

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

FILED

JAN 27 2010

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-07634

PETITIONER,

Vs.

CASE NO. 1234090881

FLORIDA DEPT OF CHILDREN AND FAMILIES
CIRCUIT: 12 Sarasota
UNIT: 88326

RESPONDENT.

FINAL ORDER

Pursuant to notice, a telephonic administrative hearing was convened before the undersigned hearing officer on December 15, 2009, at 1:17 p.m. The petitioner was present. Present on behalf of the petitioner was direction of admissions for Healthcare and Rehabilitation Center. The respondent was represented by Alicia Pena-Swart, senior worker. Present as a witness for the respondent was Stephen Machiz, M.D. business officer manager for Healthcare and Rehabilitation Center was observing.

The record was left open for additional evidence regarding the petitioner's status with Social Security. On December 15, 2009, the hearing officer received from the respondent evidence which was entered into record as Respondent Exhibit 5. The record was closed on December 15, 2009.

ISSUE

The petitioner is appealing the notice of September 17, 2009 for the respondent's action to deny Institutional Care Program (ICP) and Medicaid Program benefits for the petitioner for July, August and September 2009.

FINDINGS OF FACT

1. The petitioner was hospitalized in July 2009. On July 16, 2009, Dr. Machiz completed a Level of Care for the CARES Unit. The Level of Care was effective July 2009. The level of care was skilled. The placement recommendation was "temporary nursing facility". The petitioner was admitted to the nursing home on July 23, 2009. The petitioner was discharged from the nursing home on September 11, 2009. While the petitioner was in the nursing home, he was in and out of the hospital.

2. The petitioner's treating physician, Dr. _____ completed a Disability Evaluation Relative to Employment form. Dr. _____ diagnoses of the petitioner were "status post left foot and ankle radical surgical debridement with fifth metatarsal and toe amputation for osteomyelitis complicated by poorly controlled, insulin dependent diabetes mellitus". Dr. _____ opined that the petitioner was incapable of any employment and was estimated to be disabled for twelve months.

3. The petitioner applied for ICP and Medicaid Program benefits on August 12, 2009. He also requested retroactive ICP and Medicaid Program benefits for July 2009. The respondent forwarded the case for a determination of disability by the District Medical Review Team.

4. On September 1, 2009, Dr. Machiz completed a disability determination for the petitioner through the District Medical Review Team. Dr. Machiz rejected the petitioner's request for a finding of disability. The reason for the rejection was Dr. Machiz opined that the petitioner's impairment was not expected to be disabling for a period of twelve full months. Dr. Machiz completed the Disability Worksheet on September 1, 2009. Dr. Machiz opined that the petitioner did not meet the federal disability criteria.

5. The petitioner attested that he has been denied disability by the Social Security Administration more than three or four times. The respondent submitted a SSI Title XVI Inquiry dated December 15, 2009. The inquiry indicated that the petitioner applied for a determination of disability with Social Security on November 25, 2008. The application was denied. The petitioner appealed that denial. The appeal was denied on September 14, 2009 for reason code N32, capacity for substantial gainful activity other work, no visual impairment.

CONCLUSIONS OF LAW

The criteria for skills services is defined in the Florida Administrative Code at 59G-4.290. SSI-Related Medicaid non-financial eligibility criteria regarding ICP benefits is set forth in the Florida Administrative Code at 65A-1.711 and states:

To qualify for Medicaid an individual must meet the general and categorical requirements in 42 C.F.R. Part 435, subparts E and F and the following program specific requirements:

(1) for MEDS-AD, the individual must be age 65 or older, or disabled as defined in 20 C.F.R. § 416.905.

The Florida Administrative Code, Section 65A-1.710 et seq., sets 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...

The Code of Federal Regulations at 42 C.F.R. § 435.000 sets forth the definition and determination of disability and states in relevant part:

§ 435.540 Definition of disability.

(a) Definition. The agency must use the same definition of disability as used under SSI...

The Code of Federal Regulations at 42 C.F.R. § 435.000 sets forth the definition and determination of disability and states in relevant part:

§ 435.540 Definition of disability.

(a) Definition. The agency must use the same definition of disability as used under SSI...

§ 435.541 Determinations of disability.

(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.

(1) If the agency has an agreement with the Social Security Administration (SSA) under section 1634 of the Act, the agency may not make a determination of disability when the only application is filed with SSA.

(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 issues presented in the Medicaid application. A determination of eligibility for SSI payments based on disability that is made by SSA automatically confers Medicaid eligibility, as provided for under §435.909.

The petitioner was in need of and met the criteria for temporary skilled nursing. A Level of Care determination is for placement in a skilled facility. Meeting the level of care for temporary skilled nursing home care is not the issue. At issue is as to whether or not the petitioner met the criteria for eligibility by the State through for his stay at a nursing home through Medicaid and ICP benefits. A Level of Care determination does not convey automatic eligibility for ICP benefits. To be eligible for any SSI-Related Medicaid including ICP benefits, an individual must meet all technical criteria including either being blind, aged or disabled by the Federal standards of disability. The hearing officer reviewed the disability criteria.

The hearing officer did consider the opinion of the petitioner's treating physician. The petitioner appealed the Social Security denial of disability on July 24, 2009. By July 24, 2009, the petitioner had already been hospitalized and had entered the nursing home. Therefore, the hearing officer notes that all medical evidence regarding the petitioner's status post left foot and ankle radical surgical debridement with fifth metatarsal and toe amputation for osteomyelitis complicated by poorly controlled, insulin dependent diabetes mellitus was available for submission to Social Security for their review of the petitioner's appeal. As the petitioner's appeal was pending with Social Security, the District

Medical Review Team completed a disability review on September 1, 2009 of the petitioner's impairments regarding the petitioner's status post left foot and ankle radical surgical debridement with fifth metatarsal and toe amputation for osteomyelitis complicated by poorly controlled, insulin dependent diabetes mellitus. The District Medical Review Team physician's decision on September 1, 2009 was not disabled. Social Security denied the petitioner's appeal on September 14, 2009. The respondent adopted the decision of Social Security that the petitioner was not disabled. The physician completing the reviewed determined that the petitioner's new impairments were not expected to remain severe for a period of not less than twelve months. The petitioner did not allege any other new impairment.

A Social Security disability determination is binding, on an agency, until the determination is changed by Social Security. Based on the regulations, the respondent cannot make a decision independent of the Social Security Administration. The action of the respondent to adopt the decision of the Social Security Administration was within the regulations. The petitioner did not meet the criteria of blind, 65 years of age or disability. Based upon the above cited authorities, the respondent's denial of the petitioner's Medicaid application was within the rules of the Program.

DECISION

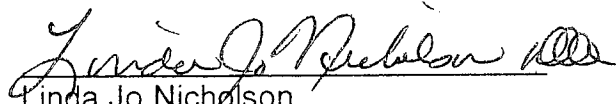
This appeal is denied.

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 department has no funds to assist in this review, and any financial obligations incurred will be the petitioner's responsibility.

DONE and ORDERED this 22nd day of January 2010,

in Tallahassee, Florida.


Linda Jo Nicholson
Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
850-488-1429

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