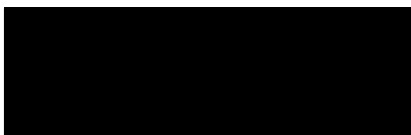


STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

FILED

APR 16 2015

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES



APPEAL NO. 14F-09773

PETITIONER,

Vs.

CASE NO.



FLORIDA DEPT OF CHILDREN AND FAMILIES
CIRCUIT: 11 Dade
UNIT: 88073


RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on February 19, 2015, at 10:10 a.m.

APPEARANCES

For the Petitioner:  Pro Se.

For the Respondent: John Roche, Operations Management Consultant,
Department of Children and Families (DCF).

STATEMENT OF ISSUE

At issue is the Department's action to deny the petitioner's application for SSI-Related Medicaid benefits on the basis that he did not meet the disability requirements of the program.

PRELIMINARY STATEMENT

Present as a witness for the petitioner was [REDACTED], Case Manager, Citrus Health.

Xavier Vazquez provided interpreting services for petitioner who is Spanish-speaking only.

The hearing was left open for seven additional days in order for the petitioner to submit additional information. No additional information was submitted within the required time period.

The respondent submitted into evidence, Respondent's Exhibits 1 through 3. The petitioner submitted into evidence, Petitioner Exhibit 1.

FINDINGS OF FACT

Based upon the oral and documentary evidence presented at the final hearing and on the entire proceeding, the following Findings of Fact are made:

1. The petitioner filed an application for Medicaid benefits with the Department on August 11, 2014. 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. As the petitioner has not turned sixty-five years and is forty-five years of age, his application was forwarded to DDD (Disability Determination Department) for disability consideration.

2. The petitioner had previously been approved by DDD for disability benefits in 2012. In June 2014, the petitioner was up for recertification of benefits. He was recertified for Food Assistance benefits but for some unknown reason, the petitioner's

Medicaid benefits were not redetermined. Starting July 2014, the petitioner's Medicaid benefits were terminated.

3. The petitioner applied for disability benefits with the Social Security Administration. He arrived in the United States about seven year ago from his native country of Cuba. The Social Security Administration denied his application for disability benefits based on his immigration status. Noting the above, DDD made an independent decision for this case and considered the petitioner's application for disability as a "new" request for disability benefits.

4. DDD relies on the same rules and regulations that apply to the Social Security Administration (SSA) when making their determination. DDD considered the petitioner as not being disabled using the code N-32. N-32 code means "capacity for substantial gainful activity-other work." DDD thus denied the petitioner at step five of the five-steps of sequential evaluation. The DDD adjudicator noted that the petitioner could do such jobs as "Garment Sorter, Swatch Clerk and Checker." The Department denied the petitioner's application for Medicaid benefits on November 7, 2014, 2014 based on not being considered disabled.

5. The petitioner does not speak English. He graduated high school in his native country of Cuba. He received about four and a half years of technical training for air conditioner repair in Cuba. He currently is not employed but was last employed as an air conditioner technician/repairman in 2012.

6. In March 2012, the petitioner was admitted to the hospital in Central Florida where he was being treated for cerebral vascular accident. This caused a stroke for the petitioner which resulted in aphasia and right sided hemiparesis.

7. The petitioner has a diagnosis of hypertension and cerebral vascular accident (CVA). Though the petitioner's witness from Citrus stated the petitioner has a major depressive disorder; the medical records provided do not indicate such. The petitioner is receiving medical help from Citrus for a mental disorder. Citrus has indicated the petitioner is anxious and thus could be considered to have an "anxiety disorder". The petitioner currently resides at the Citrus facility or otherwise he would be homeless.

8. The petitioner was admitted at the emergency room at Jackson Memorial Hospital (in Miami) on March 3, 2014. He was discharged on March 4, 2014. The treating physician, [REDACTED] completed a medical report concerning the petitioner and wrote under diagnosis "Atypical chest pain". The physician also wrote in this report under muscular ongoing assessment "Full range of motion...Moves all extremities." The report also notes under the category of impaired gait ED fall risk (for the petitioner); "Yes" was notated.

9. The petitioner was again admitted to the above hospital on May 6, 2014 for a "follow-up." He was treated by [REDACTED]. In a report completed by [REDACTED] on May 6, 2014, he wrote "Pt with HX of hypertension is here for medication refill....Left area with a steady gait." He also wrote in this report under muscular ongoing assessment "Ambulates independently. Full range of motion." This physician also wrote in the report, under physical examination and under Neurological "mild right hemiparesis."

