

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

FILED

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OFFICE OF APPEAL HEARINGS  
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 14F-09454

PETITIONER,

Vs.

CASE NO. [REDACTED]

FLORIDA DEPARTMENT OF  
CHILDREN AND FAMILIES  
CIRCUIT: 19 St. Lucie  
UNIT: 88508

RESPONDENT.

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**FINAL ORDER**

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on December 30, 2014 at 1:30 p.m., in Ft. Pierce, Florida.

**APPEARANCES**

For the Petitioner: [REDACTED]

For the Respondent: Cynthia Bunten, ACCESS supervisor.

**STATEMENT OF ISSUE**

The petitioner is appealing the respondent's action of denying him Medicaid benefits through the Department's SSI-Related Medicaid Program on the basis that he does not meet the disability criteria.

**PRELIMINARY STATEMENT**

By a Notice of Case Action dated November 4, 2014, the respondent informed the petitioner that his SSI-Related Medicaid Program benefits were being denied because he did not meet the disability requirement of the Program. On November 5, 2014, the petitioner timely requested a hearing to challenge the respondent's action.

[REDACTED], petitioner's wife, appeared as a witness on his behalf.

During the hearing, the petitioner presented evidence which was marked as Petitioner's Composite Exhibit 1. The respondent submitted seven (7) exhibits, which were marked as Respondent's Exhibits "1" through "7" respectively.

The record was left open through January 6, 2015 for the petitioner to provide additional information to the undersigned for review. The evidence was timely received and marked as Petitioner's Composite Exhibit 2. The record was closed on January 6, 2015.

**FINDINGS OF FACT**

Based upon the oral and documentary evidence presented at the final hearing and on the entire proceeding, the following Findings of Fact are made:

1. The petitioner (DOB [REDACTED]) is 53. He does not meet the aged criteria for SSI-Related Medicaid benefits. He has no minor children and does meet the technical requirement for the Family-Related Medicaid category. The petitioner did not allege blindness. Disability must be established to determine Medicaid eligibility.
2. The petitioner has a general education diploma (GED) and has been working as a maintenance supervisor for over 20 years. Petitioner is not currently employed and last worked in October 2013.

3. The petitioner suffers from various medical conditions and has been under medical care. Petitioner is experiencing severe pain and has been taking pain medications to manage his conditions since 2008. Petitioner underwent an Audiological Evaluation on December 12, 2014 and has been diagnosed with "moderate to severe" hearing loss (Petitioner's Composite Exhibit 1).

4. On November 8, 2013, the petitioner applied for disability with the Social Security Administration (SSA). SSA considered the following conditions: peripheral neuropathy in feet and lower legs, pain in feet and pain in lower back. SSA used reports from the following medical sources to decide petitioner's claim: petitioner's report, [REDACTED] M.D., [REDACTED] Med. Specialists, [REDACTED] Center, Endocrinology Diabetes & Longevity Ctr of AZ, Foot & Ankle Center of AZ, [REDACTED] neurosurgical Associates, Ltd and [REDACTED] Center for Spinal Disorders. On February 20, 2014, SSA denied the petitioner's application on the contention that the petitioner is capable of performing other work (N 32). Petitioner was previously denied on June 19, 2013 for the same reason.

5. On March 19, 2014, the petitioner filed a Request for Reconsideration for Social Security benefits. A decision was issued in July 2014 upholding the original decision. On July 23, 2014, the petitioner requested an appeal with the Office of Disability Adjudication and Review (ODAR) challenging the SSA's decision (Petitioner's Composite Exhibit 2).

6. The Florida Department of Children and Families (Department or DCF) determines eligibility for SSI-Related Medicaid programs. To be eligible an individual must be blind, disabled, or 65 years or older. The Division of Disability Determinations

(DDD) conducts disability reviews regarding Medicaid eligibility for individuals applying for disability benefits under the state Medically Needy Program. Once a disability review is completed, the claim is returned to DCF for a final determination of eligibility and effectuation of any benefits due.

7. On September 17, 2014, the petitioner applied for Medicaid benefits through the Department's SSI-Related Medicaid Program. Information obtained from the petitioner was forwarded to DDD for review.

8. On October 21, 2014, DDD received petitioner's disability package from the Department for a disability review. On October 29, 2014, a DDD examiner conducted a telephone interview with the petitioner. The DDD has access to Social Security information. Case Analysis from DDD indicates, in addition to the previous medical condition considered by SSA (peripheral neuropathy in feet and lower legs, pain in feet and pain in lower back), DDD considered petitioner's loss of hearing as a condition, but determined it did not warrant an independent review as it was not severe enough (N 30). DDD determined the hearing loss in itself would not make a decisional difference, but has requested records from the petitioner's audiologist to be considered in the course of his appeal before an administrative law judge (ALJ).

