

FILED

JAN 26 2010

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

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DEPT. OF CHILDREN & FAMILIES

PETITIONER,
Vs.

APPEAL NO. 09F-06393

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 08 Alachua
UNIT: 88323

CASE NO. 1170464033

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned-hearing officer on October 28, 2009, at 2:40 p.m., in Gainesville, Florida.

The petitioner was present and represented himself. Present as witnesses for the petitioner were _____, director of nursing, _____;

administrator, Park Meadows; Diane McSween, business office manager,

and _____, regional field analyst. _____ The Department

was represented by Louella Teague, ACCESS supervisor. Present as a witness for the Department was Jim Bratrud, senior human services program specialist.

The record was held open for 30 days to allow the petitioner the opportunity to submit additional evidence which has been received and entered into evidence as the Petitioner's Composite Exhibit 2 and the Petitioner's Exhibit 3.

ISSUE

The petitioner is appealing the Department's action of September 24, 2009, to deny his application for Institutional Care Program (ICP) Medicaid benefits based on the contention that he is not disabled.

The petitioner had the burden of proof.

FINDINGS OF FACT

1. On May 13, 2009, the petitioner was admitted into Health and Rehabilitation Center, Gainesville, Florida. The petitioner was admitted into the facility from a hospital. The petitioner's diagnosis included preorbital cellulitis, left dacrocystitis, anxiety disorder, history of facial trauma subsequent to reconstructive surgery in 2006, osteoarthritis and chronic back pain. The petitioner was discharged from the facility on August 19, 2009 as his condition had improved and he no longer required skilled nursing services.

2. On July 13, 2008, the petitioner filed an application for ICP Medicaid benefits. The petitioner also requested ICP Medicaid benefits for the retroactive months of May 2009 and June 2009. The petitioner was born on August 17, 1956 and was 52 years old. As the petitioner was under 65 years old, he did not meet the aged criteria for Medicaid. Therefore, a disability assessment was required.

3. The Department's District Medical Review Team (DMRT) completed an assessment of the petitioner's disability claim and determined that the petitioner's condition was not expected to last for a period of at least 12 consecutive months. Therefore, DMRT determined that the petitioner did not meet the Medicaid disability criteria.

4. On September 24, 2009, the Department notified the petitioner that his application for ICP Medicaid benefits was denied because he was determined not to be disabled.

5. The petitioner applied for Social Security Disability benefits based on his disability claim. At the time of the hearing, the Social Security Disability application was pending.

6. Subsequent to the hearing, the petitioner submitted a letter dated December 11, 2009 which he received from the Social Security Administration approving his Social Security Disability application as he had been determined to be disabled. The Social Security Administration determined that the petitioner became disabled under its rules on May 5, 2009. Petitioner's Exhibit 3.

CONCLUSIONS OF LAW

The Florida Administrative Code, Section 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...

42 C.F.R. §435.541 in part states:

(a) Determinations made by SSA. The following rules and those under paragraph (b) of this section apply where an individual has applied for Medicaid on the basis of disability... (2) The agency may not make an independent determination of disability if SSA has made a disability

determination within the time limits set forth in §435.911 on the same issue presented in the Medicaid application. A determination of eligibility for SSI payments based on disability that is made by SSA automatically confers Medicaid eligibility... (b) Effect of SSA determinations. (1)(i) An SSA disability determination is binding on an agency until the determination is changed by SSA... (c) *Determination 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 recipient, whether or not the State has a section 1634 agreement with SSA, and... (i) Alleges a disability condition different from, or in addition to, that considered by SSA in making its determination...

Fla. Admin. Code 65A-1.702 in Part states:

(2) Date of Eligibility. The date eligibility for Medicaid begins. This was formerly called the date of entitlement. The date of eligibility includes the three months immediately preceding the month of application (called the retroactive period)...

(9) Retroactive Medicaid. Retroactive Medicaid is based on an approved, denied, or pending application for ongoing Medicaid benefits.

(a) Retroactive Medicaid eligibility is effective no later than the third month prior to the month of application for ongoing Medicaid if the individual would have been eligible for Medicaid at the time of application for Medicaid covered services. A request for retroactive Medicaid can be made for a deceased individual by a designated representative or caretaker relative filing an application for Medicaid assistance. The individual or his or her representative has up to 12 months after the date of application for ongoing Medicaid to request retroactive Medicaid eligibility. However, Qualified Medicare Beneficiaries (QMB's) are not eligible for retroactive Medicaid benefits under the QMB coverage group as indicated in 42 U.S.C. § 1396a(e)(8).

Fla. Admin. Code 65A-1.710 in part states:

SSI-Related Medicaid Coverage Groups. The department covers all mandatory coverage groups and the following optional coverage groups:...

(2) Institutional Care Program (ICP). A coverage group for institutionalized aged, blind or disabled individuals (or couples) who would be eligible for cash assistance except for their institutional status and income as provided in 42 C.F.R. §§ 435.211 and 435.231. Institutional benefits include institutional provider payment or payment of Medicare coinsurance for skilled nursing facility care.

The Social Security Administration determined that the petitioner became disabled on May 5, 2009. Based on the above authorities, it is determined that the petitioner meets the disability requirement for the ICP Medicaid as he was determined to be disabled by the Social Security Administration. Therefore, the Department's action to deny the petitioner's ICP Medicaid application is reversed. The Department is to determine whether the petitioner meets all other factors of eligibility for ICP Medicaid based on the application date of July 13, 2009, including the retroactive months of May 2009 and June 2009. The Department must provide the petitioner with written notification of the determination of his eligibility for ICP Medicaid and his right to request a hearing if he should disagree with the Department's determination.

DECISION

The appeal is granted. The Department's action is reversed.

NOTICE OF RIGHT TO APPEAL

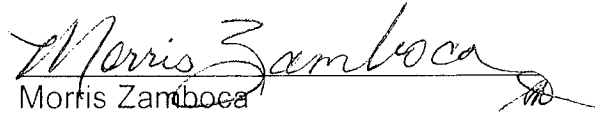
This decision is final and binding on the part of the Department. If the petitioner disagrees with this decision, the petitioner may seek a judicial review. To begin the judicial review, the petitioner must file one copy of a "Notice of Appeal" with the Agency Clerk, Office of Legal Services, Bldg. 2, 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 Department has no funds to assist in this review, and any financial obligations incurred will be the petitioner's responsibility.

FINAL ORDER (Cont.)

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DONE and ORDERED this 26th day of January, 2010,
in Tallahassee, Florida.



Morris Zamboca
Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
850-488-1429

Copies Furnished To