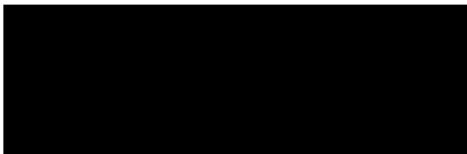


**FILED**

**JUN 12 2014**

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

OFFICE OF APPEAL HEARINGS  
DEPT OF CHILDREN & FAMILIES



PETITIONER,

Vs.

APPEAL NO. 14F-02039

CASE NO. 

FLORIDA DEPT OF  
CHILDREN AND FAMILIES  
CIRCUIT: 09 Orange  
UNIT: 66292

RESPONDENT.

**FINAL ORDER**

Pursuant to notice, the undersigned telephonically convened an administrative hearing in the above-referenced matter on May 8, 2014 at 2:15 p.m.

**APPEARANCES**

For the petitioner:  pro se

For the respondent: Clara Ford, ACCESS supervisor

**STATEMENT OF ISSUE**

At issue is whether the Department correctly denied the petitioner's application for Medicaid disability benefits.

**PRELIMINARY STATEMENT**

By notice dated January 17, 2014, the respondent notified his application was denied for Medicaid disability because he did not meet the disability requirement. Petitioner timely requested a hearing to challenge the denial.

Petitioner submitted two exhibits, which were accepted into evidence and marked as Petitioner Exhibits "1" through "2" respectively. The respondent submitted 7 exhibits, which were accepted into evidence and marked as Respondent Exhibits "1" through "7" respectively.

### FINDINGS OF FACT

1. The petitioner (44) applied for Medicaid Assistance on January 9, 2014. Petitioner resides with his significant partner and her two children. Petitioner was not over age 65 or blind and does not have any minor children.
2. Petitioner reported on his application that a request for Federal disability benefits from Social Security Administration (SSA) was denied April 4, 2013.
3. The Department contracts with the Division of Disability Determination (DDD) to make its disability determinations. The respondent did not refer the application to DDD to review because on April 4, 2013 SSA denied disability. On January 17, 2014, the respondent mailed the petitioner a Notice of Case Action denying him Medicaid disability.
4. The respondent explained the Department must adopt SSA's denial decision.
5. Petitioner explained his disability to be stroke and degenerative disorder, which continues to intensify. The petitioner testified his degenerative disorder has worsened because the condition has spread behind his skull and he may possibly become paralyzed. Petitioner was not able to answer if he has any new condition that SSA is not aware of.
6. During the hearing, petitioner submitted to the undersigned evidence (Petitioner Exhibit 2) indicating that petitioner has appealed the SSA's denial decision on March 31,

2014. Petitioner also has reapplied on March 31, 2014. The respondent explained the petitioner needed to submit further information (new disabling condition if any and SSA denial) and referred the case to DDD for processing.

### **CONCLUSIONS OF LAW**

7. 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 Fla. Stat. § 409.285.

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

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

10. Adults who are not elderly and do not have young children, medical assistance is based on the same disability standards as that used by Social Security Administration (SSA). 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. For an individual less than 65 years of age to received benefits, he must meet the disability criteria of Title XVI of the Social Security Act appearing in 20 C.F.R. § 416.905, "Basic definition of disability for adults". The regulations state, 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. ...

11. The Code of Federal Regulations continues at 42 C.F.R. § 435.541 and in part 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 issue presented in the Medicaid application. A determination of eligibility for SSI payments based on disability that is made by SSA automatically confers Medicaid eligibility... (b) Effect of SSA determinations. **(1)(i) An SSA disability determination is binding on an agency until the determination is changed by SSA...** (c) Determination 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 disability condition different from, or in addition to, that considered by SSA in making its determination... (emphasis added).

12. The cited authorities explain the Department cannot make a decision independent of the SSA decision. In the petitioner's case, Social Security Administration denied the petitioner's disability; therefore, the decision is binding on the Department. The petitioner testified his current condition degenerative disorder has worsened because the condition has spread behind his skull and he may possibly become paralyzed. The petitioner testified at the hearing that he cannot respond to claiming a new condition that was not considered by SSA, however he explained his current condition has worsened.

13. Based on the cited authority, the Department cannot make an independent decision of the SSA. Therefore, the undersigned concludes that the Department correctly followed rule in denying the petitioner's Medicaid disability.

14. The petitioner has reapplied on March 31, 2014, the respondent acknowledged at the hearing the DDD referral has been made. Appealable notice of results of the DDD review shall be issued when eligibility determination is complete.

**DECISION**

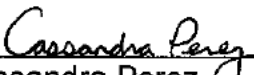
Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is denied and the Department's action is affirmed.

**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 12<sup>th</sup> day of June, 2014,

in Tallahassee, Florida.

  
Cassandra Perez  
Hearing Officer  
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1317 Winewood Boulevard  
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Copies Furnished To: [REDACTED] Petitioner  
ACCESS Keith Carpenter