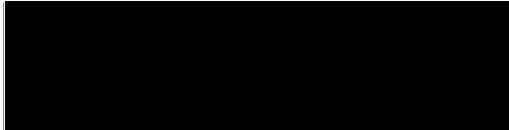


FILED

JAN 05 2015

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

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES



APPEAL NO. 14F-09406

PETITIONER,

Vs.

CASE NO. 

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 01 Okaloosa
UNIT: 88630

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing telephonically in the above-referenced matter on December 4, 2014 at 1:33pm.

APPEARANCES

For the Petitioner: 

For the Respondent: Marixsa Griffith, ACCESS Supervisor

STATEMENT OF ISSUE

Petitioner is appealing the Department's action of October 1, 2014 denying her application for Medicaid due to not meeting the disability requirement.

PRELIMINARY STATEMENT

The Department submitted information on November 22, 2014 which was entered as Respondent Exhibit #1. The Petitioner submitted information on December 1, 2014 which was entered as Petitioner Exhibit #1. The record was held open through December 11, 2014 for additional information from both parties. Additional information

was received from the petitioner on December 8, 2014 which was entered as Petitioner Exhibit #2.

FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following findings of fact are made:

1. The petitioner submitted an application for Medicaid on September 23, 2014. The petitioner is 50 years old (date of birth [REDACTED]) and has no minor children in her home.
2. The Department pended the petitioner's case on September 24, 2014 for an interview on the petitioner's request for Medicaid due to disability.
3. The Department completed an interview with the petitioner on September 30, 2014 regarding the petitioner's application.
4. The Department reviewed data exchange information from Social Security Administration (SSA) dated June 2, 2014. The record showed SSA denied the petitioner's disability request on May 16, 2014. The Department also reviewed data exchange information from SSA dated July 21, 2014 which shows the petitioner submitted an appeal of the previous decision on July 18, 2014.
5. The Department issued a Notice of Case Action on October 1, 2014 denying the petitioner's September 23, 2014 application for Medicaid beginning June 2014 for the reason "You or a member of your household does not meet the disability requirement."
6. The petitioner confirmed she has previously applied for Social Security Disability; her reconsideration was denied by SSA on May 28, 2014. She is now

pending a hearing with SSA Administrative Law Judge which was requested July 18, 2014.

7. The Notice of Reconsideration dated July 9, 2014 from SSA includes an Explanation of Determination which lists the following conditions as being reviewed by SSA: degenerative disc disease, diabetes, depression, and schizophrenia. The explanation further states "The medical record shows that you are capable of performing other work which does not require heavy lifting and might only require a very short, on-the-job training period. Therefore your claim for disability is denied."

8. The petitioner first had problems with the right side of her neck in December 2010. She had surgery to help alleviate the problems in March 2013.

9. The petitioner began having problems with the left side of her neck in September 2013, but has been unable to obtain medical attention needed to determine if she needs surgery on that side of her neck.

10. The petitioner reports she has a mental condition as well.

11. The petitioner has reported all conditions to SSA with the exception of a recent change in the medication for her mental condition.

12. The Department explained policy mandates a SSA disability decision be adopted if made within 12 months of the Medicaid application unless the petitioner has a new condition not considered in SSA's decision.

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 § 409.285, Fla. Stat.

14. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code § 65-2.056.

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

16. The Fla. Admin. 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.

17. The findings show the petitioner is under the age of 65. The undersigned concludes the Department correctly determined that the petitioner would have to meet the disability criteria found in 20 C.F.R. § 416.905 in order to qualify for Medicaid.

18. Federal Regulations at 42 C.F.R. § 435.541 Determinations of disability states in relevant 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 §435.912 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.
(emphasis added)

19. The findings show the Department did not make an independent disability decision; the Social Security disability decision was adopted. In accordance with the above controlling authority, the undersigned concludes the SSA disability decision is binding on the Department. The Department correctly denied the Medicaid application as petitioner does not meet the disability criteria.

DECISION

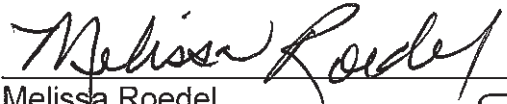
Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is denied and the Department's action is affirmed.

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.

FINAL ORDER (Cont.)
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DONE and ORDERED this 5th day of January, 2014,
in Tallahassee, Florida.


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Copies Furnished To [REDACTED] Petitioner
1 DPOES: Reg Altazan