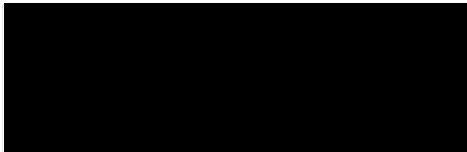


STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

FILED

MAR 30 2015

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES



APPEAL NO. 14F-11024

PETITIONER,

Vs.

CASE NO. 

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 14 Bay
UNIT: 55143

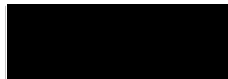
RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing telephonically in the above-referenced matter on February 20, 2015 at 1:48pm.

APPEARANCES

For the Petitioner:



For the Respondent:

Marixsa Griffith, ACCESS Supervisor

STATEMENT OF ISSUE

Petitioner is appealing the Department's action of November 20, 2014 and December 24, 2014 denying both members of the household Medicaid eligibility based on disability.

PRELIMINARY STATEMENT

The petitioner submitted evidence on February 11, 2015 regarding the petitioner's disability. This was entered as Petitioner Exhibit 1. The petitioner submitted

evidence on February 11, 2015 to the Department regarding disability of the petitioner's wife. This was forwarded to the undersigned on February 20, 2015 and entered as Petitioner Exhibit 2.

The Department submitted evidence on February 18, 2015 which was entered as Respondent Exhibit 1.

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 recertification of Food Assistance and Medicaid benefits on October 15, 2014. The household consists of the petitioner, age 52, and his wife, age 51. Food Assistance benefits were approved for the household.
2. The petitioner and his wife received family related Medicaid through October 31, 2014 due to their youngest child turning age 18. This child is no longer in the home.
3. The Department did not continue Medicaid benefits as there were no minor children in the home. The Department believed there were no Medicaid benefits to continue pending the determination.
4. On November 14, 2014 the Department submitted the disability determination request for the petitioner's wife.
5. The petitioner's wife has fibromyalgia, COPD, an enlarged heart and weakness, which were all reported to Social Security upon her initial application with them. In June 2014, she was given an additional diagnosis of rheumatoid arthritis.

In October 2014, an additional diagnosis of neuropathy was also added. She additionally an unconfirmed diagnosis of lupus. All conditions, as well as new conditions, have been reported to Social Security. Social Security has not refused to consider any of the new diagnosis during the appeals process.

6. On November 19, 2014 the Department received a denial decision from the Division of Disability Determination (DDD). DDD adopted the decision made by Social Security Administration (SSA). The decision was coded N31: Non-Pay – Capacity for substantial gainful activity (SGA) – customary past work, no visual impairment. Noted on the Disability Determination and Transmittal was "Hankerson N31 11/13; same/related allegations, hearing pending."

7. The petitioner's wife was last denied Social Security disability November 25, 2013.

8. The petitioner was last denied Social Security disability December 9, 2013.

9. The Department issued a Notice of Case Action on November 20, 2014 denying Medicaid application/review dated October 15, 2014 for both members of the household citing "You or a member(s) of your household do not meet the disability requirement." The Department issued this notice based on the denial of disability for the petitioner's wife.

10. On December 16, 2014 the Department submitted a disability determination request for the petitioner.

11. The petitioner previously had a case with vocational rehabilitation. They closed his case when they determined he would not be able to go back to work. He has

a back disorder, numbness and pain that radiates to his lower limbs. He has been unable to work due to his condition since July 2013. All of his conditions and worsening of his conditions have been reported to Social Security by his attorney. Social Security has not refused to consider any worsening of his conditions during the appeal process.

12. On December 22, 2014 the Department received a denial decision from DDD. DDD adopted the decision made by SSA for the petitioner with denial reason code N32. This reason code means Non-pay – Capacity for substantial gainful activity (SGA) – other work, no visual impairment.

13. The Department issued a Notice of Case Action on December 24, 2014 denying Medicaid application/review dated October 15, 2014 for both the petitioner and his wife. The reason cited was "You or a member(s) of your household do not meet the disability requirement." The Department issued this notices based on the denial of disability for the petitioner.

14. The petitioner is concerned the Department did not complete a state review of the disability for either himself or his wife, but simply adopted the decision based on the federal level decision.

CONCLUSIONS OF LAW

15. 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.

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

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

18. Fla. Admin. Code § 65A-1.702 Special Provisions states in relevant part:

(4) Ex Parte Process.

(a) When a recipient's eligibility for Medicaid ends under one or more coverage groups, the department must determine their eligibility for medical assistance under any other Medicaid coverage group(s) before terminating Medicaid coverage. Both family-related Medicaid and SSI-related Medicaid eligibility are determined based on available information. If additional information is required to make an ex parte determination, it can be requested from the recipient, or, for SSI-related Medicaid eligibility, from the recipient or from the Social Security Administration.

(b) All individuals who lose Medicaid eligibility under one or more coverage groups will continue to receive Medicaid until the ex parte redetermination process is completed. If the department determines that the individual is not eligible for Medicaid, the individual will be sent a notice to this effect which includes appeal rights. The individual may appeal the decision and, if requested by the individual within 10 days of the decision being appealed, Medicaid benefits will be continued pending resolution of the appeal. (emphasis added)

19. The findings show the Department did not continue the existing Medicaid coverage for the petitioner and his wife pending the determination of eligibility for SSI-Related Medicaid. The above controlling authority explains continued eligibility must be allowed while the ex parte redetermination process is being completed. The undersigned concludes the petitioner's wife was entitled to Medicaid coverage through November 2014 when her Medicaid eligibility determination was completed. The undersigned concludes the petitioner was entitled to Medicaid through December 2014 when his Medicaid eligibility determination was completed.

20. 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).

21. The petitioner is 52 years old and his wife is 51 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 and his wife does not meet the age requirement, they must each meet the disability requirement to be considered eligible for Medicaid.

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

(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 §435.912 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.

(b) Effect of SSA determinations. (1) Except in the circumstances specified in paragraph (c)(3) of this section—

...

(c)...(4) The individual applies for Medicaid as a non-cash beneficiary, whether or not the State has a section 1634 agreement with SSA, and—

...

(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.

23. The findings show the petitioner's wife last had an unfavorable determination made by Social Security in November 2013. However, that denial is presently under appeal. As all conditions have been reported to SSA for consideration during the appeal process, the undersigned concludes the Department's adoption of the SSA decision was correct.

24. The findings show the petitioner last had an unfavorable determination made by Social Security in December 2013. That denial is presently under appeal. As all conditions have been reported to SSA for consideration during the appeal process, the undersigned concludes the Department's adoption of the SSA decision was correct.

25. 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 Medicaid under the SSI or Adult-Related Medicaid program. In addition, the petitioner's wife does not meet the aged (over age 65) or disabled criteria, the undersigned further concludes she is not eligible for Medicaid under the SSI or Adult-Related Medicaid program.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is granted in part and denied in part. The appeal is granted in that petitioner's wife is entitled to Medicaid through the month of November 2014 when the ex parte determination was completed and a notice was issued. The petitioner is entitled to Medicaid through the month of December 2014 when the ex parte determination was completed and a notice was issued.

The appeal is denied in that petitioner and his wife do not meet the disability criteria and are not eligible for the SSI-Related Medicaid Program.

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 30th day of March, 2015,

in Tallahassee, Florida.



Melissa Roedel
Hearing Officer
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Tallahassee, FL 32399-0700
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FINAL ORDER (Cont.)
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Copies Furnished To: [REDACTED] Petitioner
Office of Economic Self Sufficiency