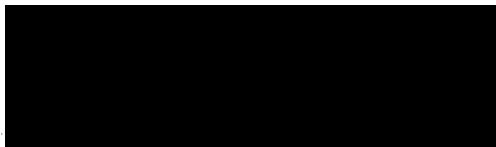


STATE OF FLORIDA  
DEPARTMENT OF CHILDREN AND FAMILIES  
OFFICE OF APPEAL HEARINGS

**FILED**

**MAR 25 2015**

OFFICE OF APPEAL HEARINGS  
DEPT OF CHILDREN & FAMILIES



APPEAL NO. 14F-10879

PETITIONER,

Vs.

CASE NO. 

FLORIDA DEPARTMENT OF  
CHILDREN AND FAMILIES  
CIRCUIT: 04 Clay  
UNIT: 88265

RESPONDENT.

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**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on January 22, 2015 at 10:22 a.m.

**APPEARANCES**

For the Petitioner: The petitioner was present and represented herself.

For the Respondent: Stephanie Ross, Economic Self-Sufficiency Specialist II

**STATEMENT OF ISSUE**

The petitioner is appealing the Department's action on December 5, 2014 to deny her SSI-Related Medicaid application as she did not meet the disability requirement.

### **PRELIMINARY STATEMENT**

The record was held open until 5:00 p.m. on February 9, 2015 to allow the petitioner and the respondent to submit additional evidence. Evidence was received from the respondent and entered as the Respondent Exhibit 4. No additional evidence was received from the petitioner.

### **FINDINGS OF FACT**

1. Prior to the action under appeal, the petitioner (age 34) received full-coverage Medicaid for herself and her minor daughter. The father to the petitioner's daughter was awarded temporary full-time custody and the daughter moved out of her home. On October 3, 2014, the petitioner reported that her daughter moved out of her home; therefore, her Medicaid coverage terminated effective October 31, 2014. The petitioner applied for SSI-Related Medicaid on December 3, 2014.

2. The Department's records indicate that the petitioner applied for SSI disability benefits in April 2014; her claim for disability was denied by the Social Security Administration (SSA) in August 2014 (Respondent Exhibit 4). Based on this information, the Department determined that the petitioner was ineligible for SSI-Related Medicaid and denied her application.

3. On December 5, 2014, a Notice of Case Action was mailed to the petitioner to inform her of the Department's action to deny her application for SSI-Related Medicaid.

4. The petitioner argues that she has medication that she is required to take and cannot afford to pay her co-payments. The petitioner argues that her doctor refuses to see her without some form of medical insurance. The petitioner believes SSA reviewed

her disabling medical conditions of a stroke, use of a defibrillator, anxiety, and depression. The petitioner was asked to submit a copy of the SSA denial letter. The undersigned did not receive a copy of the SSA denial letter listing the medical conditions reviewed.

5. The Department's position is that the petitioner's application for SSI-Related Medicaid was denied because her disability claim was denied by the SSA; the Department is required to adopt the SSA disability decision. The Department's records indicate that the SSA disability denial is under appeal as of January 5, 2015.

#### **CONCLUSIONS OF LAW**

6. 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.

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

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

9. Florida Administrative Code, Section 65A-1.710 et seq., sets forth the rules of eligibility for elderly and disabled individuals with income less than the Federal Poverty Level. For an individual less than 65 years of age to receive Medicaid, he 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 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...

10. Additionally, 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)...

(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, alleges a new period of disability which meets the durational requirement of the Act, and - ...

11. The above federal regulation indicates that the Department **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. The regulation also states that the Department **must** make a determination of disability if the individual applies for Medicaid as a non-cash recipient, whether or not the State has a section 1634 agreement with SSA and alleges a disabling condition different from, or in addition to, that considered by SSA in making its determination or alleges more than 12 months after the most recent SSA determination. The Department is bound by the federal agency's decision unless there is evidence of a new disabling condition.

12. The Department's ACCESS Florida Program Policy Manual, 165-22, section 1440.1204 Blindness/Disability Determinations (MSSI, SFP), states in part:

If the individual has not received a disability decision from SSA, a blindness/disability application must be submitted to the Division of Disability Determinations (DDD) for individuals under age 65 who are requesting Community Medicaid under community MEDS-AD, Medically Needy, and Emergency Medicaid for Alien Programs.

State disability determinations for disability-related Medicaid applications must be done for all applicants with pending Title II or Title XVI claims unless SSA has denied their disability within the past year. 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.

13. The above authority explains that a disability application must be sent to the DDD to be reviewed for applicants who are under the age of 65, who are requesting Community Medicaid under community MEDS-AD, Medically Needy, and Emergency Medicaid for Alien programs. However, if SSA has denied disability within the past year, or if the denial is under appeal, the SSA decision is to be adopted. If the individual applies for Medicaid within one year of an SSA denial and provides evidence of a new disabling condition that was not considered by SSA, the Department must make an independent disability decision. The petitioner provided no evidence of a new disabling condition, not considered by the SSA. There was no evidence of the conditions reviewed by the SSA.

14. In this case, the petitioner is under age 65 and alleges medical impairments of stroke, anxiety, and depression. The petitioner argues that she cannot receive medical care without Medicaid. Her concern and situation is recognized, however, the Department is required to follow the rules and regulations set forth by the governing authorities. The undersigned concludes that the petitioner did not meet her burden of proof to show that the Department's action was incorrect. The undersigned concludes that the Department was correct to adopt the SSA disability denial from December 2014 (within 12 months of the Medicaid application with the Department), which is currently under appeal and resulted in the Medicaid denial.

**DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, 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 25<sup>th</sup> day of March, 2015,

in Tallahassee, Florida.



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