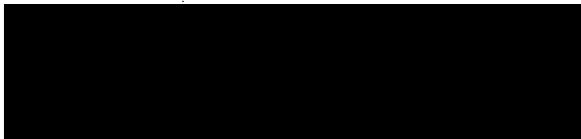


STATE OF FLORIDA  
DEPARTMENT OF CHILDREN AND FAMILIES  
OFFICE OF APPEAL HEARINGS

FILED

APR 08 2015

OFFICE OF APPEAL HEARINGS  
DEPT. OF CHILDREN & FAMILIES



PETITIONER,

Vs.

FLORIDA DEPT OF  
CHILDREN AND FAMILIES  
CIRCUIT: 11 DADE  
UNIT: 66255

RESPONDENT.


APPEAL NO. 15F-0526

CASE NO. 

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on March 23<sup>rd</sup>, 2015 at 2:50 p.m.

**APPEARANCES**

For the Petitioner:  pro se

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

**STATEMENT OF ISSUE**

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

**PRELIMINARY STATEMENT**

The hearing was originally scheduled for February 16<sup>th</sup>, 2015. However, the respondent had not shared its evidence with the petitioner, and therefore, a continuance was necessary.

Appearing as a witness for the petitioner was [REDACTED] Insurance Specialist and Outreach Worker for Community Health Services. Appearing as witnesses for the respondent were Lauren Coe, Program Operations Administrator for the Division of Disability Determinations (DDD), and Ricardo Herrera, Supervisor for ESS. Appearing as a non-participating observer was Lacy Jernigan, Medical Disability Case Specialist with DDD. Serving as a translator was Terry Levie, Economic Self-Sufficiency Specialist with ESS.

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.

Respondent's exhibits one through composite four were entered into evidence. The petitioner did not submit any documents for consideration.

**FINDINGS OF FACT**

1. The petitioner is a 63 year-old male who had a minor stroke on October 13<sup>th</sup>, 2013. The petitioner also alleges an obstruction in his carotid artery. He also alleges two inguinal hernias that inflame, causing him pain. The petitioner also alleges that serious depression renders him unable to concentrate, and therefore, unable to work. The petitioner is ambulatory and is not engaging in substantial gainful activity ("SGA" or "work activity").

2. The petitioner is non-English speaking but holds a law degree from his native country. The petitioner last worked until February 2014 as the general manager of a local restaurant.

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

4. On December 30<sup>th</sup>, 2014, DCF informed the petitioner of a denial of Medicaid eligibility effective December 2014. The reason given for the denial is no household member meets the disability requirement.

5. On December 24<sup>th</sup>, 2014, DDD completed a disability review which resulted in an unfavorable (N32) decision. DDD lists the petitioner's primary diagnosis as back disorders. DDD lists the petitioner's secondary diagnosis as affective disorders. Decision code N32 indicates Petitioner has the capacity for substantial gainful activity, specifically other work in the national economy.

6. A medical report from Ambulatory Diagnostic Center (respondent's composite exhibit 4, 28<sup>th</sup> page) dated March 26<sup>th</sup>, 2012 state as follows:

Intimal thickening is present in both carotid territories. There is evidence of calcific atheromatous plaque involving the right internal carotid artery with velocity acceleration at peak systole of 282 CM per second and flow turbulence. More distally the velocity increased to 304 CM per second with significant flow turbulence. Flow is patent and antegrade in both vertebral arteries. Doppler velocities are also increased prominently at the proximal left internal carotid artery 186 CM per second associated with concentric plaque formation. [Sic]

7. A hospital report from Coral Gables Hospital dated December 22<sup>nd</sup>, 2014 (respondent's composite exhibit 4, 1<sup>st</sup> and 2<sup>nd</sup> pages) indicates that the petitioner was admitted on December 3<sup>rd</sup>, 2014 due to pain in the right inguinal area. The report states, in part:

Physical Examination:

Abdomen: Soft nontender. Bowel sounds present in all 4 quadrants area. No hepatosplenomegaly. No rebound, no guarding. Patient's right inguinal area no palpable mass, no swelling. Patient has right inguinal area, no entrapped bowel. No palpable mass. No tenderness. Patient is very comfortable on exam. The patient on left inguinal canal area, there is no palpable mass, no bowel was appreciated. Inner ring is intact and also on a right-sided inner ring is intact and no protrusion of the bowel appreciated at present time.

8. DDD Case Analysis Form, SSA-416, dated December 24<sup>th</sup>, 2014 states in part:

1. Is [claimant] engaged in SGA? No
2. Is impairment severe? Yes
3. Does impairment meet or equal listing? No
4. Can [claimant] return to PRW [past relevant work]? No
5. Can [claimant] do other relevant work? Yes

....  
[Medical evidence of record] reflects non-severe physical impairments. [Claimant] has non exertional limitations. According to framework 204.00, [claimant] can do other [simple, repetitive, task] work.

9. Notes on the above-mentioned form dated September 29<sup>th</sup>, 2014 state:

[Petitioner's friend] stated that clmt's friend, stated that clmt is currently at Coral Gables H[ospital] since 2 days. [Sic.] [Petitioner's friend] does not do hhc, but he can take care of his personal needs. [Petitioner's friend] noted that clmt has been in constant pain due to hernia. I obtained a brief work hx as the following: clmt worked as a restaurant owner where he did clean, stock, prepare orders, and manage.

10. 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.

11. A Mental Residual Functional Capacity Assessment ("MRFC") was completed by DDD indicating that the petitioner can understand, retain, and carry out simple instructions. The petitioner can also consistently and usefully perform routine tasks on a sustained basis, with minimal (normal) supervision, and can cooperate effectively with public and co-workers in completing simple tasks and transactions.

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

#### **PRINCIPLES 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 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).

16. 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.

17. 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.

18. 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

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

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

21. 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.

22. 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 (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture)", which entails 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.

23. 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.

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 restaurant manager. According to the Dictionary of Occupational Titles, this job, identified as "Manager, Food Service." Based on DDD's analysis and petitioner's mental limitations, the petitioner would be unable to do past work as a restaurant

manager. 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 63 year-old male who holds a law degree from his native country. The objective medical evidence shows that the petitioner should be capable of performing any type of unskilled labor. One such job is that of a sticker.

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 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**

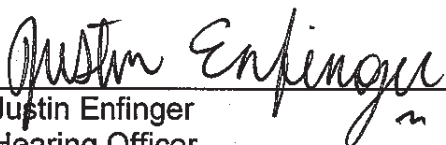
This decision is final and binding on the part of the Department. If the petitioner disagrees with this decision, the petitioner may seek a judicial review. To begin the judicial review, the petitioner must file one copy of a "Notice of Appeal" with the Agency Clerk, Office of Legal Services, Bldg. 2,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

FINAL ORDER (Cont.)  
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is responsible for any financial obligations incurred as the Department has no funds to assist in this review.

DONE and ORDERED this 8<sup>th</sup> day of April, 2015,

in Tallahassee, Florida.

  
Justin Enfinger  
Hearing Officer  
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Teresa Zepeda, Circuit 11 ESS