

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

FILED

JUL 22 2014

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES



APPEAL NO. 14F-02193

PETITIONER,

Vs.

CASE NO.



FLORIDA DEPT OF
CHILDREN AND FAMILIES
CIRCUIT: 02 Leon
UNIT: 88414

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on June 19, 2014 at 3:00 p.m. The hearing was later reconvened on June 24, 2014 at 3:30 p.m.

APPEARANCES

For the Petitioner: Mary Laufman, Capital Regional Medical Center

For the Respondent: Marixsa Griffith, ACCESS Supervisor

STATEMENT OF ISSUE

At issue is Respondent's action in denying Petitioner's application for SSI-Related Medicaid.

PRELIMINARY STATEMENT

The Florida Department of Children and Families (Department or DCF) determines eligibility for SSI-Related Medicaid programs. 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. 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 and effectuation of any benefits due.

The Petitioner was present. Witness for the Respondent was Rebecca Sills, Operations Service Manger with DDD. Appearing as an observer was Lauren Coe, Programs Operation Administrator with DDD.

Respondent's exhibits 1 through 10 were entered into evidence. Petitioner submitted no exhibits into evidence.

FINDINGS OF FACT

1. Petitioner is a 44 year-old male who alleges uncontrolled diabetes, massive dorsal abscess with osteomyelitis, tracheostomy, and sleep apnea. Petitioner is not engaging in substantial gainful activity (SGA or work activity).

2. Petitioner has 5 years of educational experience and past relevant work experience as a stucco worker.

3. On September 10, 2013, Petitioner submitted an application with DCF for SSI-Related Medicaid on the basis of disability.

4. On December 2, 2013, DCF informed Petitioner of a denial of his application for Medicaid. Reasons for the denial indicate no household member met the disability requirement.

5. On November 26, 2013, DDD completed a disability review which resulted in an unfavorable decision (N32). Decision code N32 indicates Petitioner has the capacity for substantial gainful activity, specifically other work in the national economy.

Petitioner's primary diagnosis reads Diabetes and secondary diagnosis reads Rotator

Cuff Tear:

6. DDD Case Analysis Form, SSA-416, dated November 26, 2013 states in part:

1. Is claimant engaging in SGA? NO
2. Is the impairment severe? Moderately
3. Does the impairment meet or medically equal a Listing? NO
4. Is the RFC compatible with capability to perform P.R.W? NO
5. Are they able to perform other work? YES

ADL's

He is not working. Florida Wellness was seen 850-386-6666 on North Monroe Street. He is taking medications for diabetes, blood thinners and antibiotics. He states his foot is swelling up again. He just got out of the hospital October 20. He states his tracheostomy tube was taken out because he could not change it due to finances. His wife helps with his personal care. He is currently using a cane. The doctor prescribed a walker but he could not afford it. During the day, he sits in his van in the front yard because his power is off in his van. He does not do any household work. He does not go grocery shopping. His license is suspended but he states he could not physically drive. He cannot prepare his meals, as he cannot stand up long enough. He does not take care of anyone. He is willing to undergo a CE.

Summary/Conclusion:

44 yo male with allegations of uncontrolled diabetes, massive dorsal abscess with osteomyelitis, tracheostomy and sleep apnea. MER in file from Capital Regional Medical Center ED admission on 8/16/13 for pain and swelling in the left foot. MRI of the foot demonstrated cellulitis of the large abscess without evidence of deep infection. He underwent I & D and placement of wound vacuum. S/P surgery examination of the foot revealed exposed periosteum but some granulation tissue is present. 2+ palpable DP pulse. Sensation was intact over the foot and distally as well. He was able to dorsiflex and plantar flex the ankle. No ulcers or wounds were detected.

9/2/13 tracheostomy examination revealed that due to squamous lining of at least 50% of the tracheostomy opening that this only slowly closing at its most anterior end.

Neurologically, he is alert and oriented x4 and moves all four extremities spontaneously.

