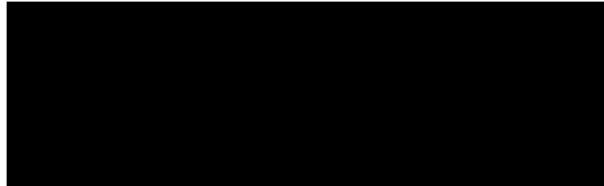


**FILED**

**MAY 07 2014**

OFFICE OF APPEAL HEARINGS  
DEPT OF CHILDREN & FAMILIES

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



PETITIONER,

Vs.

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

APPEAL NO. 14F-02054  
14F-02878

CASE NO.




RESPONDENT.

**FINAL ORDER**

Pursuant to notice, the undersigned telephonically convened an administrative hearing in the above-referenced matter on April 15, 2014 at 11:00 a.m.

**APPEARANCES**

For the petitioner:  pro se

For the respondent: Rosalyn Washington, ACCESS senior specialist

**STATEMENT OF ISSUE**

- I. At issue is whether the Department correctly denied the petitioner's application for Medicaid disability benefits.
- II. The petitioner is also appealing the Department's action on the new approval amount of her Food Assistance Program (FAP) benefits beginning January 2014.

### **PRELIMINARY STATEMENT**

At the outset of the hearing, petitioner explained the respondent corrected the FAP amount and was now satisfied with the new FAP amount therefore, is no longer an issue. The Medicaid Assistance benefits remain challenged. By notice dated February 7, 2014, the Department notified the petitioner she has been denied Medicaid disability. Petitioner timely requested a hearing to challenge the denial.

The petitioner did not present any exhibits. The respondent presented 8 exhibits, which were accepted into evidence and marked as Respondent Exhibits "1" through "8" respectively. The record was held open until close of business on April 21, 2014 for submission of additional evidence from the respondent. The additional evidence received April 21, 2014 and marked as Respondent Exhibit "9". The record closed on April 21, 2014.

### **FINDINGS OF FACT**

1. On January 14, 2014, petitioner (59) submitted an application for Medicaid Assistance on the basis of disability. The petitioner is not aged or blind and does not have any minor children.
2. The petitioner explained her disability to be stroke, high blood pressure, and heart condition.
3. On July 9, 2013, Social Security Administration (SSA) determined the petitioner was not disabled with code N31 (Respondent Exhibit 7). Respondent did not explain the definition on the denial code N31.
4. On February 7, 2014, the respondent mailed petitioner a Notice of Case Action denying the petitioner's Medicaid application based on SSA denial decision.

5. Petitioner explained she does not have any new disabling condition but her current condition has worsen and needs to see a doctor so she can get better and return back to work.

6. Respondent explained petitioner's application for Medicaid disability was denied because the Department must adopt the SSA denial decision.

### CONCLUSION

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 respondent.

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 SSA. Fla. Admin. Code § 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, one 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 regulation says, 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. In accordance with the Federal Regulations at 42 C.F.R. § 435.541

“Determinations 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 (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...** (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; (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).

12. The cited authorities explain the Department cannot make a decision independent of the SSA decision. In petitioner's case, the Social Security Administration denied the petitioner's disability; therefore, the decision is binding on the Department. The petitioner testified her condition has worsened and SSA is aware of the current conditions that have now worsened. Therefore, the Department must abide by the SSA decision based on the Hankerson ruling. The Department's action to deny the petitioner's application based on the DDD response is correct.

13. The undersigned concludes that the Department followed rule in adopting the SSA decision and denying the petitioner's application for Medicaid disability.

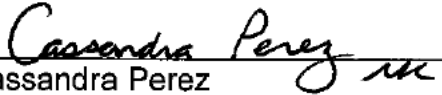
**DECISION**

Based upon the forgoing Findings of Fact and Conclusions of Law, the Medicaid Disability appeal is denied and the Department's action is affirmed. The petitioner's FAP appeal is dismissed as withdrawn.

**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 7<sup>th</sup> day of May, 2014,  
in Tallahassee, Florida.

  
Cassandra Perez  
Hearing Officer  
Building 5, Room 255  
1317 Winewood Boulevard  
Tallahassee, FL 32399-0700  
Office: 850-488-1429  
Fax: 850-487-0662  
Email: Appeal\_Hearings@dcf.state.fl.us

Copies Furnished To:  Petitioner  
ACCESS Keith Carpenter