

FILED

AUG 26 2014

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

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DEPT OF CHILDREN & FAMILIES



PETITIONER,

APPEAL NO. 14F-05279

Vs.

CASE NO. 

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 19 Martin
UNIT: 88585

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-reference matter on July 15, 2014, at 2:35 p.m.

APPEARANCES

For the Petitioner:



For the Respondent:

Cynthia Buntten, ACCESS supervisor

STATEMENT OF ISSUE

The petitioner is appealing the respondent's March 25, 2014 action of denying her February 13, 2014 application for Medicaid benefits through the Department's SSI-Related Medicaid Program on the basis that she does not meet the disability criteria.

PRELIMINARY STATEMENT

The petitioner presented one exhibit, which was entered into evidence and marked as Petitioner's Exhibit 1. The respondent presented one composite exhibit, which was entered into evidence and marked as Respondent's Composite Exhibit 1.

The record was left open until July 20, 2014, for both parties to provide additional information. Additional evidence was received from the respondent, which was accepted into evidence and marked as Respondent's Exhibit 2. Additional evidence was also received from the petitioner which was accepted into evidence and marked as Petitioner's Composite Exhibit 2.

Present as witness for the petitioner was [REDACTED]

FINDINGS OF FACT

1. The petitioner (age 51) applied for SSI-Related Medicaid on February 13, 2014. The petitioner does not have minor children and she is not considered elderly (over 65) by the Department's standards. To be eligible for Medicaid benefits, she must be determined disabled by the Department or the Social Security Administration (SSA).
2. The petitioner reported the following impairments from a surgery, she has nerve damage, spine damage, and ruptured disc. She is unable to sit or stand for more than two hours because she is in constant pain. Information obtained from the petitioner was forwarded to the Division of Disability Determination (DDD), which conducts disability determinations for the Department. DDD did not conduct an independent review.
3. The petitioner applied for disability with the SSA on September 14, 2011, her application was denied on March 21, 2012 because she was found to be capable of engaging in substantial gainful activity. The petitioner appealed SSA's denial of her disability application and was again denied in March 2014.
4. DDD denied the petitioner's claim by adopting the denial rendered by SSA in March 2014.

5. On March 25, 2014, the respondent sent the petitioner a Notice of Case Action informing her that her February 13, 2014 application for Medicaid benefits was denied because no household member was eligible for the program.

6. The Department provided a screen print showing denial code N32 and a denial date of March 21, 2012. The petitioner asserts she attended a SSA hearing in February 2014 and received a denial letter from SSA in March 2014. The record was left open for the petitioner to provide the denial letter from SSA. The petitioner has not provided disability denial letter from SSA. The Department's Running Record Comments (CLRC) dated February 25, 2014, states "DDD response: SSA determined individual is not disabled. Z32064."

7. The petitioner stated her disability began February 15, 2006. She is very ill and cannot afford to buy medication. She sold her house and used the proceeds from the sale to pay for her medicine in the past but now she has no more money. She reported her impairments to the SSA and she is not alleging any new ones to DDD.

CONCLUSIONS OF LAW

8. 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.

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

10. The burden of proof is assigned to the petitioner pursuant to Fla. Admin. Code R. 65-2.060 (1).

11. Fla. Admin. Code R 65A-1.710 et seq., sets forth the rules of eligibility for elderly and disabled individuals with income less than the Federal Poverty Level. Individuals less than 65 years of age must meet the disability criteria of Title XVI of the Social Security Act appearing in 20 C.F.R. § 416.905. The regulation states in relevant 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.

12. The authority cited above explains that adults who are not 65 or older are not eligible for Medicaid unless they are disabled.

13. Federal Regulations at 42 C.F.R. § 435.541 "Determination 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, 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.

14. The cited authority explains that a SSA decision made within twelve months of the Medicaid application is controlling and binding on the State Agency unless the applicant reports a disabling condition not previously reviewed by SSA.

15. The Department denied the petitioner's February 15, 2014 application for SSI-Related Medicaid on March 25, 2014. The petitioner confirmed she had a SSA hearing in February 2014 and received a notice informing her of the denial in March 2014. DDD adopted the March 2014 SSA denial of disability.

16. According to the above-cited authority, the decision from SSA is controlling in this case, as the respondent is required by law to adopt any decision made by SSA within the last year unless the application is claiming a new condition not previously reviewed by SSA. It has not been shown that the petitioner has any impairment different from or in addition to those that were reported to SSA.

17. After carefully reviewing the evidence and controlling legal authorities, the undersigned concludes the respondent's decision in this matter is correct.

DECISION

Based upon the forgoing Findings of Fact and Conclusions of Law, this 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 26th day of August, 2014,

in Tallahassee, Florida.

Christiana Gopaul-Marine

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Copies Furnished To: [REDACTED] Petitioner
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