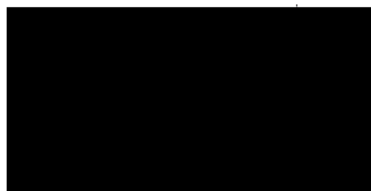


STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

FILED

JUL 15 2014

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES



PETITIONER,

Vs.

APPEAL NO. 14F-03585

CASE NO. 

FLORIDA DEPT OF
CHILDREN AND FAMILIES
CIRCUIT: 19 Glades
UNIT: 88287

RESPONDENT.

FINAL ORDER

Pursuant to notice, a telephonic administrative hearing was convened in the above-referenced matter at 10:00 a.m. on June 24, 2014. The hearing was reconvened at 10:00 a.m. on July 1, 2014.

APPEARANCES

For the Petitioner:


petitioner's authorized representative

For the Respondent:

Cynthia Buntten, ACCESS supervisor

STATEMENT OF ISSUE

At issue is respondent's action to deny petitioner Medicaid disability due to adopting the Social Security Administration (SSA) disability denial decision.

PRELIMINARY STATEMENT

By notice dated March 20, 2014 respondent notified petitioner his March 10, 2014 Medicaid application was denied. Petitioner timely requested a hearing to challenge the Medicaid denial.

Hearing Officer LaToya Jackson presided over the first hearing on June 24, 2014. The appeal was transferred to Hearing Officer Priscilla Peterson for the reconvene hearing on July 1, 2014.

Petitioner was represented by [REDACTED] his authorized representative.

At the reconvene hearing on July 1, 2014 petitioner dialed into the hearing at 10:23 a.m.; he attended the hearing for five minutes and confirmed his authorized representative. Petitioner submitted one exhibit, entered as Petitioner Exhibit "1". Respondent submitted two exhibits, entered as Respondent Exhibits "1" and "2". The record was held open until July 8, 2014 for parties to submit additional evidence. The evidence was received timely and entered as Petitioner Exhibit "2" and Respondent Exhibit "3". The record was closed on July 8, 2014.

FINDINGS OF FACT

1. Petitioner applied for disability with the SSA in January 2014. SSA denied petitioner disability; petitioner was unsure of the SSA denial date. Petitioner asserted that he was planning on appealing the SSA denial through an attorney. However, petitioner was hospitalized and was unable to appeal the denial decision within the required 60 days. Petitioner submitted another disability application with the SSA in June 2014; SSA decision on the June application has not been made.

2. Respondent asserted that the Department records indicate SSA denied petitioner disability on March 19, 2014. The record was held open until July 8, 2014 for both parties to provide verification of the SSA denial.
3. Petitioner asserted that he has a new medical condition from the time he submitted the January 2014 SSA application; and SSA is unaware of his new medical condition. However, the June 2014 SSA application does include his new medical condition.
4. Petitioner was admitted to [REDACTED] on February 5, 2014 due to heart and lung problems (new medical condition) and discharged on February 25, 2014.

5. On March 10, 2014 petitioner submitted a Medicaid disability application. Petitioner, date of birth July 8, 1977, does not have children. Petitioner included the medical records from [REDACTED] Hospital of his new medical condition with the application.
6. On March 12, 2014 respondent forwarded petitioners disability documentation to the Department's Division of Disability Determination (DDD) for review. The documentation included petitioner's February 2014 medical records from [REDACTED] Hospital. DDD is responsible for making a disability determination when an applicant applies for Medicaid disability.
7. On March 19, 2014 DDD denied petitioner Medicaid disability because they adopted the SSA denial decision. The DDD denial states "Hankerson 2/14 - N35". The definition of N35 is "Non-pay - Impairment is severe at time of adjudication but not expected to last twelve months, no visual impairment."
8. Respondent stated that DDD did not attend the hearing because the denial was due to adopting the SSA denial decision.

9. On March 20, 2014 respondent mailed petitioner a Notice of Case Action notifying his March 10, 2014 application was denied, "Reason: Eligibility requirements not met. You or a member(s) of your household do not meet the disability requirement. No household members are eligible for this program."

10. After the hearing, respondent submitted the Department's Running Record Comments and the Department's policy. Respondent did not submit the alleged March 19, 2014 SSA denial verification.

11. After the hearing, petitioner submitted the SSA denial notice dated February 26,

2014. The notice in part states:

The following evidence was used in evaluating your claim:



We have determined that your condition is not expected to remain severe enough for 12 months in a row to keep you from working...

CONCLUSIONS OF LAW

12. 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.

13. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code R. 65-2.056.

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

15. Medicaid eligibility is based on federal regulations. There are two categories of Medicaid that the Department determines eligibility for: (1) Family Related Medicaid for

parents and children, and pregnant women, and (2) Adult Related (referred to SSI-Related Medicaid) for disabled adults and adults 65 or older.

16. Florida Administrative Code R. 65A-1.703 Family-Related Medicaid Coverage

Groups states:

(1) The department provides mandatory Medicaid coverage for individuals, families and children described in Section 409.903, F.S., Section 1931 of the Social Security Act and other relevant provisions of Title XIX of the Social Security Act. The optional family-related Title XIX and Title XXI coverage groups served by the department are stated in each subsection of this rule...

17. Florida Administrative Code R. 65A-1.711 SSI-Related Medicaid Non Financial

Eligibility Criteria states:

(1) For MEDS-AD Demonstration Waiver, the individual must be age 65 or older, or disabled as defined in 20 C.F.R. § 416.905...

18. Petitioner does not have children, is under age 65 and is applying for Medicaid disability; therefore, he was considered under Adult Related Medicaid.

19. The Code of Federal Regulations at 42 C.F.R. § 435.541 "Determination of

Disability" 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 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 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...

(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; 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.

20. The above authority explains the SSA determination is binding on the Department.

However, the Department must make a determination of disability if the individual alleges a disabling condition different from, or in addition to, that considered by SSA in making its determination.

21. The Department ACCESS program policy manual at 1440.1204 Blindness/Disability Determinations (MSSI, SFP) states:

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.

22. ACCESS policy states that the Department must conduct an independent disability determination when an applicant provides evidence of a new medical condition not considered by SSA.

23. Petitioner applied for disability with the SSA in January 2014. SSA denied petitioner disability on February 26, 2014; SSA determined petitioner's condition is not expected to remain severe for 12 months. Petitioner did not appeal the SSA denial decision within the required 60 days but reapplied for disability with SSA in June 2014.

24. Petitioner alleged a new medical condition (heart and lung problems) different from that considered by SSA in making its determination. To support his new medical condition, petitioner submitted medical records from ██████████ Hospital showing he was hospitalized on February 5, 2014 and discharged on February 25, 2014.

25. The SSA denial dated February 26, 2014 indicates SSA evaluated ██████████ Hospital report received on February 25, 2014. Therefore, SSA reviewed and considered petitioner's new medical condition. Additionally, petitioner submitted another application with the SSA in June 2014; SSA decision on the June application has not been made.

26. In careful review of the cited authorities and evidence, the undersigned concludes respondent followed rule in denying petitioner Medicaid disability due to adopting the SSA denial decision.

DECISION


Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is denied and respondent'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.


Priscilla Peterson
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Copies Furnished To: [REDACTED] Petitioner
Ben F. Shirley, Jr., Suncoast Region