

FILED

MAR 31 2015

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

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DEPT. OF CHILDREN & FAMILIES



APPEAL NO. 15F-00278

PETITIONER,

Vs.

CASE NO. 

FLORIDA DEPT OF CHILDREN AND FAMILIES
CIRCUIT: 15 Palm Beach
UNIT: 88701

RESPONDENT.
_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on March 10, 2015, at 9:15 a.m.

APPEARANCES

For the Petitioner: , Pro Se.

For the Respondent: Shirley Stringer, Economic Self Sufficiency Specialist
Supervisor, Department of Children and Families (DCF).

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

The respondent submitted into evidence Respondent Exhibits 1 through 3.

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 November 6, 2014. 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. 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 filed an application for disability benefits with the Social Security Administration (SSA) in late 2014. This application was denied by SSA due to a lack of information submitted by the petitioner to SSA. Apparently, DDD was aware of the above SSA decision and made an independent decision for this case.

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. It should be noted DDD also labeled the petitioner as denied under code N-43. N-43 is similar to N-32, but it adds "No blindness" to its definition. The DDD adjudicator noted that the petitioner could do such jobs as "cashier,

cleaner/housekeeping, and parlor/chaperone.” The Department denied the petitioner’s application for Medicaid benefits on December 23, 2014 based on not being disabled.

4. The petitioner graduated high school and received about a year and a half of college education. He also graduated from a technical school. He was last employed as a Computer Aided Design (CAD) Technician on January 9, 2011. The petitioner testified that he quit his job as a technician because he was going to be laid off anyway.

5. The petitioner stated that partly due to a left eye injury when he was in his mid thirties and due to other injuries to this eye later on, he incurred a detached retina to this eye. He stated that he only received minimal medical treatment for this condition. He stated that he has only very blurred vision in the left eye as of the date of this hearing. He stated that his vision is “normal” in his right eye but based on the lack of vision in the left eye he has spatial difficulties with his overall vision.

6. The petitioner also has a back condition. He has been making visits to his treating physician to receive medical prescriptions. A medical report by the petitioner’s treating physician dated October 21, 2014 states in part under Assessment “Lumbar disc degeneration...Herniated intervertebral disc...Lumbar radiculopathy.” This report also states under Physical Exam “Palpation of the thoracic spine revealed abnormalities with tenderness along thoracic musculature and spasm...Palpation of Lumbosacral spine revealed abnormalities. Lumbosacral spine exhibited tenderness on palpation.”

Similar reports were also provided by the same physician on May 18, 2014 and July 14, 2014.

7. The petitioner was previously prescribed Percocet for pain. He now is prescribed Flexural as a muscle relaxer and Hydrocortone also for his back condition.

8. DDD 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 20 pounds. It notes the petitioner can frequently lift and/or carry 10 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.

9. For postural limitations, the assessment notes the petitioner can occasionally climb ramp/stairs and occasionally can climb a ladder/rope/or scaffold. The petitioner can occasionally balance, stoop, kneel, crouch, or crawl.

10. For manipulative limitations, the assessment notes none established.

11. For visual limitations, the assessment notes the petitioner is limited in near acuity, far acuity, depth perception, color vision, and field vision. These limitations were based on the petitioner having limited vision in left eye.

12. For communicative limitations, the assessment notes none established.

13. For environmental limitations the assessment notes the petitioner should avoid concentrated exposure hazards such as machinery heights etc. All other

environmental limitations such as extreme cold; extreme heat, wetness; humidity; noise; vibration and fumes, odors, dust, gases, and poor ventilation was noted as not limited.

14. The petitioner stated he has pain and cramps in his legs, and his feet occasionally go numb. He stated that he can only stand for about fifteen minutes at a

time. He stated that he can walk but only for a short distance, and he is not able to sit for too long either. He stated he is unable to lift any weight. The petitioner also stated that he would have a difficult time, based on his vision problems, doing his previous work as a CAD technician.

15. The hearing officer notes the petitioner's subjective statements of his ability to walk, stand, sit, etc are not supported by the objective medical evidence as provided.

CONCLUSIONS OF LAW

16. 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.

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

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

19. 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.

20. 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."

21. 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.

22. Federal Regulation 42 C.F.R. § 435.541 indicates that the state a 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.

23. 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).)

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

25. 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 a diagnosis of degenerative discs in his back and limited vision, which could be considered severe. The second step is met.

26. 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 1.04:

1.04 *Disorders of the spine* (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine); or

B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours; or

C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

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

27. As it relates to listing 2.02:

2.02 Loss of central visual acuity. Remaining vision in the better eye after best correction is 20/200 or less.

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

28. The fourth step is to determine whether the individual's impairment(s) prevents him/her from doing past relevant work. The petitioner's past job of computer aided design technician is considered light duty work under 003.362-010 of the Dictionary of Occupational Titles. A similar occupation (computer operator) is listed under 213.362-014 and is considered light duty work. According to DDD's analysis and the objective medical evidence, petitioner should be capable of performing light physical exertion. In view of this, petitioner should be capable of performing his past relevant work as a computer aided design technician, as well as other light and sedentary duty jobs in the national economy. Therefore, it is appropriate to end the analysis at step-four.

29. For the case at hand and based on the above cited authorities, 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 his burden of proof.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, this appeal is denied and the Department 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 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 31 day of MARCH, 2015,

in Tallahassee, Florida.



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