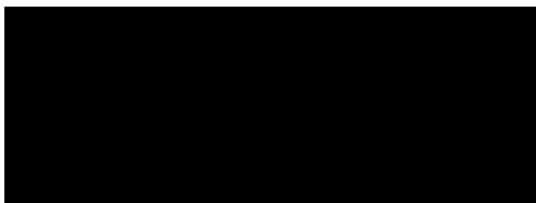


STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

FILED

JUN 12 2014

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES



APPEAL NO. 14F-02705

PETITIONER,

Vs.

CASE NO. 1407743601

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 02 Leon
UNIT: 88313

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing telephonically in the above-referenced matter on May 12, 2014 at 1:31pm.

APPEARANCES

For the Petitioner: Evelyn Noguez, Patient Representative, Paralon
Capital Regional Medical Center

For the Respondent: Marixsa Griffith, ACCESS Supervisor

STATEMENT OF ISSUE

Petitioner is appealing the Department's action of April 14, 2014 denying the petitioner's application for Adult Related Medicaid.

PRELIMINARY STATEMENT

The petitioner submitted one composite exhibit of evidence which was entered as Petitioner's Exhibit #1. The Department submitted one composite exhibit of evidence which was entered as Respondent Exhibit #1.

Larry LaBelle, of the Office of Appeal Hearings, was present as an observer.

FINDINGS OF FACT

1. The petitioner applied for Medicaid with the Department as a disabled adult on March 10, 2014.
2. The Social Security Administration (SSA) denied the petitioner's disability claim on December 6, 2013 as he did not meet the disability criteria. The petitioner appealed the unfavorable decision on January 27, 2014 with the SSA.
3. The Department adopted the unfavorable disability decision made by SSA on March 17, 2014 and denied the petitioner's application for Medicaid.
4. The petitioner filed a subsequent application for Medicaid with the Department based on disability on March 31, 2014.
5. The Department scheduled an interview to collect information on petitioner's disability for April 11, 2014.
6. The petitioner reported in his disability interview that he had appealed the decision made by SSA. In addition, the petitioner stated all existing conditions were reported to SSA.
7. The Department issued a Notice of Case Action on April 14, 2014 advising that the petitioner's Medicaid application was denied as there were no household

members eligible for this program. This was because petitioner is not age 65 and had not met the disability criteria.

8. The petitioner reported that his disability claim for SSA was based on his back and neck injury and related pain.

9. Beginning in January 2014, the petitioner began experiencing congestive heart failure with an ejection fraction of 25% and hypertension. The new conditions were reported to SSA on March 10, 2014 with the filing of an additional appeal/claim.

10. The Department acknowledged that the petitioner has a new condition that has an onset date after the denial by SSA. The respondent reported that it has started the process of reopening the petitioner's Medicaid request to submit the file for review of the petitioner's new condition(s) to the Division of Disability Determinations.

CONCLUSIONS OF LAW

11. 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.

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

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

14. Federal Medicaid Regulations at 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.

(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.

(emphasis added)

15. The findings show that petitioner has a new disabling condition not considered by the SSA in its unfavorable disability determination. The onset date of the new condition is after the SSA denial date and before the date of application for Medicaid with the Department. The Department acknowledged the need to process the Medicaid request to have the petitioner's disability determined to include his new condition(s). The undersigned concludes that all of petitioner's disabling conditions were not reviewed by the SSA; the new condition developed before the Medicaid application. Therefore, the adoption of SSA's unfavorable disability decision is not correct.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is granted and remanded to the Department. The Department is to take corrective action and make an independent disability determination to include petitioner's new disabling condition. The Department is to issue a new notice to petitioner's representative upon the completion of its determination, to include appeal rights.

In the event that the SSA makes a new disability determination while the Department is processing the independent disability determination, the Department would then follow its applicable policies.

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 12th day of June, 2014,

in Tallahassee, Florida.



Melissa Roedel *MR*
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