

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

FILED

APR 08 2015

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES



APPEAL NO. 15F-00537

PETITIONER,

Vs.

CASE NO. 

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 06 Pasco
UNIT: 883CF

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on February 4, 2015 at 9:00 a.m.

APPEARANCES

For the Petitioner: Kenneth Denman, designated representative, Outreach Patient Advocacy

For the Respondent: Anjali Pant, ES senior human services program specialist

ISSUE

The petitioner is appealing the denial of Medicaid Program benefits for July 2013.

PRELIMINARY STATEMENT

The petitioner did not appear at the hearing. Appearing telephonically, as a witness for the respondent, was Lauren Coe, program operations administrator with the Division of Disability Determination (DDD).

The respondent presented 11 exhibits, which were accepted into evidence and marked as Respondent Exhibits "1" through "11", respectively. The record was left open for 10 days for additional evidence. On February 4, 2015, the respondent presented two exhibits, which were accepted into evidence and marked as Respondent's Exhibits "12" and "13", respectively. On February 5, 2015, the petitioner presented two exhibits, which were accepted into evidence and marked as Petitioner's Exhibits "1" and "2", respectively. On February 14, 2015, the record closed.

FINDINGS OF FACT

1. On August 6, 2013, an application requesting Medicaid Program benefits was submitted for the petitioner by his representative. On September 6, 2013, a Notice of Case Action was sent to the representative informing him that the petitioner's application was denied effective August 2013.

2. On July 20, 2014, the representative reapplied for Medicaid Program benefits on behalf of the petitioner. Retroactive Medicaid Program benefits were requested for July 2013. The representative's name, address and telephone were entered on the application. The petitioner's date of birth is [REDACTED]. The petitioner alleged he was disabled.

3. The petitioner signed the Appointment of Designated Representative form, designating Mr. Denman as his representative. The representative completed and submitted the disability packet dated July 14, 2014. On page 10 of the packet, the representative answered yes to the question does the claimant need help in processing his or her claim, and the representative entered his name and address as the interested party willing to assist the claimant. The petitioner's impairments were indicated as

depressive disorder, polysubstance abuse, and moderate psychosocial stress with a global assessment of functioning of 45. The respondent received the disability packet.

4. The August 6, 2013 application would be applicable for retroactive Medicaid Program benefits for July 2013. The petitioner's eligibility for Medicaid Program benefits was reviewed. As there are no minor dependent children living with the petitioner, it was determined that he was not eligible for Family-Related Medicaid Program benefits.

5. The petitioner's eligibility for SSI-Related Medicaid for the blind, aged and disabled was reviewed. He is not aged or blind. He has not been determined disabled by Social Security. On October 23, 2104, the case was forwarded to the Division of Disability Determinations to review the petitioner's claim of disability.

6. The DDD makes a determination of disability based on the information input by the respondent into the FLORIDA computer system disability section, medical information provided, and the information provided by the applicant and/or their representative. The DDD reviewed the FLORIDA computer representative section; there was no information regarding a representative for the petitioner. There was no telephone number or address for the representative for the petitioner on the Appointment of a Designated Representative form. The DDD called the petitioner twice for an interview and sent him two letters. There was no answer to the first call, someone hung up the second call, and there was no response to the letters. On December 1, 2014, the DDD denied disability on the basis that there was insufficient evidence to assess the petitioner's impairments/allegations. The case was returned to the respondent.

7. As the DDD denied disability, it was determined that the petitioner did not meet the criteria for SSI-Related Medicaid Program benefits. On December 2, 2014, a Notice of Case Action was sent to the representative informing him that the application for Medicaid Program benefits was denied.

8. The respondent's witness asserted that, as the disability packet completed by the representative dated July 14, 2014 was not in the information received from the respondent. As the disability packet was not in the evidence, she assumed the disability packet was not received by the DDD.

CONCLUSIONS OF LAW

9. 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.

