

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

FILED

JAN 01 2015

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES



APPEAL NO. 14F-08828
14F-09516

PETITIONER,

Vs.

CASE NO. 1056839007

FLORIDA DEPT OF
CHILDREN AND FAMILIES
CIRCUIT: 05 Lake
UNIT: 88000

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned telephonically convened an administrative hearing in the above-referenced matter at 2:20 p.m. on November 12, 2014. The hearing was reconvened at 2:15 p.m. on December 10, 2014.

APPEARANCES

For the Petitioner:  pro se

For the Respondent: Marilyn Ficke, ACCESS supervisor

STATEMENT OF ISSUE

At issue is respondent's action to not process petitioner's July 1, 2014 application for Medicaid disability or Temporary Cash Assistance (TCA) benefits.

PRELIMINARY STATEMENT

By notice dated October 2, 2014 respondent notified petitioner that he was denied Medicaid disability benefits effective July 2014. Petitioner requested a hearing

to challenge denial of Medicaid disability and respondent's action to not process the July 1, 2014 application for TCA benefits.

At the first hearing on November 12, 2014 respondent was represented by Sigfredo Plaza, ACCESS supervisor. The hearing was reconvened on December 10, 2014 due to petitioner also having an issue with Medicaid disability; in addition to the TCA issue. Marilyn Ficke represented the respondent at the reconvene hearing.

Petitioner submitted three exhibits into evidence, entered as Petitioner Exhibits "1" through "3". Respondent submitted four exhibits into evidence, entered as Respondent Exhibits "1" through "4". The record closed on December 10, 2014.

FINDINGS OF FACT

1. Petitioner submitted a web redetermination application on July 1, 2014 for himself, his wife and 20 year old son. The application shows Food Assistance and Family Medicaid as the benefits applying for.
2. Petitioner asserts that he also applied for TCA benefits on the July 1, 2014 application. And the computer "kicked out" his TCA request because the system assumed he is not entitled to TCA benefits due to not having children under the age of 18.
3. Respondent explained the computer does not make assumptions on TCA eligibility. And TCA benefits were not processed with the July 1, 2014 application because the application did not show TCA as a benefit applying for.

4. To be eligible for TCA benefits, applicants must have children under age 18.

Petitioner does not have children under the age of 18. Therefore, he is not eligible for TCA benefits; even if he had selected TCA benefits on the application.

5. Respondent mailed petitioner a Notice of Case Action on July 3, 2014 informing he was ineligible for Medicaid benefits. Petitioner appealed respondent's decision.

6. On September 5, 2014 Hearing Officer Sanchez issued a Final Order; remanding the Medicaid issue to the Department for review and to preserve petitioner's July 1, 2014 date of application.

7. Petitioner described his disability as severe mental illness of PTSD. Petitioner applied for disability through the Social Security Administration (SSA) on May 6, 2014. SSA denied petitioner on August 18, 2014. Petitioner appealed the SSA denial decision in October 2014; SSA has not made a decision on the appeal.

8. Petitioner alleges a new medical condition that SSA did not consider when they denied him on August 18, 2014. Petitioner said that due to his severe PTSD being left untreated; his new medical condition is "suicidal and homicidal thoughts". Petitioner submitted evidence showing he notified the SSA of his new medical condition when he requested the appeal on October 14, 2014.

9. Respondent agreed that the Department erred by not processing petitioner's July 1, 2014 for Medicaid disability. Respondent reprocessed petitioner's July 1, 2014 application for Medicaid disability in October 2014 and determined that the SSA had denied petitioner disability in August 2014. Respondent also spoke with petitioner and

requested petitioner complete another application; due to petitioner alleging a new medical condition. Documentation of the new condition is required.

10. On October 2, 2014 respondent mailed petitioner a Notice of Case Action; notifying he was denied Medicaid disability effective July 1, 2014.

11. Petitioner asserts that in accordance with the Department's policy; the respondent must complete an independent disability determination because he has a new medical condition not considered by SSA. Although, petitioner agreed that he notified the SSA in October 2014 of his new medical condition and SSA has not made a determination.

CONCLUSIONS OF LAW

12. 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.

13. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code R. 65-2.056.

14. In accordance with Fla. Admin. Code R. 65-2.060 (1), the burden of proof was assigned to the petitioner.

TEMPORARY CASH ASSISTANCE ISSUE

15. Fla. Stat. § 414.095 Determining eligibility for temporary cash assistance in part states:

- (1) ELIGIBILITY.—An applicant must meet eligibility requirements of this section before receiving services or temporary cash assistance...
- (2) (a) To be eligible for services or temporary cash assistance and Medicaid:

1. An applicant must be a United States citizen, or a qualified noncitizen, as defined in this section.
2. An applicant must be a legal resident of the state.
3. Each member of a family must provide to the department the member's social security number or shall provide proof of application for a social security number. An individual who fails to provide a social security number, or proof of application for a social security number, is not eligible to participate in the program.
4. **A minor child must reside with a parent or parents**, (emphasis added) with a relative caretaker who is within the specified degree of blood relationship...

16. Fla. Stat. § 414.0252 Definitions in part states:

(8) "Minor child" means a child under 18 years of age, or under 19 years of age if the child is a full-time student in a secondary school or at the equivalent level of career training, and does not include anyone who is married or divorced.

17. In accordance with the above authorities a child under age 18 and or 19 years of age is the child is a full-time student in a secondary school must reside in the home to be eligible for TCA benefits.

18. Petitioner argued that he selected TCA as a benefit he was applying for on the July 1, 2014 application. And the respondent's system removed TCA as a benefit selection because it assumed he was not entitled to TCA benefits due to not having children under age 18.

