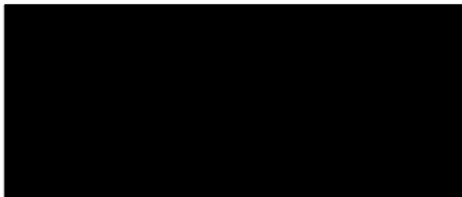


STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

FILED
JAN 26 2015

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES



APPEAL NO. 14F-8439

PETITIONER,

Vs.

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 11 Dade
UNIT: 88124

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on December 12th, 2014 at approximately 2:40 p.m.

APPEARANCES

For the Petitioner: [REDACTED] pro se.

For the Respondent: Olivia Hernandez, Economic Self-Sufficiency Specialist for the Economic Self-Sufficiency Program (ESS).

ISSUE

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

PRELIMINARY STATEMENT

The hearing was originally scheduled for November 14th, 2014. A continuance was granted and the hearing was convened as described above.

Serving as a translator was Ada Toroella of ESS.

The Florida Department of Children and Families (Department or DCF) determines eligibility for SSI-Related Medicaid programs. In addition to other technical requirements, an individual must be disabled, blind, or aged (65 years or older) to be eligible for SSI- Related Medicaid. The Department of Health's Division of Disability Determinations (DDD) conducts disability reviews regarding medical eligibility for individuals applying for disability benefits under the federal Social Security and Supplemental Security Income programs and the state Medically Needy program. Once a disability review is completed, the claim is returned to DCF for a final determination of non-medical eligibility and effectuation of any benefits due.

The respondent submitted exhibits 1 through 3 into evidence for the hearing. The petitioner did not submit any evidence for the hearing.

The record was held open for one week to allow both parties to submit additional evidence. The petitioner submitted documents within the allowed time frame; these were marked as Petitioner's Exhibits 1 and 2. The respondent submitted documents within the allowed time frame; these were marked as Respondent's Exhibits 4 and 5.

No Notice of Case Action was submitted by the respondent to indicate the date of the denial under appeal. The petitioner filed the appeal on September 23rd, 2014. Absent evidence to the contrary, the appeal is considered to be timely filed.

FINDINGS OF FACT

1. The petitioner, 43 years of age, applied on July 22nd, 2014 for Medicaid benefits on the basis of disability. A copy of the application was not submitted into evidence; however, the date of application was not in dispute.

2. On December 29th, 2013, the petitioner was the victim of two gunshot wounds to his abdomen which resulted in small bowel injuries, mesentery bleeding, colon injury, left acetabular fracture, pubic rami fracture. (See the respondent's Disability Report which is part of the Respondent's Exhibit 3.) The petitioner incurred multiple surgeries as a result of these injuries, and is now forced to use an ostomy bag. Additionally, the petitioner alleges depression as a result of the entire incident, and claims that he can no longer work. The respondent documented this information as reported by the petitioner as part of its disability review determination, and forwarded the disability determination packet to DDD on August 1st, 2014.

3. By way of a Notice of Disability Determination transmittal dated August 22nd, 2014, DDD notified the respondent that it had denied the petitioner's application for disability with reason code N-35, which signifies "Non-pay-Impairment is severe at time of adjudication but not expected to last twelve months, no visual impairment." The transmittal also states "Hankerson," indicating that a decision on the petitioner's application for disability through the Social Security Administration had been rendered (denied) in May 2014. The respondent's position is that it is bound by SSA's decision for twelve months following the date of SSA's determination.

4. The petitioner was unable to either confirm or deny that he had applied for disability via SSA, as his representative (named above) handled these matters in his stead. There was no evidence of SSA's denial provided at the hearing. However, during

the post-hearing open-record period, the petitioner provided a Notice of Disapproved Claim, issued on May 9th, 2014, by the SSA denying the petitioner's application for Social Security disability benefits. (See Petitioner's Exhibit 1.) The respondent adopted this decision.

CONCLUSIONS OF LAW

5. 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.

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

7. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code R. 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."

8. The Code of 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.

9. The above federal regulation indicates 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 regulation also states 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.

10. Although the petitioner alleges depression, the objective medical evidence fails to show any mental illness distinct from his physical condition. No evidence of a new disabling condition was presented at the hearing.

11. The above authority further explains 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 9th, 2014.

12. After reviewing the evidence as shown in the Findings of Fact, the hearing officer concludes that because the petitioner was determined not disabled by SSA and denied disability on May 9th, 2014, and no evidence of any new disabling condition was reported, the respondent must adopt the SSA's decision of not disabled and deny his application.

DECISION

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

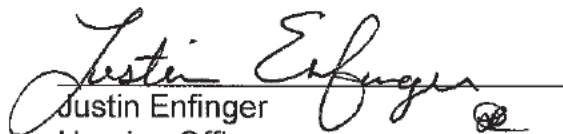
NOTICE OF RIGHT TO APPEAL

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 indigency 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 26th day of January, 2015,

in Tallahassee, Florida.



Justin Enfinger
Hearing Officer
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Tallahassee, FL 32399-0700
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Copies Furnished To: [REDACTED] Petitioner
Teresa Zepeda, District 11, ESS