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

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

12. The Fla. Admin. Code R. 65A-1.711, SSI-Related Medicaid Non-Financial Eligibility Criteria, sets forth:

To qualify for Medicaid an individual must meet the general and categorical requirements in 42 C.F.R. Part 435, subparts E and F (2007) (incorporated by reference), with the exception that individuals who are neither aged nor disabled may qualify for breast and cervical cancer treatment, and the following program specific requirements as appropriate...

(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 (2007) (incorporated by reference).

13. 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. The regulations state, in part:

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 which makes you unable to do your previous work or any other substantial gainful activity which exists in the national economy...

14. The ACCESS Policy Program Manual (The Policy Manual) at passage, 1440.1204 Blindness/Disability Determinations (MSSI, SFP), sets forth:

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...

15. The Fla. Admin. Code R. 65A-1.205, Eligibility Determination Process:

(2)(b)(3) The Department conducts phone or face-to-face interviews with applicants/recipients or their authorized/designated representatives when required for the application or complete eligibility review process... The applicant/recipient or their authorized/designated representative must keep the interview appointment or reschedule the missed appointment...

16. The Fla. Admin. Code R. 65A-1.203(9) defines representative:

“Authorized/Designated Representative: An individual who has knowledge of the assistance group’s circumstances and is authorized to act responsibly on their behalf.”

17. The ACCESS Program Policy Manual sets forth in the following passages:

0640.0107 Who May be Interviewed (MSSI, SFP):

Conduct interviews with a responsible member of the SFU (except for a sponsor) or a designated representative. A responsible member is any member able to represent the SFU by providing sufficient and accurate information concerning the SFU's circumstances...

0640.0109 Designated Representatives (MSSI):

A designated representative may be appointed or self-designated to act on behalf of the household. If the individual does not select a specific person as designated representative, determine if the self-designated representative is the most appropriate person to fulfill this responsibility. An applicant must authorize a designated representative in writing prior to eligibility determination or anytime during the review period. The applicant does not have to be functionally or legally incompetent to have a designated representative...

18. The Fla. Admin. Code R. 65A-1.204, Rights and Responsibilities, sets forth:

(1) An individual has the right to apply for assistance, to have eligibility determined, and if found eligible, to receive benefits. The applicant for or recipient of public assistance must assume the responsibility of furnishing information, documentation and verification needed to establish eligibility...

19. The petitioner's representative acts on behalf of the petitioner for the application. The representative assumes the same rights and responsibilities as the applicant, including the responsibility of furnishing information, documentation and verification needed.

20. It is noted that the Appointment of a Designated Representative form was signed indicating Mr. Denman as the representative; however, it was not completed, as did not indicate the representative's address or phone number. He did not give any reason as to why he did not list his address or phone number on that form. He argued that the respondent was aware that the petitioner had a representative, and the representative's name, address and telephone number were on both the application,

and in the disability packet as the interested party willing to assist the claimant. The DDD asserted there was no representative information on FLORIDA computer disability section, and they did not receive the disability packet. As such, the DDD did not receive the representative's contact information from the respondent. Without the address and phone number, DDD was unable to call or send the representative notification that additional information was needed to complete the disability determination. The respondent should have provided the DDD with the representative's contact information for the disability determination.

21. The undersigned concludes that the respondent's denial of the petitioner's application for Medicaid Program benefits was premature for the reason cited above. The case is remanded to respondent for a disability determination. This decision does not preclude the petitioner from meeting all other criteria for eligibility for Medicaid Program benefits.

DECISION

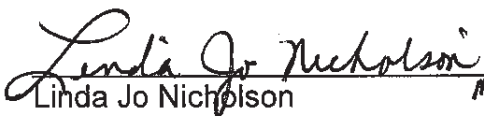
Based upon the foregoing Findings of Fact and Conclusions of Law, the respondent's denial of the petitioner's application for Medicaid Program benefits was premature. The case is remanded to the respondent for a disability determination. The remand does not insure the petitioner is eligible for Medicaid, but should be provided the opportunity to participate in the disability determination. Once a decision is made, a new notice should be issued advising of the determination and include appeal rights.

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 8th day of April, 2015,

in Tallahassee, Florida.


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