

Feb 11, 2016

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

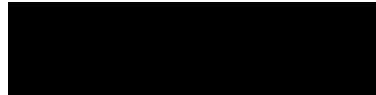
Office of Appeal Hearings  
Dept. of Children and Families



APPEAL NO. 15F-09106

PETITIONER,

Vs.



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

RESPONDENT.

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**FINAL ORDER**

Pursuant to notice, the undersigned telephonically convened an administrative hearing in the above-referenced matter on December 22, 2015 at 1:00 p.m.

**APPEARANCES**

For the petitioner:  Registered Nurse, Care Manager represented the petitioner as her designated representative.

For the respondent: Cynthia Haynes, ACCESS Supervisor

**STATEMENT OF ISSUE**

Petitioner is appealing the Department's action to deny petitioner's application for SSI-Related Medicaid benefits on the basis that she did not meet the disability Program requirement. The petitioner carries the burden of proof by the preponderance of evidence.

### **PRELIMINARY STATEMENT**

By notice dated August 18, 2015, the Department notified the petitioner that her application was denied for Medicaid disability because she did not meet the disability requirement. Petitioner timely requested this appeal to challenge the denial.

Lauren Coe, Program Operations Administrator with the Division of Disability Determination (DDD), appeared telephonically, as a witness for the respondent.

Petitioner did not present any exhibits. Respondent submitted four exhibits, entered as Respondent Exhibits "1" through "4".

### **FINDINGS OF FACT**

1. On June 16, 2015, the petitioner (51) applied for SSI-Related Medicaid benefits for herself. Petitioner had applied for disability benefits through the Social Security Administration (SSA) and was denied in 2013. Petitioner was not over age 65 or blind and does not have any minor children. The petitioner declared her disabling conditions to be [REDACTED] resulting from a head injury sustained on March 11, 2004 and June 23, 2008. Her disabling conditions also include [REDACTED]

2. The petitioner graduated from college. Petitioner was last employed in 2002. However, petitioner has volunteered in the last seven to eight years in various organizations including a consignment store. The most recent volunteer work the petitioner did was at a hospital.

3. The respondent reviewed the petitioner's eligibility for SSI-Related Medicaid for the blind, aged or disabled. The respondent sent petitioner's medical information to DDD on July 16, 2015 for a disability determination.

4. The respondent explained DDD completed an independent medical evaluation of disability and determined that the petitioner did not meet the criteria of aged, blind or disabled to be eligible for SSI-Related Medicaid benefits.

5. On August 14, 2015, DDD completed a disability review, which resulted in an unfavorable (N32) decision. DDD lists the petitioner's primary diagnosis as [REDACTED]

[REDACTED] There was nothing listed under secondary diagnosis. However, according to the witness's testimony, the secondary diagnosis considered was [REDACTED]

Decision code N32 signifies "Impairment of insufficient severity to preclude individual's engaging in all SGA".

6. DDD Case Analysis Form, SSA-416, dated August 14, 2015 states in part:

1. Is claimant engaging in SGA? DDD did not address
2. Is impairment severe? YES
3. Does impairment meet or equal a Listing? NO  
Listings considered- 11.02, 11.03 and 11.04
4. Can claimant perform PRW? NO
5. Can claimant perform other work? YES

7. DDD determined petitioner not disabled at step five. DDD determined that the petitioner's impairments did not meet or medically equal a listing according to Vocational Rule 202.13. The petitioner was found not be disabled and is capable of light work such as a street sweeper, silver wrapper or stickers.

8. On August 18, 2015, the respondent sent the petitioner a Notice of Case Action denying her June 16, 2015 application for SSI-Related Medicaid benefits. The reason stated was that she did not meet the disability requirement.

9. The petitioner's representative believes the petitioner's condition continues to get worse and explained that the petitioner has a medical history of multiple traumatic brain

injury because of constant falls, subsequently due to [REDACTED]. Petitioner demonstrates behavioral functional limitations in concentrating, difficulties in organization and in thoughts.

10. The evidence shows petitioner is able to perform her personal care independently, her household chores, cooks, grocery shops, climbs, balances and stoops. Petitioner volunteers at the hospital 20-25 hours per week.

11. The evidence also shows a recent medical record dated June 4, 2015 from petitioner's outpatient visit with [REDACTED]. Petitioner was treated and prescribed the medication [REDACTED]. Petitioner was also prescribed [REDACTED]. According to testimony, the petitioner's last seizure episode was in 2007. During the visit, no acute back pain or localized joint pain was found under the musculoskeletal system.

12. Petitioner went to Quest Diagnostics on June 4, 2015 for blood test to determine her TSH level. Her [REDACTED] is being treated adequately as well as the seizures with medication. No changes were reported in the dosage.

### **CONCLUSIONS 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 Fla. Stat. § 409.285. This order is the final administrative decision of the Department of Children and Families under Fla. Stat. § 409.285.

14. This proceeding is a de novo proceeding pursuant to Florida Administrative Code R. 65-2.056.

15. 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.

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. § 1396 a(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. 42 C.F.R. § 435.541 indicates that a 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.

18. 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).

19. 20 C.F.R. § 404.1567 “Physical exertion requirements” states:

To determine the physical exertion requirements of work in the national economy, we classify jobs as sedentary, light, medium, heavy, and very heavy...In making disability determinations under this subpart, we use the following definitions:

(a) Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

(b) Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

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

21. In evaluating the second step, the impairments must last or be expected to last for a continuous period of at least 12 months to meet durational requirements. The petitioner has a diagnosis of Seizures, which is considered severe. The second step is met.

22. 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 of the Social Security Act (Adult

listings-Part A). As it relates to listing, [REDACTED] The undersigned reviewed the impairment 11.00 Category of impairments, neurological, including 11.18

[REDACTED] The listing indicates that the required level of severity demonstrates loss of consciousness and convulsive seizures or episodes manifesting which interfere significantly with activity during the day. The report also indicates typical seizure pattern, including occurring more frequently than once a month. According to the evidence on the Physical Residual Functional Capacity Assessment (SSA-416), petitioner is able to perform her personal care independently, her household chores, cooks and volunteers at the hospital 20-25 hours a week. According to testimony and evidence, petitioner's last seizure episode was in 2007. There is no indication or evidence of convulsive seizure patterns, loss of conscious or reoccurrence episode which interfere with the petitioner's daily activities. Based on a combination of the medical evidence submitted into the record and petitioner's testimony, the petitioner does not meet a relevant Social Security listing. Petitioner does not meet this step. The analysis continues on to step 4.

23. The fourth step is an assessment of the petitioner's residual functional capacity and past relevant work. Petitioner was last employed in 2002. DDD did not review petitioner's previous employment. Therefore, it would be appropriate for DDD to move forward. The analysis continues on to step 5.

24. The fifth step is to determine if the petitioner's impairments prevent the petitioner from performing any other work in the national economy. Based on the petitioner's age, educational grade level, employment history and her impairments; the DDD assessment shows petitioner would be capable of light work. According to DDD's analysis and the



objective medical evidence, petitioner should be capable of performing light and sedentary duty jobs in the national economy.

25. Based on the evidence submitted, the hearing officer must conclude that the petitioner does have the ability to perform work in the national economy. The petitioner does not meet the disability criteria and does not meet the definition of disability as set forth in the Social Security Act. It is concluded that the respondent's denial of the petitioner's SSI-Related Medicaid application is correct.

### **DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, petitioner's appeal is denied.

**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 11 day of February, 2016,

in Tallahassee, Florida.



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Copies Furnished To: [REDACTED] Petitioner  
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[REDACTED]