

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

FILED
FEB 17 2015

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES



APPEAL NO. 15F-00049

PETITIONER,

Vs.

CASE NO. 

FLORIDA DEPT OF
CHILDREN AND FAMILIES
CIRCUIT: 09 Orange
UNIT: 88999

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned telephonically convened an administrative hearing in the above-referenced matter on February 3, 2015 at 9:45 a.m.

APPEARANCES

For the petitioner:  pro se

For the respondent: Evelyn Ross, ACCESS supervisor

STATEMENT OF ISSUE

At issue is the respondent's action to deny petitioner's application for SSI-Related Medicaid benefits on the basis that he did not meet the disability Program requirement.

PRELIMINARY STATEMENT

By notice dated September 16, 2014, the Department notified the petitioner his application was denied for Medicaid disability because he did not meet the disability requirement. Petitioner timely requested a hearing to challenge the denial.

Petitioner did not present any exhibits. The respondent submitted five exhibits, which were accepted into evidence and marked as Respondent Exhibits "1" through "5".

FINDINGS OF FACT

1. The petitioner (46) applied for Medicaid Assistance on June 2, 2014. Petitioner was not over age 65 or blind and does not have any minor children. The petitioner declared his disability to be an amputation on his left leg; he is currently using a walker for walking mobility.
2. The Department contracts with the Division of Disability Determination (DDD) to make its disability determination. On September 4, 2014, the respondent referred the petitioner's application to DDD to conduct its review.
3. On September 11, 2014, DDD denied Medicaid disability because petitioner applied for Social Security Disability on May 14, 2014, and was denied on August 15, 2014 with reason code N-35. The N-35 means the denial was based on "Impairment not expected to be disabling for 12 full months" (Respondent Exhibit 2).
4. The respondent explained that DDD denied Medicaid disability because they must adopt Social Security Administration's (SSA) denial decision.
5. On September 16, 2014, respondent mailed petitioner a Notice of Case Action denying the petitioner's Medicaid application based on the DDD decision.
6. On January 5, 2015, petitioner requested reconsideration to the denial from SSA's decision. Petitioner explained his current condition has not worsen or any new conditions.
7. Petitioner explained he is requesting full Medicaid because he needs a prosthesis device for his left leg due to an amputation.

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 Fla. Stat. § 409.285. 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. In accordance with Fla. Admin. Code R. 65-2.060(1), the burden of proof was assigned to the petitioner, as the applicant seeking assistance.

11. Adults who are not elderly and do not have young children, medical assistance is based on the same disability standards as that used by Social Security Administration (SSA). 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. For an individual less than 65 years of age to received benefits, he 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 regulations state, 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. ...

12. The Code of Federal Regulations continues at 42 C.F.R. § 435.541 and in 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 issue 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)(i) **An SSA disability determination is binding on an agency until the determination is changed by SSA...** (c) Determination 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 disability condition different from, or in addition to, that considered by SSA in making its determination... (emphasis added)

13. The cited authorities explain the Department cannot make a decision independent of the SSA decision. In the petitioner's case, Social Security Administration denied the petitioner's disability; therefore, the decision is binding on the Department. The petitioner testified his current condition has not worsened, the petitioner also testified at the hearing that he has no new condition claiming that was not considered by SSA.

14. Based on the cited authority, the Department cannot make an independent decision of the SSA. Therefore, the undersigned concludes that the Department correctly followed rule in denying the petitioner's Medicaid disability.

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 17th day of February, 2015,

in Tallahassee, Florida.


Cassandra Perez
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