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

[redacted]

PETITIONER,

Vs.

FLORIDA DEPT OF
CHILDREN AND FAMILIES
CIRCUIT: 07 Volusia
UNIT: 88317

RESPONDENT.
_____/

FILED
MAR 16 2015
OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 14F-10358

CASE NO. [redacted]

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on February 11, 2015 at 1:00 p.m.

APPEARANCES

For the Petitioner: [redacted] pro se

For the Respondent: Matthew Lynn, Economic Self Sufficiency Specialist II

STATEMENT OF ISSUE

At issue is the respondent's action to deny the petitioner's application for SSI-Related (disability) Medicaid.

PRELIMINARY STATEMENT

The Florida Department of Children and Families (Department or DCF) determines eligibility for SSI-Related Medicaid programs. To be eligible an individual must be blind, disabled, or 65 years or older. The Department of Health's Division of Disability Determinations (DDD) conducts disability reviews regarding medical eligibility

for individuals applying for disability benefits under the federal Social Security and Supplemental Security Income programs and the state Medically Needy program. Once a disability review is completed, the claim is returned to DCF for a final determination of non-medical eligibility.

By notice dated November 24, 2014 the respondent notified the petitioner that her Medicaid application was denied due to not meeting the disability requirement. The petitioner timely requested this administrative hearing to challenge the Medicaid denial.

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

The petitioner did not submit any evidence prior to the hearing. The respondent submitted four exhibits, which were accepted into evidence and entered as Respondent Exhibits "1" through "4" respectively. The record was held open through close of business on February 25, 2015 for both parties to supplement the record. The respondent timely provided the additional evidence which was accepted into evidence and marked as Respondent Exhibit "5". No evidence was received from the petitioner. The record closed February 25, 2015.

FINDINGS OF FACT

1. The petitioner's household includes the petitioner (52) only.
2. On September 15, 2014, the petitioner submitted an online application to apply for Medicaid for herself. The petitioner indicated on this application that she was disabled.
3. To be eligible for Medicaid without minor children, applicants under age 65 must be blind or considered disabled by the Social Security Administration (SSA) or DDD.

4. The petitioner is a 52 year-old female with a Master's degree. She used to work as a loan officer and also did mitigation for a lawyer in the past. She does dog training sessions, once or twice a month, but then she's in a lot of pain and has to rest for an extended period of time.

5. The petitioner's disabling condition is lymphoma. She alleges chronic pain, inability to stand for more than ten to fifteen minutes at a time and severe fatigue which limits her ability to perform activities of daily living and work.

6. The respondent referred the petitioner's disability request to DDD for review on October 15, 2014.

7. DDD utilizes a federal regulation five-step sequential evaluation process in determining disability. The five-steps are:

> Step 1: Determines if the claimant is presently engaging in substantial gainful employment (SGA).
> Step 2: Determines severity of claimant's impairment(s).
> Step 3: Determines if impairment(s) meet or equal listings set forth in federal regulations.
> Step 4: Determines if the claimant is able to perform past relevant work (PRW).
> Step 5: Determines if the claimant is able to perform work in the national economy.

8. On November 21, 2014, DDD's disability review resulted in an unfavorable determination. The decision code issued, N31, indicates the petitioner has the capacity to engage in past relevant work. The Disability Determination and Transmittal Form list the petitioner's primary diagnosis as Lymphoma.

9. As part of the decision, DDD assessed the functional information obtained from the petitioner along with her medical records in order to come up with the Residual Functional Capacity (RFC) Assessment.

10. DDD reviewed medical records from 2005 through 2013. The most recent record is from the petitioner's doctor on July 12, 2013. The doctor notes from that visit indicate the petitioner:

> ...returns for continued follow up and surveillance of lymphoplasmacytold non-Hodgkin lymphoma originating in 2005, the patient presenting with right hip pain, bone marrow biopsy confirming lymphoplasmacytold lymphoma with a hypercellular marrow at 95%. She went on to receive fludarabine and Rituxan, completing 6 cycles in 04/2006, and has been relatively asymptomatic since that time. [redacted] continues to present with hypogammaglobulinemia. Despite this, she has had no significant life-threatening infections. She is doing relatively well.

11. DDD's Case Analysis dated November 21, 2014 addresses the five-step sequential evaluation process as follows:

> Step 1: Is the claimant engaging in SGA? ***No***
> Step 2: Is the impairment severe? ***Yes***
> Step 3: Does the claimant's impairment Meet or Equal a listing? ***No***
> Step 4: Can the claimant perform past relevant work? ***No***

12. Step two of the evaluation determined petitioner's lymphoma was considered a severe physical impairment.

13. The petitioner's impairment, in step three, did not meet or equal the federal regulations listing. Ms Coe stated that the listing considered was 13.05 (A) (2) – Lymphoma. Based on its review of the petitioner's medical records, DDD determined she did not meet this listing which requires "initiation of more than one antineoplastic treatment regimen within a consecutive 12-month period."

