

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



PETITIONER,

Vs.

FLORIDA DEPT OF  
CHILDREN AND FAMILIES  
CIRCUIT: 09 Orange  
UNIT: 66032

RESPONDENT.

APPEAL NO. 14F-08145

CASE NO. 

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on December 22, 2014, at 2:15 p.m.

**APPEARANCES**

For the petitioner:  pro se

For the respondent: Evelyn Ross, ACCESS supervisor

**STATEMENT OF ISSUE**

The petitioner is appealing the denial of Medicaid disability benefits.

**PRELIMINARY STATEMENT**

By notice dated August 28, 2014, the respondent informed the petitioner that her application dated May 19, 2014 for Medicaid Assistance benefits was denied. Petitioner timely requested a hearing.

The hearing was scheduled for October 30, 2014, petitioner contacted the office and requested to reschedule due to needing additional time to obtain medical records.

The hearing was rescheduled for November 18, 2014. Petitioner then requested another continuance, which was granted and a hearing was rescheduled for December 22, 2014. All parties appeared for the hearing by telephone on December 22, 2014. No representative from Division of Disability Determination was available for said hearing.

During the hearing, petitioner's exhibit was submitted and entered as "Petitioner Exhibit 1". The respondent entered five exhibits at the hearing labeled Respondent Exhibits "1" through "5". The record was left open until close of business on January 5, 2015 for the respondent to submit additional evidence. Additional evidence was received on December 30, 2014 and marked as "Respondent Exhibit 6".

After reviewing the record, the undersigned concluded additional information/explanation was required to reach a decision on the issue. Therefore, on January 8, 2015 the undersigned issued an Order to reconvene and for the respondent to produce a witness from the Division of Disability Determination (DDD). In this Order, the parties were ordered to reconvene on January 22, 2015 at 1:00 p.m.

On January 12, 2015, the undersigned received correspondence from the petitioner. Said correspondence requested the undersigned to cancel the reconvene hearing and base the decision solely according to December 22, 2014 testimony and evidence. Said request was granted. Therefore, this Order was prepared based solely upon the record of the hearing on December 22, 2014.

#### **FINDINGS OF FACT**

1. The petitioner (32) applied for Medicaid Assistance benefits for herself. As of the hearing, petitioner has not applied for disability benefits through the Social Security

Administration (SSA). Petitioner is not employed as of the hearing. However, petitioner has a history of working in mammography and in a day care setting.

2. The respondent reviewed the petitioner's eligibility for SSI-Related Medicaid for the blind, aged and disabled. The respondent sent petitioner's medical information to DDD for a disability determination.

3. The respondent explained DDD completed an independent medical evaluation of disability and determined that the petitioner did not meet the criteria of aged, blind or disabled for SSI-Related Medicaid benefits.

4. On August 22, 2014, DDD completed a disability review, which resulted in an unfavorable decision (code 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 Fibromyalgia and secondary diagnosis as Depression (Respondent Exhibit 3).

5. DDD Case Analysis Form, SSA-416, dated August 21, 2014 states in part

(Respondent Exhibit 3, page 44):

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

6. DDD determined petitioner not disabled at step five, however respondent could not address the evaluation process. On August 28, 2014, the respondent sent the petitioner a Notice of Case Action denying her May 19, 2014 application for Medicaid Assistance benefits. The reason stated was that she did not meet the disability requirement.

7. The petitioner identified her medical conditions to be: depression, anxiety disorder - NOS, personality disorder, meralgia paresthetica, polycystic ovarian syndrome, fibromyalgia, hypothyroidism, back pain from a bulging disc, obesity, episcleritis, irritable bowel syndrome, diabetes mellitus without mention of complication and sleep apnea.

The evidence shows petitioner is able to perform her personal care independently, prepare simple meals, manager her own money, ambulate independently, and concentrate normally for the most part. Petitioner has no documented history of mental episodes requiring hospitalization. DDD determined petitioner is able to perform unskilled sedentary work.

8. Petitioner disagrees with DDD's determination that her primary diagnosis is fibromyalgia. Petitioner indicates her primary disabling condition is meralgia paresthetica, which petitioner describes as a cyst in her right leg that causes numbness. Petitioner objected to the psychiatric review technique report, petitioner explained the report does not match the medical information; however, the medical records presented did not address a history of depression. Petitioner presented medical records from 2008 from Arizona and Missouri addressing petitioner's medical history of episcleritis (chronic conjunctivitis in the eyes), acanthosis nigricans (skin condition), hyperlipidemia, morbid obesity, irritable bowel syndrome (IBS), fibromyalgia, ankle joint effusion and lumber-mild facet arthropathy.

