

FILED

JAN 28 2015

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

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES



APPEAL NO. 14F-09433

PETITIONER,

Vs.

CASE NO. 

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 20 Lee
UNIT: 88692


RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on December 12, 2014, at 8:35 a.m.

APPEARANCES

For the Petitioner:  the petitioner's friend

For the Respondent: Raymond Muraida, ES senior human services program specialist

STATEMENT OF ISSUE

The petitioner is appealing the denial of his applications for Medicaid Program benefits.

PRELIMINARY STATEMENT

The petitioner appeared telephonically and allowed Mr. [REDACTED] to represent him.

On October 20, 2014, the petitioner requested an appeal. The respondent submitted a Motion to Dismiss, as the petitioner's appeal was not timely for the petitioner's application on May 1, 2014. Parties were informed that the motion would be addressed in the Final Order, as set forth in the Conclusion of Law.

The respondent presented 10 exhibits which were accepted into evidence and marked as Respondent's Exhibits "1" through "10" respectively. The petitioner presented one exhibit which was accepted into evidence and marked as Petitioner's Exhibit "1". The record was left open for 10 days for the petitioner to submit additional evidence. No additional evidence was submitted. On December 22, 2014, the record closed.

FINDINGS OF FACT

1. The petitioner applied for Medicaid Program benefits for himself on May 1, 2014. As the petitioner did not meet the criteria of aged, blind or disabled, the petitioner's application for Medicaid Program benefits was denied and a Notice of Case Action was sent on June 13, 2014. The petitioner did not contact the respondent between June 13, 2014 and September 10, 2014. The petitioner reapplied for Medicaid Program benefits on September 10, 2014, and November 10, 2014. He is homeless. He has not held a full time job since 2008. He has no dependent child living with him. He is 59 years old.

2. The respondent reviewed the applications. The respondent determined that the petitioner was not eligible for Family-Related Medicaid Program benefits. The

respondent reviewed the petitioner's eligibility for SSI-Related Medicaid for the blind, aged and disabled. The petitioner did not allege blindness. The petitioner did not meet the aged criteria of 65 years of age. The respondent requested proof of Social Security disability application.

3. The petitioner applied for Social Security disability on December 20, 2011, the application was denied on April 20, 2012, and the petitioner appealed that denial on August 10, 2012.

4. The petitioner submitted a Notice of Decision - Unfavorable from Social Security dated April 4, 2014. This unfavorable decision from Social Security was determined within 12 months of the petitioner's three applications for Medicaid Program benefits.

5. The unfavorable decision by Social Security was adopted indicating that the petitioner's impairments did not meet the disability criteria. As the petitioner did not meet the criteria of aged, blind or disabled, the petitioner's applications for Medicaid Program benefits were denied and Notices of Case Action were sent on September 15, 2014 and December 5, 2014.

6. The petitioner's stated impairments are an undiagnosed throat problem, causing bleeding and loss of voice; back problems from an October 2013 accident; and three hernias. He stated that his impairments are worsening. He needs to see a doctor for a throat culture. He has had surgery on one of the hernias and additional surgery is needed. He reported all impairments to the attorney that is handling his Social Security appeals; who he assumed, has given that information to Social Security for its determinations.

CONCLUSIONS OF LAW

7. The Department of Children and Families, Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties, pursuant to § 409.285, Fla. Stat. This order is the final administrative decision of the Department of Children and Families under Fla. Stat. § 409.285.

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

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

As to the issue of the May 1, 2014 Medicaid Program application denied on June 13, 2014.

11. The Fla. Admin. Code R. 65-2.046 establishes the time limits in which to request a hearing and states:

(1) The appellant or authorized representative must exercise the right to appeal within 90 calendar days in all programs. Additionally, in the Food Stamp Program, a household may request a fair hearing at any time within a certification period to dispute its current level of benefits. The time period begins with the date following: ...

(c) The date of the Department's written notification of denial or a request or other action which aggrieves the petitioner when that denial or action is other than an application decision or a decision to reduce or terminate program benefits.

12. The petitioner's May 1, 2014 Medicaid Program application was denied and Notice of Case Action was sent on June 13, 2014. The petitioner had 90 calendar days to request an appeal. The petitioner requested an appeal on October 20, 2014. The evidence did not demonstrate that the petitioner contacted the respondent within 90 days of the June 13, 2014 notice to dispute the denial. An application, as submitted on

September 10, 2014, is not a request for appeal. It is concluded that the petitioner's hearing request for the denial of the May 1, 2014 was outside of the 90-day time standard, and the hearing officer lacks jurisdiction to hear the merits of the appeal related to that application. The respondent's motion to dismiss this part of the appeal is granted.

As to the issue of the September 10, 2014 and November 10, 2014 applications.

13. 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. 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...

14. 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.

15. The ACCESS Policy Program Manual sets forth disability determinations in the following passages:

1440.1204 "Blindness/Disability Determinations (MSSI, SFP)"

...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.

1440.1205 Exceptions to State Determination of Disability (MSSI, SFP)

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

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...

16. The petitioner's stated impairments are throat problem causing bleeding and loss of voice; back problems; and three hernias. The accident resulting in his back was in 2013 and was prior to the unfavorable decision by Social Security on April 4, 2014. The petitioner has had surgery for one of the hernias in the past. He stated that his impairments are worsening. He reported all impairments to his attorney that is handling

his Social Security appeals. This indicates that his back problems and hernias are not new impairments. The policy explains the regulation that the applicant is to provide evidence of a new condition not previously considered by Social Security, and for a worsening of a condition to be referred to Social Security. The evidence indicates that Social Security is aware of all of the petitioner's impairments.

17. A Social Security disability determination is binding on an agency until the determination is changed by Social Security. Based on the regulations, the DDD cannot make a decision independent of Social Security. It is concluded that the action of the DDD and the respondent to adopt the decision of Social Security that the petitioner was not disabled was within the regulations. The petitioner did not meet the Medicaid eligibility criteria for disability related Medicaid.

18. The hearing officer explored all other Medicaid groups. The only other Medicaid group was Family-Related Medicaid. The petitioner applied for himself. He has no minor children residing with him. The Family-Related Medicaid rules are set forth in the Florida Administrative Code at 65A-1.705. The rules set forth that a child must be living in the home. The petitioner does not meet the criteria for Family-Related Medicaid.

19. The petitioner did not meet the criteria for any Medicaid Program. Therefore, the respondent's denials of the petitioner's September 10, 2014 and November 10, 2014 applications for Medicaid Program benefits were within the rules of the Program.

DECISION

Based upon the foregoing Findings of Fact and Conclusion of Law, the appeals are found as follows.

As to the issue of the May 1, 2014 Medicaid Program application denied on June 13, 2014, the request is outside of the 90 days period to request an appeal and the hearing officer dismisses this part of the appeal due to lack of jurisdiction.

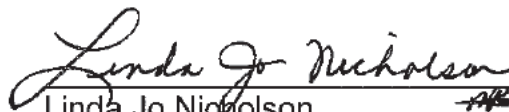
As to the issue of the September 10, 2014 and November 10, 2014 Medicaid Program applications, the appeal is denied.

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 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.



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