

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

**FILED**

**MAR 12 2015**

OFFICE OF APPEAL HEARINGS  
DEPT OF CHILDREN & FAMILIES



APPEAL NO. 14F-10246

PETITIONER,

Vs.

CASE NO. 

FLORIDA DEPARTMENT OF  
CHILDREN AND FAMILIES  
CIRCUIT: 02 Leon  
UNIT: 88313

RESPONDENT.

---

**AMENDED FINAL ORDER**

This order is issued to replace the Final Order issued erroneously March 11, 2015.

Pursuant to notice, the undersigned convened an administrative hearing telephonically in the above-referenced matter on January 21, 2015 at 2:03 p.m.

**APPEARANCES**

For the Petitioner: 

For the Respondent: Marixsa Griffith, ACCESS Supervisor

**STATEMENT OF ISSUE**

Petitioner is appealing whether the Department's action of November 26, 2014 to deny Medicaid on the basis that he did not meet the disability criteria was correct.

**PRELIMINARY STATEMENT**

The Department submitted information prior to the hearing which was entered as Respondent's Composite Exhibit 1 (RC1). The petitioner submitted information prior to the hearing which was entered as Petitioners Composite Exhibit 1 (PC1). The record was held open until February 4, 2015 for the Department to supplement the record with the complete Notice of Case Action. This was received January 21, 2015, and was entered as Respondent's Composite Exhibit 2 (RC2).

Lauren Coe, Program Operations Manager of the Division of Disability Determinations, appeared as a witness for the Department.

**FINDINGS OF FACT**

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following findings of fact are made:

1. Petitioner is 28 years old. He communicates in English. He is unemployed at this time.
2. The petitioner's education history includes some college.
3. The petitioner was formerly employed in Alaska in the commercial fishing business. He has done fishing, processing and cleaning boats. He was employed in Alaska during 2011 and 2012. Petitioner is trying to resolve his impairment so he can return to this work.
4. Petitioner filed a web application on September 29, 2014 for Medicaid as a disabled adult due to an injury to his left shoulder. The injury occurred on June 2, 2013 while in New Zealand. Petitioner was detained in New Zealand for one year which prevented adequate medical treatment.

5. Petitioner's Exhibit 1 includes a one page document from a medical examination on June 3, 2013. The record shows multiple scratches and a left shoulder injury and sprain. This exhibit also includes a two page document from Capital Regional Medical Center from October 8, 2014 showing "sprained shoulder, shoulder pain." He was prescribed Naproxen to take every 12 hours as needed with no refills. The discharge instructions state, "Your exam shows your shoulder pain is due to tendinitis, bursitis, or an injury to the tendons that surround the joint (the rotator cuff)..." The follow up instructions given were to follow up with a doctor if the pain did not start to improve within five days.

6. Respondent's Composite Exhibit 1 includes petitioner's medical record from Bond Community Health Center electronically signed on November 3, 2014. This record indicates a shoulder injury. The notes under "Musculoskeletal" indicate there is extra boney prominence on left clavicle and it does not appear to be fractured and is non-tender. The record indicates no limitations with range of motion in the right upper extremity. This record reflects onset of November 1, 2014. Under the "Plan" section it states, "We Care application: I really don't see the need for We Care referral – however patient is adamant that there is an injury that prevents him from working. Informed patient that it is solely up to Orthopedics to take his caseload regarding his injury..."

7. Petitioner believes an ultrasound would show tears involving his AC joint, collarbone and left shoulder blade. The majority of his problems involve the left shoulder blade back area. He has been unable to secure an ultrasound and is currently working with vocational rehabilitation to secure this exam. Petitioner believes the pain is worse in cold weather and described the feeling as if the arm is hanging by the bone.

He described numbness in left arm and finger tips turning purple when lying on the arm improperly. Petitioner believes most of his limitations are in pulling rather than lifting. He cannot specify exactly the weight he can lift as he has avoided lifting on that side to prevent further injury. He currently carries groceries in a back pack. He can sit and walk with no limitations. Petitioner does push-ups and believes he can tolerate 15 to 20 before feeling pain and the possibility of damaging the shoulder area. Petitioner carries weight on his right side and believes this causes pain to his left side.

8. As the petitioner was under the age of 65 and has no minor children, the Department forwarded the disability request to the Division of Disability Determinations (DDD) for a determination of disability for Medicaid eligibility. DDD conducted a desk review of the medical evidence. DDD then prepared the case analysis on its review of the petitioner's claim using the federal five step sequential evaluation. DDD determined the petitioner met step 1 as he is not gainfully employed. DDD determined the petitioner's impairment is severe at step 2. DDD determined the petitioner's impairment does not meet or equal a listing in the federal regulation as required in step 3. DDD bypassed step 4 and did not determine if petitioner could return to any prior relevant work. DDD's controlling federal regulations allow this for efficiency when step five will result in a denial. DDD determined at step 5 (based on age and educational level) the petitioner does have the physical capacity remaining to perform other work in the national economy based on petitioner retaining a residual functional capacity (RFC) of light.