9. The most recent medical record is dated October 10, 2014, where the petitioner had an outpatient visit with [REDACTED] N.P. Petitioner was treated and subscribed medication for chronic conjunctivitis, hypothyroidism, vitamin D deficiency, and referred

to acupuncture for the fibromyalgia and for a diabetic eye exam. Petitioner submitted a statement from vocational rehab closing services due to her medical issues.

10. Petitioner underwent a vocational rehabilitation evaluation in 2014 and submitted a medical source statement of disability. However, the treatment records submitted fail to support this statement.

### CONCLUSIONS OF LAW

11. 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 Fla. Stat. § 409.285.

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

13. In accordance with Fla. Admin. Code R. 65-2.060(1), the standard of proof needed to be met for an administrative hearing is by a preponderance of the evidence. The burden of proof was assigned to the petitioner.

14. Fla. Admin. Code R. 65A-1.710 et seq., sets forth the rules of eligibility for Elderly and Disabled Individuals Who Have Income of Less Than the Federal Poverty Level. 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:

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

which makes you unable to do your previous work or any other substantial gainful activity which 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. The hearing officer evaluated the petitioner's claim of disability using the sequential evaluation as set forth in 20 C.F.R. § 416.920.

17. 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 to 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).)

18. Florida Statutes § 90.801 Hearsay; definition; exceptions.- states in part,:

(c) "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(2) A statement is not hearsay if the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement and the statement is:

(a) Inconsistent with the declarant's testimony and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding or in a deposition;

(b) Consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of improper influence, motive, or recent fabrication; or

(c) One of identification of a person made after perceiving the person.

19. Florida Administrative Code R. 28-106.213 addresses evidentiary standards for

use at administrative hearings and states in part:



(3) Hearsay evidence, whether received in evidence over objection or not, may be used to supplement or explain other evidence, but shall not be sufficient in itself to support a finding unless the evidence falls within an exception to the hearsay rule as found in Chapter 90.801-805, F.S.

20. DDD was not present at the hearing to provide first hand testimony or explanation of its decision. There was a lack of information provided by the respondent. The undersigned attempted on two occasions to reconvene with a DDD representative to fully develop the record, however both attempts were objected to by the petitioner. Said objections were both sustained and the undersigned now proceeds to make a determination with only the testimony of the petitioner and a Department representative who was unfamiliar with the decision.

21. The first step is to determine whether the individual is working. The petitioner is not working. The petitioner meets this step.

22. The second step is to determine whether or not an individual has a severe impairment. DDD determined petitioner's condition is severe. Based on the evidence, the undersigned concurs. The analysis continues to the third step.

23. The third step is to determine whether or not the individual's impairment(s) meets or equals a listed impairment in Appendix 1 of the Social Security Act. DDD determined petitioner's impairment does not meet or equal a listing. Based on the objective medical evidence, the undersigned agrees with DDD's analysis and concludes petitioner does not meet a listing. Therefore, the analysis moves to step four.

24. The fourth step is to determine whether the petitioner's impairment(s) prevents her from doing past relevant work according to 20 C.F.R. § 416.960. DDD determined



petitioner is unable to perform her past relevant work, and the undersigned is in agreement to this conclusion. Therefore, the analysis moves to step five

25. The fifth step requires the undersigned to determine whether Petitioner is able to do any other work considering her residual functional capacity, age, education, and work experience. DDD concluded that the petitioner should be capable of performing sedentary unskilled work such as a scoreboard operator in accordance with the Medical-Vocational Guideline 201.25. See 20 C.F.R. Part 404, Subpart P, Appendix 2.

26. Sedentary work is defined at 20 C.F.R. § 416.967(a) as:

(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.

27. Unskilled work is defined at 20 C.F.R. § 416.968(a) as:

(a) *Unskilled work.* Unskilled work is work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time. The job may or may not require considerable strength. For example, we consider jobs unskilled if the primary work duties are handling, feeding and offbearing (that is, placing or removing materials from machines which are automatic or operated by others), or machine tending, and a person can usually learn to do the job in 30 days, and little specific vocational preparation and judgment are needed. A person does not gain work skills by doing unskilled jobs.

28. While Petitioner may have some medically determinable impairments, these impairments should not preclude her from performing other work in the national economy, specifically unskilled sedentary jobs in accordance with the above authority.

The undersigned agrees with DDD's analysis and concludes petitioner is not disabled at step-five, in accordance with the objective medical evidence. Additionally, the medical

source statement of disability by vocational rehabilitation is being afforded no weight as it is inconsistent with the objective medical evidence.

29. After careful review of the evidence submitted and the relevant laws set forth above, the undersigned finds the petitioner's burden was not met.


**DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, petitioner's 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 6<sup>th</sup> day of February, 2015,  
in Tallahassee, Florida.

  
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