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

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DEPT OF CHILDREN & FAMILIES



APPEAL NO. 14F-03266

PETITIONER,
Vs.

CASE NO. 

FLORIDA DEPT OF
CHILDREN AND FAMILIES
CIRCUIT: 06 Pinellas
UNIT: 88268

RESPONDENT.
_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on May 29, 2014 at 8:30 a.m.

APPEARANCES

For the Petitioner:  pro se

For the Respondent: Raymond Muraida, 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.

Witness for the Petitioner was [REDACTED] his mother. Witness for the Respondent was Consevilla Martinez, Operations Service Manger with DDD.

Respondent's exhibits 1 through 10 were entered into evidence. Petitioner's exhibit 1 was entered into evidence.

FINDINGS OF FACT

1. Petitioner is a 23 year-old male who alleges a right leg and knee injury status-post motor vehicle accident. Petitioner is not engaging in substantial gainful activity (SGA or work activity).

2. Petitioner has no past relevant work history.

3. On January 2, 2014, Petitioner submitted an application with DCF for SSI-Related Medicaid on the basis of disability.

4. On February 20, 2014, 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 February 19, 2014, DDD completed a disability review which resulted in an unfavorable decision (N35). Decision code N35 indicates Petitioner's impairments are not expected to be disabling for 12 full months. Petitioner's primary diagnosis reads

S/P MVA w/ORIF (status-post motor vehicle accident with open reduction and internal fixation) and secondary diagnosis reads Right Great Toe Amputation.

6. DDD Case Analysis Form, SSA-416, dated February 19, 2014 states in part:

1. Is the clmt engaging in SGA? NO
2. Is the impairment severe? YES
3. Does the claimant's impairment Meet or Equal a Listing? NO
4. Can the clmt perform past relevant work (PRW)? N/A
5. Can the clmt perform other work? N/A

Data:

23 y.o. alleging right leg and knee injury s/p MVA. No PRW for the last 15 years. Treatment/MER findings- His last apt was with Hopkins Hospital and Bayfront Medical Center.

ADLS:

Clmt can not perform ADLs without assistance due to RLE injury. Clmt resides with his mother who is currently his caregiver. Clmt stated that he uses a wheelchair for ambulation.

Mental:

Clmt has new onset depression and anxiety noted in MER, but has had no tx and meds were prescribed during hospitalization. He states that he was unaware of any mental diagnosis and that he has never had mental health issues in the past. However, he is capable of ADL/s limited only by his physical condition. Mental impairment is ruled out.

Summary/Decision:

23 y.o. clmt with impairments not expected to last 12 months but may result in residuals within the parameters of a light RFC due to ORIF of the RLE with vascular injury, right great toe amputation and thrombosis. Clmt is denied-N35 to light RFC.

7. Medical records from Florida Orthopaedic Associates dated March 10, 2014 shows follow-up of ORIF right distal femur fraction. He is making progress, pain is more controlled. He is getting physical therapy and making strides as far as mobility. Alignment was good and high incision is well healed. X-ray Right Femur shows fracture is healing satisfactorily. April 21, 2014 records show pain is controlled with Tramadol

and patient indicates things seem to be getting better as time goes by. Weightbearing is allowed as tolerated.

8. A projected Physical Residual Functional Capacity Assessment ("RFC"), 12 months after onset dated December 1, 2014, 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. The DDD examiner noted discharge summary dated 1/20/14 reveals clmt with normal physical exam except nasopharynx with an ulceration on the back of the uvula consistent with trauma resulting in pain and RLE non weight bearing (NWB) s/p sx and amputation of great toe due to gangrene. X-ray of the right femur dated 1/6/2014 shows internally fixated distal right femoral fx without evidence of hardware failure or loosening. Remainder of exam unremarkable.

9. Petitioner asserts he can bear full weight on his lower extremity but has some muscle atrophy. He is on blood thinners. Petitioner asserts he was given Lexapro while in the hospital but has not taken any since then. This appears to be primarily due to his physical condition. He is not taking any psychotropic medications or receiving any psychological treatment.

10. DDD determined Petitioner not disabled at step two of the five-steps of sequential evaluation process based on the available medical records. DDD determined Petitioner's impairments are not expected to last 12 months and therefore do not meet durational requirements. Furthermore, even if Petitioner's impairments were to last 12 months a projected RFC dated December 1, 2014, 12 months after

onset, would indicate Petitioner should maintain the functional capacity to perform light physical exertion and a full range of light work.

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

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

13. The burden of proof was assigned to the Petitioner pursuant to Fla. Admin. Code R. 65-2060(1).

14. 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).

15. 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.

16. 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.

17. 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).)

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

19. In evaluating the second step, Petitioner's physical impairments must be considered severe and must meet durational requirements. Petitioner was found not disabled at step two because his impairments are not expected to last 12 months or more.

20. 20 C.F.R. § 416.909, How Long the Impairment Must Last, sets standards for meeting the durational requirement and indicates "[u]nless your impairment is expected to result in death, it must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement."

21. The cumulative evidence shows Petitioner's fracture is healing satisfactorily and the rest of his exam is normal. Even after 12 months of onset, the objective medical evidence projects Petitioner should be capable of doing light work in the national economy. The undersigned is in agreement with DDD's assessment. While

Petitioner does have medically determinable impairments, the medical evidence suggests these impairments are not expected to last 12 months or more in accordance with 20 C.F.R. § 416.909. Therefore, a durational denial at step two of the five-steps of sequential evaluation would be appropriate.

22. 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

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 9th day of July, 2014,

in Tallahassee, Florida.

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