

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

FILED

MAR 26 2015

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES



PETITIONER,

Vs.

FLORIDA DEPT OF
CHILDREN AND FAMILIES
CIRCUIT: 11 DADE
UNIT: 66244

APPEAL NO. 15F-0450

CASE NO. 

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on March 16th, 2015 at 2:30 p.m.

APPEARANCES

For the Petitioner: 

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

STATEMENT OF ISSUE

The petitioner is appealing the respondent's action in denying her application for SSI-Related Medicaid. The petitioner carries the burden of proof.

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 a non-participating observer was Ricardo Herrera, Supervisor for ESS.

The hearing was originally scheduled for February 16th, 2015; however, the respondent's proposed evidence was received only three days before the hearing date, and had not been shared with the petitioner. At the rescheduled hearing, the petitioner confirmed having received the respondent's documents.

Respondent's exhibits 1-4 were entered into evidence.

FINDINGS OF FACT

1. The petitioner is a 55 year-old female who alleges bipolar disorder, as well as bulging herniated discs in her cervical and lumbar spine, and hyperparathyroidism. 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 secretary.

3. On October 21st, 2014, the petitioner submitted an application with DCF for SSI-Related Medicaid on the basis of disability.

4. On December 18th, 2014, DCF informed the petitioner of a denial of Medicaid eligibility. A copy of the Notice of Case Action was not included in the respondent's evidence.

5. On December 16th, 2014, DDD completed a disability review which resulted in an unfavorable (N31) decision. DDD lists the petitioner's primary diagnosis as bugling/herniated discs in [cervical and lumbar] spine. DDD lists the petitioner's secondary diagnosis as bipolar [disorder]. Decision code N31 signifies "Nonpay. Capacity for substantial gainful activity - customary past work, no visual impairment."

6. Medical records dated November 25th, 2014 show the following: Anomalies of nails, back pain, bipolar affective mixed, breast lump or mass right, cervicalgia, gastritis, herniated intervertebral disc, hypercalcemia, hyperlipidemia, hyperparathyroidism, irritable bowel syndrome, urinary tract infection. According to the reports, the petitioner was on prescribed treatment which includes Clonazepam (1 mg), Depakote EF (500 mg), Duloxetine HCl (30 mg), Flexeril (10 mg), and Zolpidem Tartrate (5mg). (See the 48th page et seq. of the respondent's exhibits.)

7. DDD Case Analysis Form, SSA-416, dated December 16th, 2014 states in part:

1. Is the claimant engaging in SGA? No
2. Is there a MDI? Yes
3. Does this impairment meet or equal a listing? No
4. Is the claimant able to perform a PRW? Yes
5. N/A

The claimant is not working at this time and has PRW as a secretary. She is able to perform her personal care tasks independently but does have difficulty some days. She is able to prepare simple meals for herself, [s]he lives with her son and is able to do light housework. She is able to drive and goes grocery shopping alone, but has the grocery worker load her

groceries in the car. She does not use an assistive device and is able to stand/walk short periods of time before needing to rest. She is able to count change and manage her money. She reported poor concentration, increased appetite medication at this time.

8. DDD determined at step four of the five-steps of sequential evaluation process that the petitioner has the capacity to return to previous work in the national economy.

9. A Physical Residual Functional Capacity Assessment ("RFC") was completed by DDD indicating that the petitioner has the functional capacity to perform light physical exertion. Light physical exertion entails lifting 20 pounds occasionally and standing, walking, and sitting about six hours in an eight hour workday.

10. 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.

11. The petitioner asserts that her bipolar disorder prevents her from working due to the fact that she has great difficulty dealing with people, and that her "nerves are a wreck."

PRINCIPLES OF LAW

12. 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..

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

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).)

ANALYSIS

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

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

19. 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 12.00 (mental disorders).

20. In terms of the musculoskeletal system, the petitioner's impairments do not rise to the level of severity required for listing 1.04 "Disorders of the spine" (herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, fact arthritis, vertebral fracture) resulting in compromise of a nerve root (including the cauda equine) 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.

21. In terms of mental disorders, the petitioner's impairments do not rise to the level of severity required for listing 12.04, affective disorders, which are 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.

22. The fourth step requires determining whether the petitioner can still do past relevant work based on her residual functional capacity. Based on the evidence submitted, the petitioner's past relevant work is that of a secretary. According to the Dictionary of Occupational Titles, this job is categorized as "sedentary work," which is defined as "exerting up to 10 pounds of force occasionally or a negligible amount of force frequently to lift, carry push, pull, or otherwise move objects, including the human body. Sedentary work involves sitting most of the time, but may involve walking or standing for brief periods of time. Jobs may be defined as sedentary when walking and standing are required only occasionally and all other sedentary criteria are met.

Based on DDD's analysis, the petitioner would be able to do past work as a secretary. The hearing officer agrees with this analysis. Therefore, it is not necessary to move on to step five.

23. The cumulative evidence shows while the petitioner may have some medically determinable impairments, these impairments should not preclude her from adjusting to her past relevant work as a secretary. Therefore, the hearing officer concludes that the petitioner is found not disabled at step four, in accordance with the objective medical evidence.

DECISION

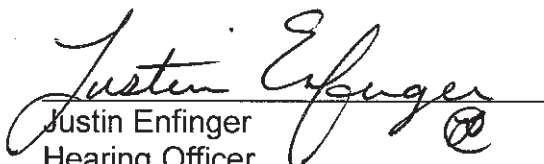
Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is
DENIED and the respondent's action is affirmed.

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 26th day of March, 2015,

in Tallahassee, Florida.


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