MER in file from Florida Wellness Center reveals MRI of the right shoulder from 5/10 that revealed partial tear of the supraspinatus and subscapularis. Injury was sustained in MVA on 1/30/13. MER in file from Tallahassee Memorial Regional Medical Center provides chest x-ray (1/30/13) that revealed heart was normal heart size, tracheostomy tube overlies the tracheal column, clear lungs and pleural spaces and DDD of the spine. Medical history is significant for uncontrolled diabetes, obstructive sleep apnea requiring tracheostomy (2009) and rotator cuff injury. The claimant did not meet or equal a listing and a RFC was created suggesting light work. The claimant can perform other work, N32, such as marker (209.587-034), sales attendant (200.677-010) or storage facility rental clerk (295.367-026).

7. A Physical Residual Functional Capacity Assessment ("RFC") was completed by DDD, which indicates Petitioner has the functional capacity to perform light physical exertion. Light physical exertion entails being able to lift 20 lbs occasionally and 10 lbs frequently as well as standing, walking, and sitting about six hours in an eight hour work day.

8. Petitioner asserts due to his illness and education he is unable to find employment.

9. DDD determined Petitioner not disabled at step five of the five-steps of sequential evaluation process based on the available medical records. Ms. Sills asserts Petitioner maintains the functional capacity to perform light physical exertion and a full range of light work. This is consistent with vocational code 202.18. Such jobs include a marker, sales attendant, and storage facility rental clerk.

CONCLUSIONS OF LAW

10. 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. § 120.80. This order is the final administrative decision of the Department of Children and Families under Fla. Stat. § 409.285.

11. This hearing was held as a de novo proceeding pursuant to Fla. Admin. Code R. 65-2.056.

12. The burden of proof was assigned to the Petitioner pursuant to Fla. Admin. Code R. 65-2.060(1).

13. 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).

14. 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.

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. 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).)

17. In evaluating the first step, it was determined Petitioner is not engaging in SGA. The first step is considered met.

18. In evaluating the second step, it was determined Petitioner has a medically determinable impairment or combination of impairments considered severe. The second step is considered met.

19. The third step requires determining whether Petitioner's impairments meet or equal the "Listing of Impairments" indicated in Appendix 1 to subpart P of section 404 of the Social Security Act. Based on the cumulative and objective medical evidence, Petitioner's impairments fail to meet or equal the "Listing of impairments", which includes sections 1.00 Musculoskeletal System, 3.00 Respiratory System, and 9.00 Endocrine Disorders.

20. At step four, the undersigned must determine whether Petitioner has the residual functional capacity to perform the requirements of his/her past relevant work. Based on the evidence submitted, the Petitioner's past relevant work is that of a stucco worker (DOT 842.381-014). The dictionary of occupational title describes this job as

having medium physical exertion. According to DDD's analysis, Petitioner would be unable to do past work as a stucco worker. The undersigned is in agreement with this analysis. Therefore, it is appropriate to move on to step five.

21. The fifth step requires the undersigned to determine whether Petitioner is able to do any other work considering his/her residual functional capacity, age, education, and work experience.

22. The cumulative evidence shows Petitioner is a 44 year-old male with five years of educational experience and past relevant work history as a stucco worker. The objective medical evidence shows Petitioner should be capable of performing light exertional activity and even sedentary exertional activity, in accordance with medical-vocational guideline 202.18. See 20 C.F.R. Part 404, Subpart P, Appendix 2. Light exertional activity jobs include marker, sales attendant, and storage facility rental clerk.

23. While Petitioner may have some medically determinable impairments, these impairments should not preclude him from performing other work in the national economy, specifically light and sedentary exertional activity jobs. The undersigned concludes Petitioner is found not disabled at step-five, in accordance with the objective medical evidence.

24. After careful review of the evidence submitted and the relevant laws set forth above, the undersigned finds the Department's action was proper, and the Petitioner's burden was not met.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the Petitioner's appeal is hereby denied and Department's action 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 20th day of July, 2014,

in Tallahassee, Florida.

LaToya Jackson *mc*

La Toya Millicent Jackson
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
2 DPOES: Reg Altazan
MARY LAUFMAN