This physician also wrote under Diagnosis "Benign hypertension...residual right hemiparesis secondary to CVA. The petitioner was discharged on the same day from the hospital.

10. The petitioner was admitted to Hialeah Hospital on March 28, 2014. The treating physician was [REDACTED]. He completed a report on March 28, 2014 in which he wrote under impression "Hypertension...medication refill...Condition is stable...Problem is an ongoing problem...Symptoms have improved." The petitioner was discharged on the same day.

11. A Mental Status Examination was submitted as part of Petitioner Exhibit 1 from Citrus Health. The date of the examination was April 28, 2014 and was completed by [REDACTED]. This examination indicated appearance and general behavior, appropriate dress; motor activity, calm; attitude towards examiner/others, cooperative; speech quality, normal; mood and effect, anxious; thought processes, logical and goal directed; thought content, unremarkable; perceptual disturbances, none; and potential for harm to self or others, no sign of increased risk to self/others.

12. DDD completed a Physical Residual Functional Capacity Assessment for the petitioner. For the "Exertion Limitations" part of this assessment, it notes the petitioner can occasionally lift and/or carry 20 pounds. It notes the petitioner can frequently lift and/or carry 10 pounds. It notes the petitioner can stand and/or walk about 6 hours in an 8 hour workday. It notes the petitioner can sit with normal breaks about 6 hours in an 8 hour workday. It notes the petitioner can push and/or pull unlimited. The

assessment indicates petitioner has the functional capacity to perform light physical exertion.

13. For postural limitations the assessment notes the petitioner can frequently climb ramp/stairs but never can climb a ladder/rope/or scaffold.

14. For manipulative limitations the assessment notes none established.

15. For visual limitations the assessment notes none established.

16. For communicative limitations the assessment notes none established.

17. For environmental limitations the assessment notes the petitioner should avoid concentrated exposure hazards such as machinery heights etc. All other environmental limitations such as extreme cold; extreme heat, wetness; humidity; noise; vibration and fumes, odors, dust, gases, poor ventilation were noted as being unlimited.

18. The petitioner stated that he can walk, but only for a block or so. He stated that can stand for only a short period of time. He stated that he cannot sit for long due to pain. He stated that he can lift items with his left hand but cannot lift anything with his right hand. He stated that he has memory problems, will talk to himself a lot, and has to take medications to sleep. He stated his is very anxious. He stated he occasionally thinks of suicide.

19. The hearing officer notes the petitioner's subjective statements of his ability to walk, stand, sit, etc are not supported by the objective medical evidence as provided .

CONCLUSIONS OF LAW

20. 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.

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

22. In accordance with Fla. Admin. Code R. 65-2.060 (1), the burden of proof was assigned to the petitioner.

23. Federal Regulation 42 C.F.R. § 435.541 sets standards for when it is appropriate for the state Medicaid agency to make a determination of disability for individuals who apply for Medicaid. The regulation states in relevant part:

(c) *Determinations made by the Medicaid agency.* The agency must make a determination of disability in accordance with the requirements of this section if any of the following circumstances exist:...

(4) The individual applies for Medicaid as a non-cash beneficiary, whether or not the State has a section 1634 agreement with SSA, and—

(i) Alleges a disabling condition different from, or in addition to, that considered by SSA in making its determination; or

(ii) Alleges more than 12 months after the most recent SSA determination denying disability that his or her condition has changed or deteriorated since that SSA determination and alleges a new period of disability which meets the durational requirements of the Act, and has not applied to SSA for a determination with respect to these allegations.

24. The Department's Florida Program Policy Manual, section 1440.1204 Blindness/Disability Determinations (MSSI, SFP), states in part "If the individual has not received a disability decision from SSA, a blindness/disability application must be submitted to the Division of Disability Determinations (DDD) for individuals under age 65 who are requesting Community Medicaid under community MEDS-AD, Medically Needy, and Emergency Medicaid for Alien Programs."

25. 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.

26. Federal Regulation 42 C.F.R. § 435.541 indicates that the state Medicaid agency's 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.

27. 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).)

28. In evaluating the first step, the petitioner is employed, but is not engaging in substantial gainful activity. Therefore, the first step is met.

29. In evaluating the second step, the impairments must last or are expected to last for a continuous period of at least 12 months to meet durational requirements. The petitioner has a diagnosis of hypertension and cerebral vascular accident (CVA) which could be considered severe. The second step is met.

