

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

FILED

JUL 15 2014

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES



PETITIONER,

Vs.

APPEAL NO. 14F-03292

CASE NO.



FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 05 Hernando
UNIT: 88585

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing telephonically in the above-referenced matter on June 25, 2014 at 9:35 am.

APPEARANCES

For the Petitioner:



For the Respondent:

Gail Crews, ACCESS Supervisor

STATEMENT OF ISSUE

Petitioner is appealing the Department's action of April 10, 2014 denying SSI-Related Medicaid coverage

PRELIMINARY STATEMENT

The Department submitted information prior to the hearing which was entered as Respondent Exhibit #1. The record was held open through July 7, 2014 for additional information and petitioner's response to the additional information. The Department

provided additional information on June 25, 2014 which was entered as Respondent Exhibit #2. The petitioner did not submit any additional information.

FINDINGS OF FACT

1. The petitioner applied for Medicaid for himself on February 3, 2014.
2. The petitioner was 63 years old at the time of application. His date of birth is [REDACTED]. The household consists of the petitioner and his wife.
3. The petitioner submitted an application to Social Security for Supplemental Security Income (SSI) due to disability on January 8, 2014.
4. The Department contracts with the Department of Health, Division of Disability Determinations (DDD) to make disability determinations. The Department submitted the petitioner's request to DDD on February 10, 2014.
5. Social Security denied the petitioner's disability request on April 8, 2014 with reason code N32 which means "Non-pay – Capacity for substantial gainful activity – other work, no visual impairment".
6. DDD adopted the Social Security unfavorable disability decision of April 8, 2014 rather than make an independent determination.
7. The Department issued a Notice of Case Action on April 10, 2014 denying the petitioner's application for Medicaid as "You or a member(s) of your household do not meet the disability requirement."
8. The petitioner has reported all conditions to Social Security for review. He has no new disabling conditions. The petitioner reported he fell June 6, 2014 but all conditions found were from old injuries already reported to Social Security.

9. The petitioner has appealed the denial with Social Security and retained a lawyer to assist with that appeal.

CONCLUSIONS OF LAW

10. 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.

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

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

13. The Fla. Admin. 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 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.

14. The findings show the petitioner is under the age of 65. The undersigned concludes the Department correctly determined that the petitioner would have to meet the disability criteria found in 20 C.F.R. § 416.905 in order to qualify for Medicaid.

15. The Department's Program Policy Manual, 165-22, section 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.

When the individual files an application within 12 months after the last unfavorable disability determination by SSA and provides evidence of a new condition not previously considered by SSA, the state must conduct an independent disability determination. Request a copy of the SSA denial letter. The SSA denial letter contains an explanation of all the conditions considered and the reason for denial.

16. Federal Regulations at 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—

(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:

(1) The individual applies for Medicaid as a non-cash beneficiary and has not applied to SSA for SSI cash benefits, whether or not a State has a section 1634 agreement with SSA; or an individual applies for Medicaid and has applied to SSA for SSI benefits and is found ineligible for SSI for a reason other than disability.

(2) The individual applies both to SSA for SSI and to the State Medicaid agency for Medicaid, the State agency has a section 1634 agreement with SSA, and SSA has not made an SSI disability determination within 90 days from the date of the individual's application for Medicaid.

...
(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.

17. The findings show that the Department denied the petitioner's application for Medicaid due to not meeting the disability criteria. The Department did not make an independent disability decision; the Social Security disability decision was adopted. The findings show that the Social Security unfavorable disability decision was made within one year of the date of application for Medicaid. The findings also show that there are no new disabling conditions. In accordance with the above controlling authorities, the

undersigned concludes the Department is bound by the decision of SSA in determining the petitioner did not meet the disability requirement.

18. The undersigned concludes that as the petitioner does not currently meet the disability requirement and is not age 65 or older, the Department correctly denied the Medicaid application.

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 15th day of July, 2014,

in Tallahassee, Florida.


Melissa Roedel
Hearing Officer
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FINAL ORDER (Cont.)
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Copies Furnished To [REDACTED] Petitioner
Circuit 5 ACCESS: Charles Barresi
