

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

**FILED**

**APR 01 2015**

OFFICE OF APPEAL HEARINGS  
DEPT OF CHILDREN & FAMILIES



APPEAL NO. 15F-00133

PETITIONER,

Vs.

CASE NO. 

FLORIDA DEPT OF CHILDREN AND FAMILIES  
CIRCUIT: 11 Dade  
UNIT: 66251


RESPONDENT.

---

**FINAL ORDER**

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on March 12, 2015, at 9:00 a.m., in Doral, Florida.

**APPEARANCES**

For the Petitioner:  Pro Se.

For the Respondent: Lois Samuel, Economic Self Sufficiency Specialist  
Supervisor, Department of Children and Families.

**STATEMENT OF ISSUE**

At issue is the Department's action to deny the petitioner's application for SSI-Related Medicaid benefits on the basis that he did not meet the disability requirements of the program.

**PRELIMINARY STATEMENT**

Present as a witness for the petitioner was the petitioner's neighbor, [REDACTED]

[REDACTED] Present as an observer was Ada Torroella from DCF.

Present as an interpreter was Mari Lara.

The respondent submitted into evidence Respondent's Exhibits 1 through 3. The petitioner submitted into evidence Petitioner Exhibit 1.

**FINDINGS OF FACT**

Based upon the oral and documentary evidence presented at the final hearing and on the entire proceeding, the following Findings of Fact are made:

1. The petitioner filed an application for Medicaid benefits with the Department on September 1, 2014. An individual must be disabled, blind, or aged (65 years or older) to be eligible for SSI- Related Medicaid. As the petitioner has not turned sixty-five years and is forty-nine years of age, his application was forwarded to DDD (Disability Determination Department) for disability consideration.

2. The petitioner has not applied for Social Security benefits (SSI) as she believes she would not be eligible for these benefits based on her not passing the U.S. citizenship test.

3. DDD relies on the same rules and regulations that apply to the Social Security Administration (SSA) when making their determination. DDD considered the petitioner as not being disabled using the code N-32. N-32 code means "capacity for substantial gainful activity-other work." DDD thus denied the petitioner at step five of the five-steps of sequential evaluation. The DDD adjudicator noted that the petitioner could do such

jobs as "Garment Sorter, Swatch Clerk and Checker." DDD also noted that the petitioner could do unskilled work in the national economy. The Department denied the petitioner's application for Medicaid benefits on November 21, 2014, 2014 based on not being considered disabled.

4. The petitioner does not speak English. She has an eleventh grade level of education. She currently is not employed but was last employed as a caretaker for an elderly individual in 2013. She had previous work history as a hotel housekeeper and as a cook. She does not recall the time she worked at these jobs.

5. A Patient Chart Report for the petitioner dated September 12, 2014 by petitioner's treating psychiatrist shows diagnoses of Schizoaffective Unspecified and Paranoid Schizophrenic. A medical report dated June 27, 2013 states: "Patient has been under psychiatric care and medication currently she is more stable after inpatient treatment. Patient appears to be well groomed with normal psychomotor skills. Affect was blunt. Sensorium was alert. Thought process was goal directed. Patient experiences auditory hallucinations. Speech was coherent. Patient is able to care for herself."

6. A Psychiatric Progress Note for the petitioner dated January 14, 2014 states under Thought Process: "No suicidal ideation; No homicidal ideation; No hallucinations and under delusions...None." A medical report concerning the petitioner dated August 17, 2011 by petitioner's treating physician states under Assessment "Hypertension."

7. The petitioner currently is prescribed Prozac and Abilify for her mental condition. She is prescribed Metoprolol for hypertension.

8. DDD completed a Psychiatric Review Technique assessment that was signed by DDD's Consulting Psychologist, Thomas Clark, Ph. D. This review shows the petitioner was evaluated under Affective Disorders. Regarding Functional Limitations, the petitioner has a mild degree of limitation under Restriction of Activities of Daily living. She has a moderate degree of limitation under Difficulties in Maintaining Social Function. She has a moderate degree of limitation under Difficulties in Maintaining Concentration, Persistence, or Pace. She has no degree of limitation under Episodes of Decompensation, each of extended duration.

