

FILED

JAN 28 2015

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

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES



PETITIONER,

APPEAL NO. 14F-09319

vs.

CASE NO. 


FLORIDA DEPT OF CHILDREN AND FAMILIES
CIRCUIT: 17 Broward
UNIT: 88238

RESPONDENT.
_____ /

FINAL ORDER

Pursuant to notice, an administrative hearing convened before Hearing Officer Patricia Antonucci on December 4, 2014 at approximately 1:00 p.m. All parties and witnesses appeared via teleconference.

APPEARANCES

For the Petitioner:  Petitioner

For the Respondent: Shirley Stringer, Supervisor
Department of Children and Families

STATEMENT OF ISSUE

At issue is whether Respondent, the Department of Children and Families (DCF or 'the Department'), was correct to deny Petitioner's request for SSI-Related Medicaid.

PRELIMINARY STATEMENT

Petitioner appeared as his own representative, assisted by his daughter-in-law,

 Petitioner explained that he was represented by an attorney in his

appeal to the Social Security Administration (SSA), but that he had not retained counsel for the instant hearing. Respondent was represented by Shirley Stringer, Supervisor with DCF. Respondent's Exhibits 1 through 9, inclusive, were accepted into evidence.

FINDINGS OF FACT

1. Petitioner is a 61-year-old male, born [REDACTED]. He has a medical history that includes diabetes and diabetic neuropathy, congestive heart failure, lymphedema, and hypertension. He has had multiple surgeries on one eye, but continues to have compromised vision in same. Petitioner has trouble with short-term memory, experiences swelling in his legs, and uses a cane to assist in mobilization. He has diminished sensation in his legs and arms/hands, which makes it difficult for him to walk up stairs or hold objects. Petitioner also has trouble urinating, has poor hearing, and is a fall risk. He believes he suffers from sleep apnea, but cannot afford the cost of testing or ameliorative devices.

2. The Petitioner applied for Supplemental Security Income (SSI) and/or Social Security Disability Insurance (SSDI) with the Social Security Administration (SSA) on or about August 20, 2014. On or about October 3, 2014, SSA denied Petitioner's application utilizing code N31 – "capacity for substantial gainful activity – customary past work, no visual impairment."

3. On or about October 28, 2014, Petitioner filed an appeal of SSA's determination. Petitioner advises that he is represented by an attorney in this case, which is currently pending hearing.

4. On or about September 3, 2014, Petitioner's application for disability-based Medicaid was filed with DCF. Petitioner supplemented this application with a Disability

Report and an Authorization to Disclose Information, granting the Department access to his medical records.

5. As the Petitioner is under age 65, a disability determination was needed to determine whether he qualifies for Medicaid benefits. Since the SSA denied disability, and because a final decision is still pending on his SSA appeal, the Department did not make an independent determination with regard to establishing disability. Instead, DCF adopted Social Security's decision that the Petitioner is not disabled.

6. Via letter dated October 6, 2014, Respondent notified Petitioner that his application was denied, noting, "You or a member(s) of your household do not meet the disability requirement."

7. On or about October 30, 2014, Petitioner requested a hearing to challenge the Department's determination.

8. At hearing, Petitioner explained that he was employed until August of 2014, when he could no longer continue to work. His health insurance (due to expire in January 2015), has continued at the monthly rate of \$594.00, but as he cannot afford this, his children have been paying the premium on his behalf. The Petitioner has frequent medical appointments, many with specialists who require a \$40.00 co-payment per visit. He takes approximately 14 medications, including two types of insulin, which total to about \$4,300.00 per month.

9. Since applying for Medicaid, Petitioner has been seen by physicians for wound care, pulmonology, neurology, and spinal issues. He was informed that he likely has a problem with his C4, C5, and C6 discs, for which he must undergo MRI imaging. He has also been diagnosed with Carpal Tunnel Syndrome. Petitioner is not sure whether

these are new conditions, or conditions that have always existed/resulted in his symptoms, but which were previously undiagnosed. He reports that he has kept his attorney informed of all medical appointments and documentation, and believes that same were forwarded to SSA, to keep his case current.

10. Petitioner's daughter-in-law explained that the Petitioner has had trouble obtaining portions of his medical files because he has outstanding bills at certain hospitals. As a result, the hospital(s) will not supply his records, directly, and Petitioner is not sure whether the documentation obtained by SSA and DCF via his Authorization for Release is actually complete.

