

Jan 12, 2016

Office of Appeal Hearings
Dept. of Children and FamiliesSTATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

APPEAL NO. 15F-08941

PETITIONER,

Vs.

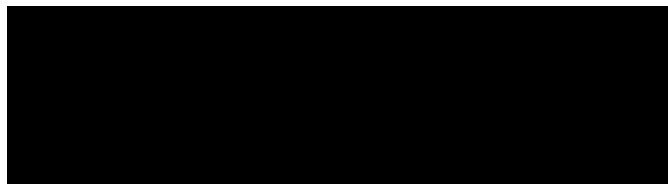
FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 01 Okaloosa
UNIT: 88630RESPONDENT.

FINAL ORDER

Pursuant to notice, an administrative hearing in the above captioned matter was convened before Hearing Officer Gregory Watson on December 1, 2015, at approximately 2:00 PM. All participants appeared via teleconference.

APPEARANCES

For the Petitioner:

For the Respondent: Theresa Nadeau, Economic Self-Sufficiency Specialist II,
Department of Children and Families

PRELIMINARY STATEMENT

Petitioner submitted additional evidence while the record was held open on December 2, 2015. It was entered as Petitioner's Exhibit 2.

Sheila Rushing, Operations Management Consultant with the Department of Children and Families appeared as a witness. Lauren Coe, Program Operations Administrator with Division of Disability Determinations also appeared as a witness. Susan Dixon, Hearing Officer, observed the proceeding.

ISSUE

Petitioner is appealing the Department's action to deny her Medicaid benefits through the Department's SSI-Related Medicaid Program on the basis that she did not meet the disability criteria. The petitioner carries the burden of proof by the preponderance of evidence that this denial was improper.

FINDINGS OF FACT

- 1.) The Petitioner is a 51-year-old woman, born [REDACTED] She has a 12th grade education and work history as a waitress and in retail. She has not worked since September 27, 2015.
- 2.) On October 2, 2015, a Medicaid application was submitted for the Petitioner by her designated representative, [REDACTED]
[REDACTED] A disability application with the Social Security Administration was also submitted on this day; as of the date of the hearing, it was in a pending status.

- 3.) On September 27, 2015, Petitioner presented at [REDACTED] reporting dizziness and left leg weakness. She was admitted. Radiologist interpretation

states: [REDACTED]

- 4.) On September 28, 2015 Petitioner suffered a Transient Ischemic Attack (TIA) with continued left leg weakness. An MRI was consistent with an ischemic event and Petitioner has significant family history of the same. [REDACTED]

[REDACTED] Transfer was recommended and Petitioner moved to [REDACTED].

- 5.) The medical record dated October 5, 2015 states:

- 6.) From October 7 through 18, Petitioner was moved from FWBMC to Inpatient Rehabilitation. Petitioner suffered another stroke and was transferred back to [REDACTED] on October 19, 2015 where she remains.

- 7.) On October 23, 2015, the Department denied the Medicaid application, sending a Notice of Case Action on October 26, 2015 that states:

Your Medicaid application/review dated October 02, 2015 is denied...
Reason: You or a member(s) of your household do not meet the disability requirement. No household members are eligible for this program. The law

that supports this actions is: (FL Admin. Code = R) (FL Statute = S), R65A-1.711 R65A-1.205

- 8.) The Department does not itself make disability determinations. These are contracted out to the Division of Disability Determinations (DDD).
- 9.) This denial is subsequent to receipt from the DDD of its findings. On October 22, 2015, a CF-ES 2909 was received by the Department stating that the primary diagnosis of [REDACTED] and the secondary diagnosis of [REDACTED] [REDACTED] were reviewed and disability denied with code N31 (Non-pay – Capacity for substantial gainful activity – customary past work, no visual impairment [page 38 of DCF State On-line Query (SOLQ) User's Guide]). This document was stamped as reviewed by Master Adjudicator, [REDACTED] [REDACTED] on October 22, 2015.
- 10.) [REDACTED] is not a physician or nurse; however, she is highly trained in disability examination by her employer.
- 11.) Medical documentation of Petitioner's worsening condition was submitted to the Social Security ERE Portal for disability consideration by her representative (RN case manager). This portal is accessed by DDD for receipt of information for the Social Security Administration's disability determinations. The information therein was not considered by [REDACTED] when making her Medicaid disability determination for the Department. In addition, the RN case manager provided that discharge plans are being made for petitioner to enter an in-field nursing home facility as she is not ambulatory, paralyzed on the left side and has slurred speech. As part of the discharge plan, a nursing home level of care has already been determined by the Department of Elder Affairs

(DOEA) which means she is medically appropriate to be admitted to a nursing home upon discharge from the rehabilitation facility.

