

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

FILED
FEB 17 2015

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 14F-09771

PETITIONER,

Vs.

CASE NO. [REDACTED]

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 11 Dade
UNIT: 88691

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on January 6, 2015, at 10:15 a.m. All parties appeared telephonically from different locations.

APPEARANCES

For the Petitioner: [REDACTED] pro se.

For the Respondent: Melissa Diaz, ACCESS Operations & Management
Consultant 1 (OMC 1).

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

On November 13, 2014, the petitioner filed an appeal requesting Medicaid under the respondent's SSI-Related Medicaid Program benefits.

During the hearing, the petitioner did not submit any evidence for the undersigned to consider. The respondent presented three (3) exhibits which were accepted into evidence and marked as Respondent's Exhibits "1" through "3" respectively. Petitioner had not received the evidence package by the day of the hearing, but opted to proceed. The record was left open through January 13, 2015 for both parties to submit additional evidence for consideration. The respondent's evidence was timely received and marked as Respondent's Exhibits 4 through 7. The petitioner did not provide any additional information, nor did he contact the hearing officer for additional time. The record closed on January 13, 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 33 years of age. He does not meet the aged criteria for SSI-Related Medicaid benefits. He claims no minor children as tax dependents and does meet the technical requirement for the Family-Related Medicaid Program. The petitioner did not allege blindness. Disability must be established to determine Medicaid eligibility.
2. Petitioner is currently employed part-time (averaging \$460 biweekly). Petitioner has a history of vascular disease and had heart surgery in 2011.

3. On October 29, 2014, the petitioner applied for disability with the Social Security Administration (SSA). SSA considered the following conditions: congestive heart failure (CHF) and hypertensive vascular disease. On December 10, 2014, SSA denied the petitioner's application on the contention that this condition is not severe enough to preclude him from engaging in substantial gainful activities (SGA), denial code N 32. On December 17, 2014, the petitioner requested an appeal to challenge the SSA's decision (Respondent's Exhibits 1 & 4).

4. The respondent (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 for the Department. Once a disability review is completed, the claim is returned to DCF for a final determination of eligibility and effectuation of any benefits due.

5. On November 4, 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 (Respondent's Exhibits 2 & 3).

6. On December 12, 2014, DDD received petitioner's disability packet from the Department for a disability review. The primary diagnosis reviewed by DDD was CHF. In addition, DDD considered hypertensive vascular disease as a secondary diagnosis. The DDD has access to Social Security information.

7. On December 12, 2014, DDD denied the petitioner's claim of disability by adopting the December 2014 SSA denial citing a Hankerson adoption as its authority (Respondent's Exhibit 7). DDD did not make an independent determination.

8. On December 15, 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 Exhibit 6).

9. The respondent explained that it denied the petitioner's SSI Related Medicaid application because SSA has determined that he was not disabled and DDD adopted the SSA 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 medical conditions are getting worse. He did not claim any new conditions. Petitioner explained that he has serious medical issues and is in need of medical insurance so he can get the medical care he needs to maintain his heart-monitoring device. He explained that he is forced to keep his job because he needs the money to pay his bills, but cannot afford to work a normal 40-hour work week due to his medical limitations.

10. The record was left open through January 13, 2015 for the petitioner to provide the Explanation of Determination notice from SSA, but no information was received.

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

CONCLUSIONS OF LAW

12. 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.

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

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

15. 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.

16. 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...

17. 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.

18. 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.

19. 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...

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.

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. Petitioner applied for disability with the Social Security Administration (SSA) on October 29, 2014. His application was denied on December 10, 2014. He applied for Medicaid benefits through the Department's SSI-Related Medicaid Program on November 4, 2014 and was denied on December 12, 2014. According to the above-cited authorities, a SSA decision made within 12 months of the Medicaid application is controlling and binding on the state agency unless the applicant reports a disabling condition not previously reviewed by SSA or the determination is changed by SSA. In this instant case, SSA has determined that the petitioner's conditions were not severe enough to prevent him from engaging in SGA. Petitioner did not report any new conditions not previously reviewed by the SSA. Therefore, DDD did not make an independent decision.

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 Program 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 17th day of February, 2015,

in Tallahassee, Florida.


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