19. Petitioner does not have children under age 19 residing in the home. Therefore, even if petitioner's July 1, 2014 application had TCA as a selected benefit; petitioner is not eligible for TCA.

MEDICAID DISABILITY ISSUE

20. Medicaid eligibility is based on federal regulations. There are two categories of Medicaid that the Department determines eligibility for: (1) Family Related Medicaid for

parents and children, and pregnant women, and (2) Adult Related (referred to SSI-Related Medicaid) for disabled adults and adults 65 or older.

21. Florida Administrative Code R. 65A-1.703 Family-Related Medicaid Coverage

Groups states:

(1) The department provides mandatory Medicaid coverage for individuals, families and children described in Section 409.903, F.S., Section 1931 of the Social Security Act and other relevant provisions of Title XIX of the Social Security Act. The optional family-related Title XIX and Title XXI coverage groups served by the department are stated in each subsection of this rule...

22. Florida Administrative Code R. 65A-1.711 SSI-Related Medicaid Non Financial

Eligibility Criteria states:

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

23. Petitioner does not have minor child; he is under age 65 and is applying for Medicaid disability. Therefore, he was considered under Adult Related Medicaid.

24. The Code of Federal Regulations at 42 C.F.R. § 435.541 "Determination of

Disability" 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 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 under 435.909...

(b) Effect of SSA determinations. (1) Except in the circumstances specified in paragraph (c) (3) of this section-

(i) An SSA disability determination is binding on an agency until the determination is changed by SSA.

(ii) If the SSA determination is changed, the new determination is also binding on the agency...

(2) The agency must refer to SSA all applicants who allege new information or evidence affecting previous SSA determinations of ineligibility based upon disability for reconsideration or reopening of the determination, except In cases specified in paragraph (c) (4) of this section...

(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 recipient, 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.

(iii) Alleges less than 12 months after the most recent SSA determination denying disability that his or her condition has changed or deteriorated since that SSA determination, alleges a new period of disability which meets the durational requirements of the Act. and-

(A) Has applied to SSA for reconsideration or reopening of its disability decision and SSA refused to consider the new allegations; (emphasis added) and/or

(B) He or she no longer meets the nondisability requirements for SSI but may meet the State's nondisability requirements for Medicaid eligibility.

25. The above authority explains the SSA determination is binding on the Department.

However, the Department must make a determination of disability if the individual

alleges a disabling condition different from, or in addition to, that considered by SSA in making its determination.

26. Petitioner applied for disability through SSA on May 6, 2014. SSA denied petitioner on August 18, 2014; petitioner appealed the SSA denial decision in October 2014. SSA had not made a decision on petitioner's appeal.

27. Petitioner alleged a new medical condition of "suicidal and homicidal thoughts" due to his severe PTSD being left untreated. Petitioner alleged that the SSA did not consider his new medical condition when they denied him August 18, 2014. Petitioner testified and provided evidence that he notified the SSA of his new medical condition in October 2014 when he appealed their decision.

28. The above authority also states that the agency (Department) must make a determination of disability when an applicant (petitioner) has applied to SSA for reconsideration or reopening of its disability decision and SSA refused to consider new allegations.

29. The Department ACCESS program policy manual at 1440.1205 Exceptions to State Determination of Disability (MSSI, SFP) states:

The state does not make a disability determination under the following conditions:

1. When an individual only applies to SSA (no application is filed with DCF and no SSI denial or ex parte is involved).
2. When an individual receives Title II disability or SSI benefits based on their own disability (not dependent or early retirement benefits).
3. When an earlier favorable federal or state determination of blindness/disability is still in effect and no unfavorable decision has been rendered by SSA.
4. When an individual is no longer eligible for SSI solely due to institutionalization.
5. When the applicant is appealing an earlier decision from SSA and claims no new disabling condition (condition not previously considered by SSA).
6. When the individual files an application within 12 months after the last unfavorable disability determination by SSA, and the individual alleges no new disabling condition or claims a deterioration of an existing condition previously considered by SSA. Refer the individual to SSA for disability reconsideration or appeal. **Only request a disability decision from DDD if:**
 - a. **SSA refuses (or has already refused) to reconsider the unfavorable disability decision, (emphasis added) or**

b. the applicant no longer meets SSI non-disability criteria such as income or assets.

30. The above Department's policy explains that the respondent is to request a disability decision from DDD if SSA refuses to reconsider the unfavorable disability decision.

31. The SSA has not refused to reconsider its August 2014 unfavorable decision; and has not made a determination on petitioner's appeal.

HEARING OFFICER CONCLUSION

32. In careful review of the cited authorities and evidence, the undersigned concludes petitioner's TCA issue is moot. Petitioner is not eligible for TCA benefits because he does not have minor child.

33. Additionally, the undersigned concludes the respondent complied with the September 5, 2014 remanded order and reprocessed petitioner's July 1, 2014 application for Medicaid disability. Petitioner is currently appealing the SSA denial decision and has informed SSA of his new medical condition. Therefore, the respondent cannot make an independent disability determination.

DECISION

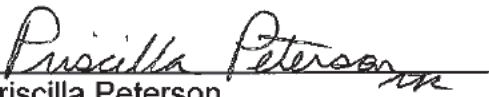
Based upon the foregoing Findings of Fact and Conclusions of Law, the appeals are denied and respondent's actions are affirmed.

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 is responsible for any financial obligations incurred as the Department has no funds to assist in this review.

DONE and ORDERED this 2nd day of January, 2014,

in Tallahassee, Florida.


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