30. In evaluating the third step, the impairment(s) would have to meet or equal one of the listings in appendix 1 to subpart P of part 404. The petitioner was evaluated under listing 11.04:

11.04 *Central nervous system vascular accident*. With one of the following more than 3 months post-vascular accident:

A. Sensory or motor aphasia resulting in ineffective speech or communication; or

B. Significant and persistent disorganization of motor function in two extremities, resulting in sustained disturbance of gross and dexterous movements, or gait and station (see 11.00C).

The petitioner has not met this listing as indicated in the medical records provided.

31. The petitioner was also evaluated under listing 12.06:

12.06 *Anxiety Related Disorders*: In these disorders anxiety is either the predominant disturbance or it is experienced if the individual attempts to master symptoms; for example, confronting the dreaded object or situation in a phobic disorder or resisting the obsessions or compulsions in obsessive compulsive disorders.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in both A and C are satisfied.

A. Medically documented findings of at least one of the following:

1. Generalized persistent anxiety accompanied by three out of four of the following signs or symptoms:

- a. Motor tension; or
- b. Autonomic hyperactivity; or
- c. Apprehensive expectation; or
- d. Vigilance and scanning;

or

2. A persistent irrational fear of a specific object, activity, or situation which results in a compelling desire to avoid the dreaded object, activity, or situation; or

3. Recurrent severe panic attacks manifested by a sudden unpredictable onset of intense apprehension, fear, terror and sense of impending doom occurring on the average of at least once a week; or

4. Recurrent obsessions or compulsions which are a source of marked distress; or

5. Recurrent and intrusive recollections of a traumatic experience, which are a source of marked distress;

AND

B. Resulting in at least two of the following:

- 1. Marked restriction of activities of daily living; or
- 2. Marked difficulties in maintaining social functioning; or
- 3. Marked difficulties in maintaining concentration, persistence, or pace; or
- 4. Repeated episodes of decompensation, each of extended duration.

OR

C. Resulting in complete inability to function independently outside the area of one's home.

12.07 *Somatoform Disorders*: Physical symptoms for which there are no demonstrable organic findings or known physiological mechanisms.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Medically documented by evidence of one of the following:

1. A history of multiple physical symptoms of several years duration, beginning before age 30, that have caused the individual to take medicine frequently, see a physician often and alter life patterns significantly; or

2. Persistent nonorganic disturbance of one of the following:

a. Vision; or

b. Speech; or

c. Hearing; or

d. Use of a limb; or

e. Movement and its control (e.g., coordination disturbance, psychogenic seizures, akinesia, dyskinesia; or

f. Sensation (e.g., diminished or heightened).

3. Unrealistic interpretation of physical signs or sensations associated with the preoccupation or belief that one has a serious disease or injury;

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or

2. Marked difficulties in maintaining social functioning; or

3. Marked difficulties in maintaining concentration, persistence, or pace; or

4. Repeated episodes of decompensation, each of extended duration.

The petitioner has not met this listing as indicated in the medical records provided.

32. The fourth step is to determine whether or not the individual's impairment(s) prevents him/her from doing past relevant work. The petitioner's past job of air conditioner technician-mechanic is considered "medium duty work" under 637.261-014 of the Dictionary of Occupational titles. According to DDD's analysis which shows petitioner should be capable of performing light physical exertion, Petitioner would be unable to do past work as an air conditioner technician. The undersigned is in agreement with this analysis. Therefore, it is appropriate to move on to step five.

33. The fifth step is to determine if the petitioner can do other work in the national economy which requires considering petitioner's Physical Residual Functional Capacity Assessment, age, education, inability to speak English, work experience, and the treating physician's evaluations of improvement to see if he can adjust to other work. The respondent's position is that the petitioner can do other work in the national economy. The Dictionary of Occupational titles describes Garment sorter, Swatch clerk and Checker as light duty work, all of which such jobs the petitioner could perform. The undersigned agrees with this analysis.

34. For the case at hand and based on all of the above, the hearing officer concludes the petitioner does not meet the disability criteria of Title XVI of the Social Security Act appearing in 20 C.F.R. § 416.905 and is not considered disabled. The petitioner has not met his burden of proof.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, this appeal is denied and the Department's action affirmed.

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 16th day of April, 2015,

in Tallahassee, Florida.



Robert Akel
Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
Office: 850-488-1429
Fax: 850-487-0662
Email: Appeal_Hearings@dcf.state.fl.us

Copies Furnished To: [REDACTED] Petitioner
Office of Economic Self Sufficiency