14. DDD established the petitioner's residual functional capacity (RFC) through analysis of her medical records and history. Based on the petitioner's age, medical conditions, and risk level, DDD determined the petitioner maintains the functional capacity to perform light physical exertion work in accordance with vocational rule

202.14. This type of work entails having the capacity to occasionally lift 20 pounds, frequently lift 10 pounds, stand and/or walk (with normal breaks) for approximately 6 hours in an eight-hour day, and sit (with normal breaks) for approximately 6 hours in an eight hour day.

15. The petitioner argued that she is not capable of standing, walking or sitting for as long as the respondent believes. She is in constant pain and cannot stand or sit for longer than 10 to 15 minutes at a time before having to lay down to rest. She disagreed with the respondent's assessment.

16. The petitioner expressed concern with some of the information included in DDD's assessment as she never reported that she had multiple myeloma. The respondent explained it appears this diagnosis was incorrectly inputted when the information was sent to DDD; however, when DDD received the petitioner's medical records and made its determination, it only considered her correct diagnosis.

17. The petitioner was also concerned that the medical records used by DDD to make its decision are over a year and a half old because she has not been able to go to the doctor since July 2013. Ms. Coe explained those are the only medical records available; therefore, they have to base their determination on those records.

CONCLUSIONS OF LAW

18. 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.

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

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

21. The standard of proof needed to be met for an administrative hearing is by a preponderance of the evidence, as provided by Fla. Admin. Code R. 65-2.060(1).

22. 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 Medicaid 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.

23. Federal Regulation 42 C.F.R. § 435.541 explains that a State Medicaid disability determination 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.

24. 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).)

25. In evaluating the first step, it has been determined the petitioner is not presently engaging in SGA. Therefore, the first step is considered met.

26. The petitioner's lymphoma is considered severe and meets duration requirements. The second step is met.

27. The third step requires determining whether the petitioner's impairment meets or equals the "Listing of Impairments" indicated in Appendix 1 to subpart P of section 404 of the Social Security Act. Based on the cumulative evidence, the petitioner's impairment does not meet or equal the "Listing of Impairments," which includes section 13.05 – Lymphoma.

28. The evidence does not support meeting or equaling listing 13.05 "Lymphoma", which requires "initiation of more than one antineoplastic treatment regimen within a consecutive 12-month period." As the most recent medical records available are from July 2013, there is no evidence of this treatment in the past 12 months.

29. Without the proper medical documentation, the petitioner's impairment does not rise to the level of severity required to meet or equal the above listing. Therefore, the third step is not met and the analysis continues to step four.

30. The fourth step requires determining whether the petitioner can still do past relevant work based on her residual functional capacity. Analysis of the petitioner's 2005

through 2013 medical records revealed the petitioner maintains the functional capacity to perform light physical exertion work in accordance with vocational rule 202.14.

31. Federal Regulation 20 C.F.R. § 404 Subpart P, Appendix 2 states in relevant part:

> 202.00 Maximum sustained work capability limited to light work as a result of severe medically determinable impairment(s). (a) The functional capacity to perform a full range of light work includes the functional capacity to perform sedentary as well as light work. Approximately 1,600 separate sedentary and light unskilled occupations can be identified in eight broad occupational categories, each occupation representing numerous jobs in the national economy. These jobs can be performed after a short demonstration or within 30 days, and do not require special skills or experience.
> (b) The functional capacity to perform a wide or full range of light work represents substantial work capability compatible with making a work adjustment to substantial numbers of unskilled jobs and, thus, generally provides sufficient occupational mobility even for severely impaired individuals who are not of advanced age and have sufficient educational competences for unskilled work.
> ...
> (e) The presence of acquired skills that are readily transferable to a significant range of semi-skilled or skilled work within an individual's residual functional capacity would ordinarily warrant a finding of not disabled regardless of the adversity of age, or whether the individual's formal education is commensurate with his or her demonstrated skill level. The acquisition of work skills demonstrates the ability to perform work at the level of complexity demonstrated by the skill level attained regardless of the individual's formal educational attainments.
> ...
> Table No. 2 – Residual Functional Capacity: Maximum Sustained Work Capability Limited To Light Work as a Result of Severe Medically Determinable Impairment(s).

Rule	Age	Education	Previous work experience	Decision
202.14	Closely approaching Advanced age (50 – 54+)	High school or more	Skilled or semiskilled - skills not transferable	Not disabled

32. While the evidence shows the petitioner has a severe medical impairment, this impairment should not preclude her from performing past relevant work. Based on the

totality of the evidence presented, the petitioner should be capable of performing light work.

33. In careful review of the evidence, testimony and controlling authorities, the undersigned concludes the petitioner does not meet the federal disability criteria for Medicaid eligibility, and the respondent followed rule in denying the petitioner's application for SSI-Related (disability) Medicaid.

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 16th day of March, 2015,

in Tallahassee, Florida.

Karina A. Sanchez
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