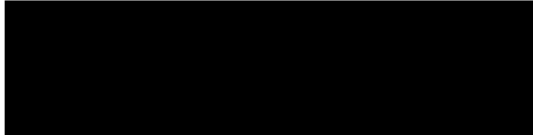


STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

FILED
FEB 13 2015
OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES



APPEAL NO. 14F-09718

PETITIONER,

Vs.

CASE NO. 

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 01 Santa Rosa
UNIT: 88630

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing telephonically in the above-referenced matter on December 18, 2014 at 8:44am.

APPEARANCES

For the Petitioner:



For the Respondent:

Amy Sumner, ACCESS Supervisor

STATEMENT OF ISSUE

Petitioner is appealing the Department's action of October 15, 2014 denying her application for Adult Related Medicaid.

PRELIMINARY STATEMENT

Rachel Mills, ACCESS Supervisor, appeared as an observer.

The Department submitted evidence prior to the hearing which was entered as Respondent Exhibit #1. The record was held open through January 2, 2015 for

additional information from both parties. The Department submitted additional information on December 23, 2014 which was entered as Respondent Exhibit #2.

The petitioner subsequently requested additional time to submit her evidence. The time was enlarged through January 12, 2015. No additional information was received and the record closed.

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 Food Assistance and Medicaid on October 10, 2014. The household consists of the petitioner only. The petitioner is 45 years old. The application was marked "N/E" for Disability.
2. The petitioner reported during her interview that she is disabled. She was not established as disabled by Social Security prior to the interview.
3. The petitioner reports she lost her Supplemental Security Income (SSI) based on asset ownership as she had a car for her son in her name. She then reapplied for SSI in 2011.
4. The Department utilized a checklist to determine how to proceed with the petitioner's Medicaid application. The Department determined as the petitioner was between ages 18 and 65 and has no minor children in the home, the petitioner's Medicaid application must be reviewed under SSI-Related Medicaid policy.
5. The Department reviewed the case and asked the petitioner if she had a new or worsening condition. The Department recorded the petitioner's response that she did not have a new or worsening condition. Without a new or worsening condition,

the Department did not submit a disability determination request to the Division of Disability Determinations (DDD). Accordingly, the Department denied Medicaid on October 15, 2015 citing "No household members eligible for this program."

6. The disability request from August 2014 was returned from DDD and denied for insufficient medical information.

7. The Department presented an electronic data exchange received from Social Security showing the petitioner applied for SSI on May 1, 2011. The exchange further shows the petitioner was denied with a reason code N32 (not disabled) on June 23, 2011.

8. The petitioner's lawyer submitted a written statement dated November 4, 2014 showing the petitioner submitted an appeal on the Social Security disability denial on July 19, 2013. Included with this statement was the documentation submitted to Social Security in July 2013.

9. Included in Respondent's Exhibit #2 is a letter from the Office of Disability Adjudication and Review showing that as of the inquiry dated July 21, 2014 the petitioner's request for review was received, but an evaluation had not started as of that time.

10. The petitioner confirmed that her appeal with the Office of Disability Adjudication and Review is still pending. She expects that ruling to be soon as it has been 15 months since the hearing. She has been advised the Appeals Counsel decisions take 15 to 18 months.

11. The petitioner reports her medical conditions as multiple back surgeries, a back syndrome, arachnoiditis, bladder stimulator, arthritis, diabetes, high cholesterol,

high blood pressure, migraines, enlarged heart, lung disease, COPD, sleep apnea, depression and anxiety. The petitioner has presented all of her physical conditions to Social Security for consideration. She believes that her attorney has updated Social Security with all physical updates but was uncertain if her mental health conditions had been included.

12. The petitioner did not submit either the summary of the Social Security decision which lists the conditions Social Security considered or any other supporting documentation to show Social Security was unaware of any additions conditions.

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. Fla. Admin. Code § 65A-1.711 "SSI-Related Medicaid Non-Financial Eligibility Criteria" states in part:

To qualify for Medicaid an individual must meet the general and categorical requirements in 42 C.F.R. Part 435, subparts E and F (2007) (incorporated by reference), with the exception that individuals who are neither aged nor disabled may qualify for breast and cervical cancer treatment, and the following program specific requirements as appropriate. Individuals who are in Florida temporarily may be considered residents of

the state on a case-by-case basis, if they indicate an intent to reside in Florida and can verify that they are residing in Florida.

(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 (2007) (incorporated by reference).

17. The petitioner is 45 years old. The above controlling authority sets forth that an individual must either be age 65 or older or be determined as disabled to receive Medicaid in the SSI or Adult-related program. The undersigned concludes as the petitioner does not meet the age requirement, she must meet the disability requirement to be considered eligible for Medicaid.

18. Federal Medicaid Regulations 42 C.F.R. § 435.541 "Determinations of disability" states in relevant part:

(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 beneficiary, 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.

19. The Department published a transmittal to clarify the above cited federal regulation at (c)(4)(ii). Transmittal I-03-05-0025 dated May 23, 2003 states in part:

Adoption of Social Security Disability Decision
Most Social Security disability decisions must be adopted by the state. A favorable decision is always adopted. To help staff determine when to

adopt an unfavorable SSA disability decision, the following guidelines must be followed: ...

2. If the SSA disability denial was made over a year prior to the application for Medicaid with DCF, the state must conduct an independent disability determination *unless* the client's case is still under appeal with SSA based on the same condition. Again, it may be necessary to obtain a copy of the SSA denial letter in order for staff to determine whether or not the client has a condition that is different than that which is under appeal.

20. The findings show the petitioner last had an unfavorable determination made by Social Security in June 2011. However, that denial is currently under appeal.

21. The petitioner believes that all conditions and worsening of conditions have been provided to the Social Security Administration (SSA). She had some uncertainty as to whether her mental health condition had been reported to SSA. Petitioner was given time post-hearing to furnish evidence of the conditions reviewed by SSA. Petitioner failed to furnish evidence of such.

22. The Findings show that more than 12 months has passed since the petitioner's last unfavorable decision from SSA and the denial is under appeal with SSA. Petitioner held the burden of proof to show the Department's denial action was incorrect. Petitioner failed to show the conditions reviewed by SSA. Therefore, the undersigned concludes petitioner failed to meet her burden to show the Department's adoption of the SSA decision was incorrect.

23. In accordance with the above controlling authority, as the petitioner does not meet the aged (over age 65) or disabled criteria, the undersigned concludes the petitioner is not technically eligible for the SSI-Related Medicaid.


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 13th day of February, 2015,
in Tallahassee, Florida.


Melissa Roedel
Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
Office: 850-488-1429
Fax: 850-487-0662
Email: Appeal_Hearings@dcf.state.fl.us

Copies Furnished To: [REDACTED] Petitioner
Office of Economic Self Sufficiency