9. DDD determined the petitioner's RFC of light based on the medical evidence. DDD determined petitioner can occasionally lift and/or carry 20 pounds; DDD

determined petitioner can frequently lift and/or carry 10 pounds. DDD determined the petitioner can stand and/or walk (with normal breaks) for about 6 hours in an 8 hour workday. DDD determined petitioner can sit about 6 hours in an 8 hour workday.

10. DDD determined the condition of "shoulder sprain" did not meet the duration requirement as this condition is not expected to last 12 months. DDD considered the 12 months will expire in November 2015 based on the Bond Community Health Center's record showing an onset date of November 2014. DDD noted petitioner has normal range of motion and strength in his right upper extremity and no joint enlargement or tenderness; in the left upper extremity there is extra bony prominence on left clavicle and does not appear to be fractured and was non-tender. The shoulder blade was within normal limits. No limitation with range of motion.

11. Petitioner argues the condition has already lasted 12 months from his injury date of June 2013 and believes the denial reason was incorrect.

#### **CONCLUSIONS OF LAW**

12. The Fla. Admin. Code, Section 65A-1.710 et seq., set forth the rules of eligibility for disabled individuals. For an individual less than 65 years of age to received Medicaid, he or she must meet the disability criteria of Title XVI of the Social Security

---

Act appearing at Title 20 C.F.R. § 416.905. The regulations state, 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...

13. The Federal Regulations at Title 20 C.F.R § 416.920, "Evaluation of disability of adults, in general" states in part"

(4) The five-step sequential evaluation process. The sequential evaluation process is a series of five "steps" that we follow in a set order. See paragraph (h) of this section for an exception to this rule. 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 paragraphs (f) and (h) 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 paragraphs (g) and (h) of this section and §416.960(c).

14. The hearing officer reviewed the DDD determination of the petitioner's claim of disability using the sequential evaluation as set forth in 20 C.F.R. §416.920. The medical records define the impairment as a shoulder sprain. The first step is to determine whether the individual is working and earning a substantial and gainful income. DDD determined the petitioner is not working and therefore meets the first step. The findings show this to be correct.

15. The second step is to determine if an individual has a severe impairment. DDD determined the petitioner's condition is severe (see page 17 in Respondent's Composite Exhibit 1). The analysis continues to the next sequential step.

16. The third step is to determine whether or not the petitioner's impairment meets or equals a listed impairment in Appendix 1 of the Social Security Act. The listed impairments are considered severe enough to prevent an individual from participation in any gainful activity, regardless of age, education or work experience. DDD determined the petitioner's impairment does not meet or equal a listing. The undersigned reviewed Title 20 C.F.R. Volume 2, Chapter III appendix 1 to subpart P of part 404, specifically "1.00 Musculoskeletal System" in part A. The petitioner's impairment is not shown in this section. The listings reviewed are: 1.02 Major dysfunction of a joint(s) (due to any cause) and 1.03 Reconstructive surgery or surgical arthrodesis of a major weight-bearing joint (due to any cause). The undersigned concludes the petitioner's impairment does not meet or equal a listing shown in the regulation. Therefore, the analysis moves to the step four.

17. DDD did not determine if petitioner met step four. The concept in skipping step four is for efficiency if the individual cannot pass at step five. Therefore, the

undersigned did not conduct analysis of step four. Petitioner's primary work could be considered similar to a deckhand on a commercial fishing vessel. This work is listed in the Dictionary of Occupational Titles at 449.667-010 as heavy work (Petitioner's Residual Functional Capacity was determined to be light). Light work is defined in 20 C.F.R §416.967 as:

To determine the physical exertion requirements of work in the national economy, we classify jobs as sedentary, light, medium, heavy, and very heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor. In making disability determinations under this subpart, we use the following definitions: ...

b) Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

18. The fifth step is to determine whether the individual's impairment prevents him from performing other work in the national economy. Petitioner's ability to adjust to other work is determined by the RFC and the vocational factors of age, education, and work experience. Petitioner is considered a younger individual and has high school and higher education. The medical evidence shows an impairment of shoulder sprain. Petitioner admits to doing minimal push-ups, does not know his weight limitation, has no limitations walking or sitting. As a guide to determine if petitioner can do other work in the national economy the undersigned considered the grid cited in 20 C.F.R. Pt. 404,



Subpt. P, App. 2, rules 202.20 – 202.22 which shows not disabled. However, petitioner experiences pain in the left upper shoulder area with some exertion. Considering the pain involved beyond the exertion of 15 or so push-ups, the undersigned reviewed numerous light exertion jobs cited in the Dictionary of Occupation Titles which an individual with these limitations can perform (i.e., ticket taker, toll collector, short order cook). In addition, petitioner is working with vocational rehabilitation which involves individuals which have capacity to return to some type of work. Therefore, petitioner fails at step five as there is other work available petitioner can transition to (at his level of age and education) with the physical limitations set forth in the findings.

19. The undersigned did not find it necessary to rule on the correctness of the denial reason of duration (less than 12 months) as petitioner fails at step 5 of the sequential evaluation. Due to the failure at step 5, petitioner is not considered as a disabled individual for Medicaid eligibility.

#### **DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is denied, and the Department's decision is 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 12<sup>th</sup> day of March, 2015,

in Tallahassee, Florida.

  
\_\_\_\_\_  
Larry LaBelle  
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](mailto:Appeal_Hearings@dcf.state.fl.us)

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