

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

**FILED**

FEB 25 2015

OFFICE OF APPEAL HEARINGS  
DEPT OF CHILDREN & FAMILIES

APPEAL NO. 14F-9382

CASE NO. [REDACTED]

[REDACTED]  
PETITIONER,

Vs.

FLORIDA DEPT OF  
CHILDREN AND FAMILIES  
CIRCUIT: 11 DADE  
UNIT: 88675

RESPONDENT.  
\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on January 9<sup>th</sup>, 2015 at 10:15 a.m. in Miami, Florida.

**APPEARANCES**

For the Petitioner: [REDACTED] pro se

For the Respondent: Oilda Guerra, Economic Self-Sufficiency Specialist for the Economic (ESS) program.

**STATEMENT OF ISSUE**

The petitioner is appealing the respondent's action in denying his 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.

Appearing as a witness for the respondent was Lauren Coe, Program Administrator for DDD. Appearing as non-participating observers were Eduardo Villoch, supervisor for ESS and Don Burdick, supervisor of DDD. Serving as a translator was Carlos Yulee of ESS.

A telephonic hearing was originally scheduled for December 12<sup>th</sup>, 2014. The petitioner subsequently requested that the hearing be changed to an in-person forum, and the hearing was rescheduled and convened as described above.

Respondent's exhibits 1-4 were entered into evidence. The petitioner did not submit any documents for consideration.

#### **FINDINGS OF FACT**

1. The petitioner is a 32 year-old male who alleges swelling and thrombosis of the right leg, obesity and as an ensuing result, diabetes, hypertension, and cholesterol problems. The petitioner is ambulatory and is not engaging in substantial gainful activity ("SGA" or "work activity").

2. The petitioner has 12 years of educational experience and a past relevant work history as a sign maker.

3. On August 8<sup>th</sup>, 2014, the petitioner submitted an application with DCF for SSI-Related Medicaid on the basis of disability.

4. On November 3<sup>rd</sup>, 2014, DCF informed the petitioner of a denial of Medical eligibility effective August 2014. (See Respondent's Exhibit 4, page 189 of the exhibits.) The reason given for the denial is no household member meets the disability requirement.

5. On October 30<sup>th</sup>, 2014, DDD completed a disability review which resulted in an unfavorable (N32) decision. DDD lists the petitioner's primary diagnosis as deep vein thrombosis. DDD lists the petitioner's secondary diagnosis as obesity. Decision code N32 indicates Petitioner has the capacity for substantial gainful activity, specifically other work in the national economy.

6. Medical records dated June 17<sup>th</sup>, 2014 show the following: (see page 38 et seq.) Deep vein thrombosis, obesity, sleeps apnea, type 2 diabetes, and hypertension. BP was 124/83, pulse was 87 bpm, height is 5'7", and weight is 436 lbs. The petitioner is on prescribed treatments which include Metformin (1000 mg, twice daily); Metoprolol Tartrate (100 mg, twice daily), and Pravastatin (20 mg, once daily). June 19, 2014 venous duplex ultrasound shows no sonographic evidence of deep vein thrombosis in the sample vessels of the right lower [extremity].

7. The petitioner submitted a medical report from Jessie Trice Community Health Center, Inc., dated June 19<sup>th</sup>, 2014, indicating that he would be able to return to school with no restrictions after July 3<sup>rd</sup>, 2014. The report places no restrictions on lifting pushing or pulling, reaching overhead, bending, squatting, or walking/standing/sitting for over any specific length of time. (See page 50 of the respondent's exhibits.)

8. DDD Case Analysis Form, SSA-416, dated October 30<sup>th</sup>, 2014 states in part:

1. Claimant is not working.
2. Impairment(s): Deep vein thrombosis, obesity
3. Does not meet or equal listings(s)
4. Past work as a sign maker
5. Claimant does not appear capable of doing past work but does appear capable of doing other work. ...

