

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

FILED

JUN 16 2014

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES



APPEAL NO. 14F-2719

PETITIONER,

Vs.


FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 11 Dade
UNIT: 88673

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on May 21st, 2014 at 1:15 p.m.

APPEARANCES

For the Petitioner:  pro se.

For the Respondent: Lizette Vega, economic self-sufficiency specialist supervisor for the Economic Self-Sufficiency program.

ISSUE

The petitioner is appealing the respondent's action to deny her application for Medicaid.

PRELIMINARY STATEMENT

Appearing as an observer was Larry Labelle with the Office of Appeal Hearings.

Prior to the hearing, the Office of Appeal Hearings received from the respondent a packet of documents to support the respondent's position at the hearing. The

respondent stated that a copy of these documents had been mailed to the petitioner; however, the petitioner did not receive them in time for the hearing as she had moved, and had not reported her new address to the Department. The petitioner had no objection to going forth with the hearing. The respondent agreed to reissue the documents to the petitioner's current address. The documents were moved into evidence as Respondent's Exhibits 1 through 3. The record was held open for seven days to allow the respondent's exhibits to reach the petitioner. The petitioner was then to contact the Office of Appeal Hearings in the event that she wished to reconvene and refute any of the respondent's evidence. As of the close of business May 28th, 2014, the petitioner had not contacted the Office of Appeal Hearings. The record was also held open for the same period of time to allow the respondent to submit additional evidence. The additional evidence was received within the allowed time frame and marked as Respondent's Exhibit 4. The record was then closed.

The petitioner did not submit any documents into evidence.

By way of Notice of Case Action (Spanish version) dated March 21st, 2014, the respondent informed the petitioner that there would be no change in her Medicaid benefits. The notice goes on to indicate that the petitioner is ineligible for Medicaid (no reason given), and that [REDACTED] (the petitioner's daughter) is eligible. The petitioner clarified (and the respondent verified) that action was taken to terminate the petitioner's Medicaid on April 16th, 2013 when her twin sons (the youngest of her three children) turned 18 years of age.

On March 31st, 2014, the petitioner filed an appeal to challenge the respondent's denial of her Medicaid based on the March 21st, 2014 notice. The appeal is considered to be timely filed.

FINDINGS OF FACT

1. The petitioner's household consists of herself (born in June 1964) and her twin sons (born in April 1995). The petitioner's sons are both disabled and receive Supplemental Security Income (SSI) and SSI-related Medicaid. Additionally, the petitioner has a daughter, 20 years of age, who receives Medicaid under a coverage group allowed for eligible children who are 18-21 years of age. These facts are not in dispute.

2. On March 12th, 2014, the petitioner submitted an application for recertification for her daughter's Medicaid. On the same application, the petitioner applied for Medicaid for herself. A copy of the application was not supplied at the hearing; however, this fact was not in dispute.

3. The respondent submitted into evidence Respondent's Exhibit 4, which is screen print entitled "State of Florida, SSA State On-Line Query, SSI Title XVI Inquiry." (See Respondent's Exhibit 4.) The query reflects that the petitioner applied for disability-related Medicaid for herself at the Social Security Administration on March 20th, 2014. The query also indicates that this application was denied on May 6th, 2014. The reason listed is "N32", which signifies "Nonpay. Capacity for substantial gainful activity-other work, no visual impairment." The query also reflects that on May 20th, 2014, the petitioner filed an appeal with SSA to challenge this action. The petitioner verified this

information, except to say that she has an attorney who is handling her Medicaid application with SSA, and she was not aware that the appeal had been filed.

4. The petitioner stated that she suffers from kidney stones. The petitioner also stated that she had been "feeling bad" over the past several months. As a result, the petitioner was seen at a clinic, was sent for lab testing, and "all the results came back bad." However, the petitioner did not submit any evidence of any medically disabling conditions at the hearing.

5. The respondent's position is that in order to qualify for Family Related-Medicaid, the petitioner must have at least one minor child (under the age of 18 years) in her custody, or otherwise be either at least 65 years of age or disabled. Once the petitioner's twin sons turned 18 in April 2013, the petitioner no longer met this eligibility requirement. The petitioner is not yet 65 years of age; therefore, the petitioner does not meet the age requirement. Furthermore, the respondent's position is also that since the petitioner has an application for disability-related Medicaid benefits with the SSA that has been denied, the petitioner must go through the appeals process with SSA and await the final outcome of SSA's decision.

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 § 409.285, Fla. Stat. This order is the final administrative decision of the Department of Children and Families under Fla. Stat. § 409.285.

7. In accordance with Fla. Admin. Code § 65-2.060(1), the burden of proof was assigned to the petitioner. The party with the burden proof shall establish his/her position by, a preponderance of the evidence, to the satisfaction of the hearing officer.

8. This proceeding is a *de novo* proceeding pursuant to Fla. Admin. Code § 65-2.056, which states in part:

(3) The Hearing Officer must determine whether the Department's decision on eligibility or procedural compliance was correct at the time the decision was made. The hearings are *de novo* hearings, in that, either party may present new or additional evidence not previously considered by the department in making its decision.

9. The Florida Administrative Code, Section 65A-1.710 et seq., sets forth the rules of eligibility for Elderly and Disabled Individuals Who Have Income of Less Than the Federal Poverty Level. For an individual who does not have custody of minor children, is not pregnant, and is less than 65 years of age, to receive benefits he or she must meet the disability criteria of Title XVI of the Social Security Act appearing in 20 C.F.R. §416.905. The regulations state, in part:

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 which makes you unable to do your previous work or any other substantial gainful activity which exists in the national economy...

10. The Code of Federal Regulations at 42 C.F.R. § 435.541, Determinations of disability states in 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.

(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 Sec. 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 for under Sec. 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.

(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....

11. Fla. Integrated Pub. Policy Manual passage 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.

12. The above federal regulations indicate 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 regulations also state 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 not reviewed by SSA. The petitioner did not submit any such evidence at the hearing.

13. The above authorities also explain that if SSA has denied disability within the past year, or if the denial is under appeal, the SSA decision is to be adopted. The evidence shows that a full year has not lapsed since the SSA denied the petitioner's application for Medicaid, as the denial took place on May 6th, 2014. The evidence further shows that the denial is currently under appeal.

14. The petitioner asserts that she needs Medicaid assistance urgently and cannot afford to wait for the appeals process with SSA to be completed. However, the

above regulations state that the SSA decision (in this case, the May 6th, 2014 denial) is binding and must be relied upon by the respondent. Therefore, given the evidence presented, the hearing officer concludes that the petitioner must await SSA's appeal decision on her application for Medicaid.

DECISION

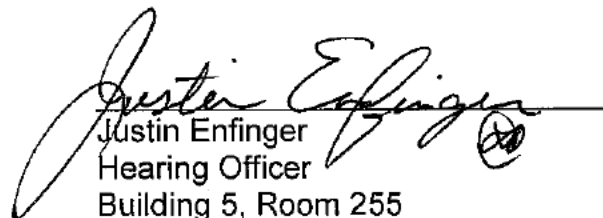
Based upon the foregoing Findings of Fact and Conclusion of Law, the appeal is DENIED.

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 indigence to waive those fees. The Department has no funds to assist in this review, and any financial obligations incurred will be the petitioner's responsibility.

DONE and ORDERED this 16th day of June, 2014,

in Tallahassee, Florida.



Justin Enfinger
Hearing Officer
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