conditions and requires Medicaid benefits to pay for his medications, various treatments, and physician visits.

11. Petitioner alleged his medical conditions affect his ability to complete his ADLs as he cannot function outside of the home; can only drive if another person is with him; can

complete chores around the home to occupy his time; and requires his mother to attend physician appointments with him.

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

13. This proceeding is a de novo proceeding pursuant to Florida Administrative Code § 65-2.056.

14. 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 and 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.

15. 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.

16. Federal Regulation 20 C.F.R. § 416.920, Evaluation of Disability of Adults,

explain the five-step sequential evaluation process used in determining disability and 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).)

17. In evaluating the first step, it was determined petitioner is not engaging in SGA.

The first step is considered met.

18. In evaluating the second step, the respondent must determine if petitioner's mental impairments are considered severe and would last more than a year.

19. Pursuant to the above authority, during the second step of an independent disability review, DDD is to rate petitioner's mental impairments based on the extent they interfere with his functional limitations, which include Activities of Daily Living, social functioning, concentration, persistence or pace, and episodes of decompensation.

20. In order to determine if the impairment is not severe, step two is a threshold inquiry that allows only claims based on the most trivial impairments to be rejected.

The claimant's burden at step two is mild. An impairment is not severe only if the abnormality is so slight and its effect so minimal that it would clearly not be expected to interfere with the individual's ability to work, irrespective of age, education or work experience. Claimant need show only that her impairment is not so slight and its effect is not so minimal."¹

¹ McDaniel v. Bowen 800 F.2d 1026,1031 (1986)

Muckenthaler v. Department of Children and Families, (732 So. 2d 362, 362, (Fla. 1999)), explains that a claimant's burden to meet step two is that the impairments are not so slight and its effects on claimant's ability to work more than minimal.

21. Respondent argued petitioner's medical conditions do not affect his ability to complete his Activities of Daily Living and his medical conditions are a direct result of his [REDACTED]. However, petitioner argued his medical conditions affect his ability to complete his Activities of Daily Living and his ability to function outside of the home. Petitioner's impairments meet the threshold requirements of step two.

22. Furthermore, petitioner's impairment must be expected to last longer than a year to meet the complete requirements of step two. Petitioner has had these impairments for years, thus meeting the durational requirement of step two.

23. The respondent also did not consider petitioner's diagnosis of [REDACTED] during the independent disability review; therefore, the respondent did not determine if petitioner's [REDACTED] meets the threshold requirements of step two.

24. In careful review of the cited authorities and evidence, the undersigned concludes the petitioner has met his burden of proof to indicate he meets step two of the sequential evaluation process used in determining disability as his impairments are considered mild and affect his ability to function in and outside of the home; and the impairments shall last more than twelve months. Respondent also did not consider if all of petitioner's medical conditions meet the threshold requirements of step two.

25. The respondent was incorrect to deny petitioner's July 20, 2015 application for SSI-Related Medicaid benefits at step two of the sequential evaluation process. The undersigned remands the case to the respondent for further development. Respondent

is hereby ordered to redetermine petitioner's independent disability review in accordance with the controlling legal authorities. The evaluation is to determine if petitioner meets the criteria of steps three and four, and possibly of step five, of the sequential evaluation process. Respondent is also ordered to determine if all of petitioner's medical conditions meet the threshold requirements of step two.

Respondent is to issue a Notice of Decision when the review is completed; the notice should include appeal rights.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is GRANTED and REMANDED to the Department for further development as explained in the conclusions. Once the new review is completed, the respondent is to issue written notice, to include appeal rights.

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 29 day of December, 2015,

in Tallahassee, Florida.

Mary Jane Stafford

Mary Jane Stafford
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Copies Furnished To: [REDACTED] Petitioner
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