Per telephone call on 10/10/14, [petitioner] had s [sic] difficulty doing his personal care due to obesity, left leg circulatory problems and edema. He cannot do household chores. He can walk less than one block before stopping due to legs pain. He does not use a cane due to cost. He can lift about 10-20 pounds. He can drive. He can shop with difficulty. He does not take care of any other persons. His friends take care of him. He [does] not take care of any pets. On a typical day he reads.

9. DDD found the petitioner not disabled at step five of the five-steps of sequential evaluation process for having the capacity to do other work in the national economy. Ms. Coe confirmed DDD's decision is in accordance with vocational rule 201.27.

10. A Physical Residual Functional Capacity Assessment ("RFC") was completed by DDD indicating that the petitioner has the functional capacity to perform sedentary exertion. Sedentary physical exertion entails lifting no more than 10 pounds, sitting six hours in an eight hour workday, and some walking to carry out necessary job duties.

11. The petitioner asserts that he is eager and willing to get ahead in life, but that his physical limitations prevent him from doing so.

12. Ms. Coe explained DDD's decision is based on the medical records and that the petitioner's physical limitations were taken into account to the fullest extent possible.

**CONCLUSIONS OF LAW**

13. The Department of Children and Families Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties, pursuant to § 120.80, Fla. Stat.. This order is the final administrative decision of the Department of Children and Families under § 409.285, Fla. Stat..

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

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

16. 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).

17. 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.

18. 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.

19. 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).)

20. In evaluating the first step, it was determined that the petitioner is not engaging in SGA. The first step is considered met.

21. In evaluating the second step, the petitioner's physical impairments are considered severe and meet requisite durational requirements. The second step is met.

22. The third step requires determining whether the 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 do not meet or equal the "Listing of impairments", which includes sections 1.00 Musculoskeletal System and, 4.00 Cardiovascular System.

23. In terms of the cardiovascular system, the petitioner's impairments do not rise to the level of severity required for listing 4.11 "Chronic venous insufficiency" which entails extensive brawny edema involving at least two-thirds of the leg between the ankle and knee or the distal one-third of the lower extremity between the ankle and the hip, or superficial varicosities, stasis dermatitis, and either recurrent ulceration or

persistent ulceration that has not healed following at least 3 months of prescribed treatment.”

24. The fourth step requires determining whether the petitioner can still do past relevant work based on his residual functional capacity. Based on the evidence submitted, the Petitioner’s past relevant work is that of a sign maker. According to the Dictionary of Occupational Titles, this job is categorized as “medium work,” which is defined as “exerting 20 to 50 pounds of force occasionally, and/or 10 to 25 pounds of force frequently, and/or greater than negligible up to 10 pounds of force constantly to move objects. Based on DDD’s analysis, the petitioner would be unable to do past work as a sign maker. The hearing officer agrees with this analysis. Therefore, it is appropriate to move on to step five.

25. The fifth step requires considering Petitioner’s residual functional capacity, age, education, and work experience to determine if he can adjust to other work. The evidence shows Petitioner is a 32 year-old male with 12 years of educational experience and past relevant work history as a sign maker. The objective medical evidence shows Petitioner should be capable of performing sedentary activity, in accordance with medical-vocational guideline 201.27. See 20 C.F.R. § 416.969. Such sedentary jobs include surveillance system monitor, bonder, semiconductor, or printed circuit layout taper.

26. The cumulative evidence shows while the petitioner may have some medically determinable impairments, these impairments should not preclude him from adjusting to other work in the national economy. Therefore, the hearing officer



concludes that the petitioner is found not disabled at step five, in accordance with medical-vocational guideline 201.27 as well as the objective medical evidence.

**DECISION**

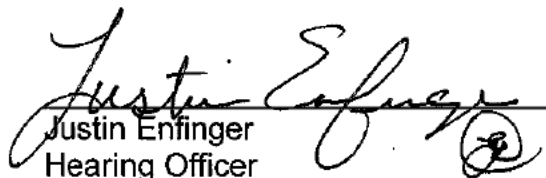
Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is denied and the Department's action is affirmed.

**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 25<sup>th</sup> day of February, 2015,

in Tallahassee, Florida.



Justin Entinger  
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  
Teresa Zepeda, Circuit 11 ESS