11. The Petitioner's daughter-in-law has observed the Petitioner getting worse, and feels that he desperately needs assistance. Aside from his health concerns, Petitioner's house is in foreclosure, he is unable to pay bills, and he cannot afford to purchase meals. He has no savings, and his children are no longer able to provide financial support. The family is very concerned as to how the Petitioner will manage his health once his insurance is no longer available. Although they have sought community assistance, Petitioner has been told he does not qualify for same because of his significant work history. Petitioner and his family do not understand why an individual who has worked his whole life, but because of health issues, was unable to continue working to age of retirement, is not eligible to receive Medicaid benefits.

12. Respondent clarified that Petitioner's Medicaid application was denied after documentation received from Petitioner was forwarded to the Department's Division of Disability Determinations (DDD). Based on review of the alleged disabling conditions,

DDD adopted SSA's decision that the Petitioner is *not* disabled, citing code N31. No independent determination was made.

13. Respondent further noted that if Petitioner feels there is a new disabling condition – one which SSA did not review prior to issuing its denial -- Petitioner may file a new application with DCF and request an independent review. However, to the extent that any condition and/or symptoms *were* reviewed by SSA, additional evidence to support these conditions/symptoms must also be forwarded to SSA, as the Department is unable to override a federal disability determination.

14. With regard to alternative sources of assistance, Respondent suggested that Petitioner try the Healthcare District, but acknowledged that there is not much available in terms of medical aid.

CONCLUSIONS OF LAW

15. 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 § 409.285, Fla. Stat.

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

17. In accordance with Fla. Admin. Code R. 65-2.060 (1), the burden of proof was assigned to the Petitioner, who seeks Medicaid enrollment.

18. Federal Regulations at 42 C.F.R. § 435.541, "Determinations of disability," state in part:

(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 ['Timely Determination of Eligibility'] 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.

(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....

(underlined emphasis added)

19. The Department's ACCESS Program Policy Manual, 165-22 section

1440.1204 Blindness/Disability Determinations (MSSI, SFP) states, in part:

State disability determinations for disability-related Medicaid applications must be done for all applicants with pending Title II or Title XVI claims unless SSA has denied their disability within the past year. If SSA has

denied disability within the past year and the decision is under appeal with SSA, do not consider the case as pending. Use the decision SSA has already rendered. The SSA denial stands while the case is pending appeal.

When the individual files an application within 12 months after the last unfavorable disability determination by SSA and provides evidence of a new condition not previously considered by SSA, the state must conduct an independent disability determination. Request a copy of the SSA denial letter. The SSA denial letter contains an explanation of all the conditions considered and the reason for denial.

(emphasis added)

20. Absent medical records to reflect otherwise, the evidence does not demonstrate that a *new* disabling condition has arisen since Petitioner was denied by SSA on October 3, 2014. Petitioner confirms that he is currently appealing SSA's denial, with the assistance of his attorney, and believes said attorney is continuing to update SSA regarding the Petitioner's medical status.

21. The undersigned does not doubt that Petitioner is experiencing physical pain and resultant limitations. In combination with his financial status, it is acknowledged that Petitioner is in a very difficult situation. However, per the above-cited authorities, the Department must adopt the SSA's denial as binding, and cannot independently evaluate Petitioner's disability status. As such, the hearing officer concludes that Respondent's denial of Medicaid was proper, since Petitioner is under age 65 and does not have an established disability to meet Medicaid requirements.

22. Should Petitioner wish to submit a new application to DCF, in which he alleges a disabling condition *not* reviewed by SSA, he may do so at any time. Petitioner will then retain the right to appeal any new decision rendered by the Department.

DECISION

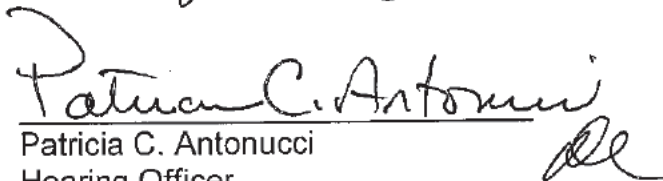
Based upon the foregoing Findings of Fact and Conclusions of Law, Petitioner's appeal is DENIED. The Respondent's action is hereby affirmed.

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 28th day of January, 2015,

in Tallahassee, Florida.


Patricia C. Antonucci
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ESS Circuit 17