9. The above noted consultant stated in this review:

She has carried a diagnosis of "schizophrenia" but is prescribed antidepressants. The mental status reports in treatment records are more consistent with a mood disorder with psychotic features (Schizoaffective Disorder). ... Claimant is able to leave home alone and use public transit, but her son "does not like her to go out alone." This is not a limitation imposed by her mental illness but reflects a cultural preference. ... Treatment records reflect good control of psych sx with benefits of Rx.

10. DDD also completed a Mental Residual Functional Capacity Assessment for the petitioner, which was also signed by DDD's Consulting Psychologist, Thomas Clark, Ph. D. In this assessment under Understanding and Memory, the petitioner is not significantly limited in the ability to remember locations and work-like procedures; ability to understand remember short and simple instructions; and the ability to understand and remember detailed instruction.

11. Under Sustained Concentration and Persistence, the petitioner is not significantly limited in the ability to carry out short and simple instructions; to carry out detailed instructions; to sustain an ordinary routine without special supervision; to work

in coordination with or proximity to others without being distracted by them; and to make simple work related decisions.

12. She is moderately limited in her ability to maintain attention and concentration for extended periods; to perform activities within a schedule, maintain a regular attendance, and to be punctual within customary tolerances and to complete a normal workday and worksheet without interruptions from psychologically based symptoms; and to perform at a consistent pace without an unreasonable number and length of rest period.

13. Under Social Interactions, the petitioner is not significantly limited in the ability to interact appropriately with the general public; to ask simple questions or request assistance; to accept instructions and respond appropriately to criticism from supervisors; and to maintain socially appropriate behavior and to adhere to basic standard of neatness and cleanliness.

14. She is moderately limited in her ability to get along with coworkers or peers without distracting them or exhibiting behavioral extremes.

15. Under Adaption, the petitioner is not significantly limited in the ability to respond appropriately to changes in work setting; to be aware of normal hazards and take appropriate precautions; to travel in unfamiliar places or use public transportation and to set realistic goals; or make plans independently of others.

16. DDD also completed a Physical Residual Functional Capacity Assessment for the petitioner. For the Exertional Limitations part of this assessment, it notes the petitioner can occasionally lift and/or carry 50 pounds. It notes the petitioner can

frequently lift and/or carry 25 pounds. It notes the petitioner can stand and/or walk about six hours in an eight-hour workday. It notes the petitioner can sit with normal breaks about six hours in an eight-hour workday. It notes the petitioner can push and/or pull unlimited.

17. For postural limitations, the assessment notes none established. For manipulative limitations, the assessment notes none established. For visual limitations, the assessment notes none established. For communicative limitations, the assessment notes none established. For environmental limitations, the assessment notes none established. Based on this assessment, DDD considered the petitioner as having the ability to perform medium level work.

18. The petitioner and her witness stated that the petitioner has been taking her medication for about three months now. While on her medication, the petitioner stated that she feels good; she can prepare her meals; she can clean her house and can run errands. She stated that the medication makes her sleepy and she sleeps about two hours during the day on top of her normal eight hours of sleep. When she does not take her medication, she will cry all of the time and will just take off walking and not return home. At times, she would not return home for a month.

#### **CONCLUSIONS OF LAW**

19. 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 § 409.285, Fla. Stat.

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

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

22. Federal Regulation 42 C.F.R. § 435.541 sets standards for when it is appropriate for the state Medicaid agency to make a determination of disability for individuals who apply for Medicaid. The regulation states in relevant part:

(c) *Determinations made by the Medicaid agency.* The agency must make a determination of disability in accordance with the requirements of this section if any of the following circumstances exist:...

(4) The individual applies for Medicaid as a non-cash beneficiary, whether or not the State has a section 1634 agreement with SSA, and—

(i) Alleges a disabling condition different from, or in addition to, that considered by SSA in making its determination; or

(ii) Alleges more than 12 months after the most recent SSA determination denying disability that his or her condition has changed or deteriorated since that SSA determination and alleges a new period of disability which meets the durational requirements of the Act, and has not applied to SSA for a determination with respect to these allegations.

23. The Department's Florida Program Policy Manual, section 1440.1204 Blindness/Disability Determinations (MSSI, SFP), states in part "If the individual has not received a disability decision from SSA, a blindness/disability application must be submitted to the Division of Disability Determinations (DDD) for individuals under age 65 who are requesting Community Medicaid under community MEDS-AD, Medically Needy, and Emergency Medicaid for Alien Programs."