12.) DDD determined the Petitioner's residual functional capacity (RFC) as light and that she had the capacity to return to her prior work as a waitress and retail work.

13.) On October 22, 2015, the medical record states [REDACTED]

14.) Subsequently, on November 17, 2015, the medical record states:

[REDACTED]

CONCLUSIONS OF LAW

15.) Fla. Admin Code R. 65A-1.710 et seq., set forth the rules of eligibility for Elderly and Disabled Individuals Who Have Income of Less Than the Federal Poverty Level. 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 regulations state, in part:

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 which makes you unable to do your previous work or any other substantial gainful activity which exists in the national economy. If your severe impairment(s) does not meet or medically equal a listing in appendix 1 to subpart P of part 404 of this chapter, we will assess your residual functional capacity as provided in §§416.920(e) and 416.945. (See §416.920(g)(2) and 416.962 for an exception to this rule.) We will use this residual functional capacity assessment to determine if you can do your past relevant work. If we find that you cannot do your past relevant work, we will use the same residual functional capacity assessment and your vocational factors of age,

education, and work experience to determine if you can do other work.
(See §416.920(h) for an exception to this rule.)

- 16.) This proceeding is a de novo proceeding pursuant to Fla. Admin. Code R. 65-2.056. Medical evidence was presented at the hearing which was not submitted to DDD. DDD declined to review the new evidence and stood by its denial determination during the hearing. However, the undersigned has reviewed and considered all new relevant medical evidence in making this decision.
- 17.) The hearing officer evaluated the Petitioner's claim of disability using the sequential evaluation as set forth in 20 C.F.R. § 416.920.
- 18.) The first step is to determine whether or not the individual is working. The Petitioner has not worked since September 27, 2015 and therefore meets the first step.
- 19.) The second step is to determine whether or not an individual has a severe impairment. The Petitioner suffers with slightly slurred speech, intermittent muscle spasms and left side paralysis. Petitioner's treating physician concludes the disability is permanent. Therefore, petitioner meets step two of the analysis.
- 20.) The third step is to determine whether or not the individual's impairment(s) meets or equals a listed impairment in Appendix 1 of the Social Security Act. It was not found that petitioner meets a listing.
- 21.) The fourth step is to determine whether or not the individual's impairment(s) prevents her from doing past relevant work. Petitioner's past work was in retail and waitressing. For prior jobs as a waitress and [REDACTED] Sales Representative, the Dictionary of Occupational Titles lists the functional

capacity as light. Considering the medical evidence and testimony, the undersigned has concluded the Petitioner does not even meet sedentary RFC. Petitioner's paralysis on the left side and her not being ambulatory would prevent her from working in a restaurant or store. In addition there is an altered mental status. Her discharge plans are to enter a nursing facility and she has been assigned a level of care by DOEA. In addition, her physician concluded she is totally and permanently disabled. There was no rebuttal evidence from respondent. Therefore, the undersigned concludes petitioner passes step four of the sequential analysis.

22.) The fifth step is to determine whether or not the individual's impairment prevents her from performing other work in the national economy. Based on the treating physician's opinion, the undersigned concludes petitioner does not have the mental or physical capacity remaining to do any job in the national economy and is therefore determined to meet the disability criteria for SSI-related Medicaid.

DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the appeal is granted. The Department's denial action is reversed. The Department is ordered to determine eligibility from the application of October 2, 2015 to include the retroactive month of September 2015. The Department is to consider the petitioner disabled beginning September 2015 and issue a written notice once the determination is complete. A copy is to be provided to the representative.

A disability review is to be completed one year from this decision. In the event the Social Security Administration decides otherwise, the Department is to follow its policy concerning adoption of SSA decisions.

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 12 day of January , 2016,
in Tallahassee, Florida.



Gregory Watson
Hearing Officer
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Copies Furnished To: [REDACTED] Petitioner
Office of Economic Self Sufficiency
MICHELLE CASTRO