9. On October 30, 2014, DDD denied the petitioner's claim of disability by adopting the February 2014 SSA denial. DDD did not make an independent determination on the peripheral neuropathy condition.

10. On November 4, 2014, the Department mailed the petitioner a Notice of Case Action denying his application for SSI-Related Medicaid due to not meeting the disability criteria (Respondent's Exhibits 1 through 7).

11. The respondent explained that it denied the petitioner's SSI-Related Medicaid application because SSA has determined that he was not disabled and DDD has adopted the decision. The respondent explained that SSA decision is binding and must be accepted by the Department as final. The petitioner did not dispute the facts presented; however, he asserted that his peripheral neuropathy is deteriorating. He did not claim any new conditions. Petitioner explained that he was wearing an assisted listening device during his interview with DDD and that's the reason he did not appear to have a hearing problem. Petitioner's witness explained that petitioner requires assistance with his activities of daily living and has not been getting much needed medical care because he does not have insurance and cannot afford to see any medical specialists. She does not understand why her husband is not eligible for Medicaid in Florida, just like he received in Arizona. Petitioner believes DDD should request medical records from his doctors and make an independent disability determination, not just accepting SSA's decision.

12. Petitioner's appeal before the Social Security Administration is still pending.

#### **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 R.  
65-2.056.

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

16. Fla. Admin. Code R 65A-1.710 et seq., sets forth the rules of eligibility for elderly and disabled individuals with income less than the Federal Poverty Level. Individuals less than 65 years of age must meet the disability criteria of Title XVI of the Social Security Act appearing in 20 C.F.R. § 416.905. The regulation states in relevant part:

(a) 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(s) that makes you unable to do your past relevant work (see §416.960(b)) or any other substantial gainful work that exists in the national economy.

17. 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...

18. Federal Regulations at 42 C.F.R. § 435.541 "Determination of Disability," 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; 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.

19. The ACCESS Policy Program Manual at passage 1440.1204

"Blindness/Disability Determinations (MSSI, SFP)" states:

**...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.

20. The ACCESS Policy Program Manual at passage 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, or**
  - b. **the applicant no longer meets SSI non-disability criteria such as income or assets. (emphasis added)**

The eligibility specialist must explore eligibility for Medicaid for the individual based on other coverage criteria, e.g., family-related coverage prior to exploring eligibility for disability-related Medicaid.

20. According to the above-cited authorities, an SSA decision made within 12 months of the Medicaid application that is under appeal is controlling and binding on the State Agency unless the applicant reports a disabling condition not previously reviewed by SSA. Additionally, they direct worsening and deteriorating of conditions to the SSA. In this instant case, SSA has determined that the petitioner's condition was not severe enough to prevent him from performing other work. In addition to those conditions that were reported to SSA when petitioner applied for Social Security, DDD has considered petitioner's loss of hearing condition, but has determined it was not severe enough and



would not make a decisional difference in his case. Therefore, DDD did not make an independent decision on the peripheral neuropathy. On October 30, 2014, DDD adopted the SSA decision and alerted the Department that the petitioner was not disabled.

21. Based on the evidence and testimony presented, the above-cited rules and regulations, the hearing officer concludes that the Department's action to deny the petitioner Medicaid under the SSI-Related Medicaid coverage group is correct.

22. The hearing officer explored all other Medicaid groups. The only other Medicaid group was Family-Related Medicaid Program benefits. The petitioner has no minor children residing with him. The Family-Related Medicaid Program benefit rules are set forth in the Fla. Admin. Code R. 65A-1.705, Family-Related Medicaid General Eligibility Criteria. The rules set forth that to be eligible for that Medicaid Program, a dependent child must be living in the home. The petitioner does not meet the criteria for Family-Related Medicaid Program benefits. It is concluded, the respondent's action to deny the petitioner's application for Medicaid Program benefits was within the rules of the Program.

### **DECISION**

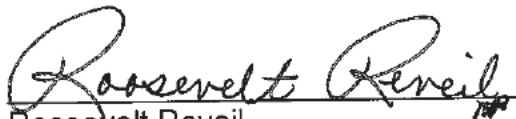
Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is denied. The Department's action is affirmed.

**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.

DONE and ORDERED this 3<sup>rd</sup> day of February, 2015,

in Tallahassee, Florida.



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Copies Furnished To: [REDACTED] Petitioner  
ESS Circuit 19