

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

FILED

JAN 07 2015

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES



APPEAL NO. 14F-09594

PETITIONER,

Vs.

CASE NO. 

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 15 Palm Beach
UNIT: 88322

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing telephonically in the above-referenced matter on January 6, 2015 at 1:42 p.m.

APPEARANCES

For the Petitioner: Manuel Borge, patient advocate with Conifer Health Solutions
(authorized representative)

For the Respondent: Shirley Stringer, Supervisor

STATEMENT OF ISSUE

Petitioner is appealing the Department's action of August 18, 2014 denying Medicaid due to not meeting the disability criteria. Petitioner is seeking coverage for May, June, July and August 2014.

PRELIMINARY STATEMENT

Petitioner did not appear; she was represented by the authorized representative who made the Medicaid application on her behalf, Mr. Borge. Petitioner agreed to enter the Department's exhibits only as his records were duplicative and contained additional medical evidence that had not yet been furnished to the Department.

FINDINGS OF FACT

1. Petitioner is 31 years old and has not been determined disabled. She has not yet filed for disability with the Social Security Administration. She has no minor children.
2. A web application was filed on petitioner's behalf on June 16, 2014 requesting ongoing and retroactive Medicaid coverage as a disabled adult. The application was filed by Manuel Borge of Conifer Health Solutions. The request is for Medicaid coverage beginning May 2014.
3. The Department collected medical information on petitioner and referred the disability request to the Division of Disabilities Determinations (DDD). This division makes the disability decisions for the Department.
4. DDD makes disability determinations based on the medical evidence as well as information furnished by the applicant about his or her functional limitations and activities of daily living. DDD reviewed the medical information submitted by the Department and attempted to reach the petitioner for an interview. DDD attempted to reach the petitioner by phone; there was no voice mail to leave a message. DDD then mailed two letters to the petitioner explaining the need to speak with her and asked that she contact the office. The letters were mailed to

the address provided on the Medicaid application (548 Dolphin Dr. Delray Beach, Florida). DDD has a time limit to comply with; DDD proceeded with its disability determination based on the records furnished to the Department by the authorized representative.

5. DDD determined there was insufficient functional information to deem petitioner physically disabled. Because DDD was unable to obtain any information from petitioner about her limitations and activities of daily living (ADLs) and the remaining functional capacity on a day-to-day basis (resulting in the lack of any evidence to the contrary) it made the decision of not disabled.
6. DDD's Case Analysis notes on petitioner's disability request reflect "not known" for each of the five steps involved in a disability determination. This is the same sequential five step process used by the Social Security Administration. DDD believed it could not complete the five step analysis without critical facts from the applicant (or a knowledgeable representative) of her ADLs.
7. The petitioner's diagnoses are pneumonia and liver disease. This is reflected in the medical records provided to DDD. The medical records are "older". The medical records also indicate a mental health issue. DDD attempted to review this as well as the physical impairments. However, there was also insufficient evidence to determine a disability based on the impairment of depression and opioid dependence. This review was completed by Thomas L. Clark, Ph.D. of DDD's staff.
8. DDD did not contact the authorized representative in this case as it believed it would be meaningless as Mr. Borge had no further contact information for

petitioner. DDD drew the distinction between contacting a hospital representative and a family member who might be the authorized representative. In some cases, the authorized representative would have been contacted in the absence of being able to speak with the applicant when functional limitation information could be provided.

9. Mr. Borge agreed that petitioner needed to be present to speak with a DDD representative and needed to be present for the hearing. He indicated she was "not locatable" and essentially homeless. While she was hospitalized an employee of his company completed the disability questionnaire and simply responded "none" or "needs help very week" to the questions which address engaging in routine activities. In addition, the vocational questionnaire as well as the form collecting information on petitioner's physical limitations was left blank. Mr. Borge agreed that the employee who completed the form should have given more explanation. In addition, while an applicant is in the hospital the observations by the patient advocates may be more limiting than later when released from the hospital.
10. The Department's denial notice does not address an action for the month of May 2014. The Department's position is a denial for May 2014 based on the same reason of not meeting the disability criteria to be eligible for Medicaid.

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 § 409.285, Fla. Stat.

12. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code § 65-2.056.
13. In accordance with Fla. Admin. Code § 65-2.060 (1), the burden of proof was assigned to the petitioner.
14. The Fla. Admin. Code, Section 65A-1.710 et seq., sets forth the rules of eligibility for disabled Individuals. For an individual less than 65 years of age to receive Medicaid, 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 regulations state, 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. The findings show petitioner is under age 65 and has requested Medicaid as a disabled individual. She has not filed for benefits through the Social Security Administration. Because she has not yet been determined disabled, the Department referred her request to DDD for a disability determination.
16. DDD determined petitioner was not disabled. The findings show that DDD was unable to complete the required sequential five step analysis due to insufficient evidence. DDD made both phone and mail attempts to make contact with the petitioner.

17. The hearing officer evaluated petitioner's claim of disability using the sequential evaluation as set forth in 20 C.F.R. §416.920. The first step is to determine whether or not the individual is working and earning substantial gainful income. Because petitioner's representative does not know how to locate her (she is "not locatable") and is not familiar with her limitations, the undersigned concludes he is unable to provide valid testimony to satisfy the steps of the required federal five step disability analysis. It is unknown if petitioner meets this step.
18. In an abundance of caution, the undersigned considered the second step which is to determine whether or not an individual has a severe impairment. The undersigned concludes petitioner's liver disease could be considered to be severe.
19. 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. Based on the record, the undersigned could not conclude petitioner's impairments meet or equal a listing in the federal regulation.
20. The fourth step is to determine whether or not the individual's impairment(s) prevents her from doing past relevant work. There is no evidence that the undersigned can review to determine if petitioner can return to prior relevant work. No work history was provided. There is no evidence of petitioner's residual functional capacity for either her physical or mental impairments.
21. The fifth step is to determine whether or not the individual's impairment prevents her from performing other work. The undersigned cannot determine if petitioner's impairments allow her to do any work in the national economy due to the lack of

petitioner's residual functional capacity for either her physical or mental impairments.

22. Petitioner failed to meet her burden of proof to show that she meets the federal disability definition and that the Department's decision was incorrect.

DECISION

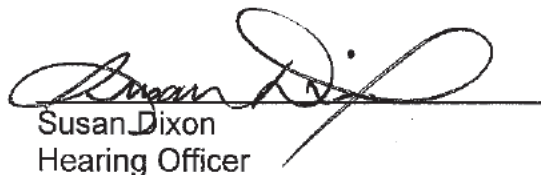
Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is denied.

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 7th day of January, 2015,

in Tallahassee, Florida.



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