24. 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.

25. Federal Regulation 42 C.F.R. § 435.541 indicates that the state Medicaid agency's 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.

26. 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).)

27. In evaluating the first step, the petitioner is not engaging in substantial gainful activity. Therefore, the first step is met.

28. In evaluating the second step, the impairments must last or are expected to last for a continuous period of at least 12 months to meet durational requirements. The

petitioner has diagnoses of hypertension, schizoaffective unspecified, and paranoid schizophrenic which could be considered severe. The second step is met.

29. In evaluating the third step, the impairment(s) would have to meet or equal one of the listings in appendix 1 to subpart P of part 404. As it relates to listing 12.04:

*Affective Disorders:* Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one of the following:

1. Depressive syndrome characterized by at least four of the following:

- a. Anhedonia or pervasive loss of interest in almost all activities; or
- b. Appetite disturbance with change in weight; or
- c. Sleep disturbance; or
- d. Psychomotor agitation or retardation; or
- e. Decreased energy; or
- f. Feelings of guilt or worthlessness; or
- g. Difficulty concentrating or thinking; or
- h. Thoughts of suicide; or
- i. Hallucinations, delusions, or paranoid thinking; or

2. Manic syndrome characterized by at least three of the following:

- a. Hyperactivity; or
  - b. Pressure of speech; or
  - c. Flight of ideas; or
  - d. Inflated self-esteem; or
  - e. Decreased need for sleep; or
  - f. Easy distractability; or
  - g. Involvement in activities that have a high probability of painful consequences which are not recognized; or
  - h. Hallucinations, delusions or paranoid thinking;
- or

3. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes);

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Marked difficulties in maintaining concentration, persistence, or pace; or
4. Repeated episodes of decompensation, each of extended duration;

OR

C. Medically documented history of a chronic affective disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

1. Repeated episodes of decompensation, each of extended duration; or
2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or
3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

The petitioner has not met the above listing as indicated in the medical records provided.

30. The petitioner was further evaluated under section 4.00 Cardiovascular System of the "Listing of Impairments." No listing in this section was met as indicated in the medical records provided.

31. The fourth step is to determine whether or not the individual's impairment(s) prevents him/her from doing past relevant work. Based on DDD's analysis, the petitioner has no past relevant work that was considered to be "substantial gainful activity." Therefore, it is appropriate to move on to step five.

32. The fifth step is to determine if the petitioner can do other work in the national economy which requires considering petitioner's Mental Residual Functional

Capacity Assessment, Physical Residual Functional Capacity Assessment, age, education, inability to speak English, work experience, effects of medication, and the treating physician's evaluations of improvement to see if she can adjust to other work.

33. The petitioner has indicated that with the use of medication she can function. The respondent's position is that the petitioner can do other work in the national economy. The undersigned is in agreement that the petitioner should be capable of performing other work within her mental and physical limitations in the national economy. The Dictionary of Occupational titles indicates Garment Sorter, Swatch Clerk and Checker as light duty work, all of which such jobs the petitioner could perform.

34. For the case at hand and based on all of the above, the hearing officer concludes the petitioner does not meet the disability criteria of Title XVI of the Social Security Act appearing in 20 C.F.R. § 416.905 and is not considered disabled. The petitioner has not met her burden of proof.

### **DECISION**

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

### **NOTICE OF RIGHT TO APPEAL**

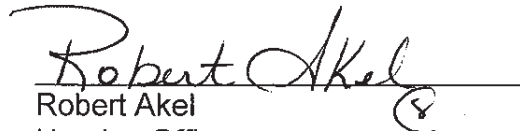
This decision is final and binding on the part of the Department. If the petitioner disagrees with this decision, the petitioner may seek a judicial review. To begin the judicial review, the petitioner must file one copy of a "Notice of Appeal" with the Agency Clerk, Office of Legal Services, Bldg. 2, 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

FINAL ORDER (Cont.)  
15F-00133  
PAGE -13

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 1<sup>st</sup> day of April, 2015,

in Tallahassee, Florida.



Robert Akel  
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  
Office of Economic Self Sufficiency