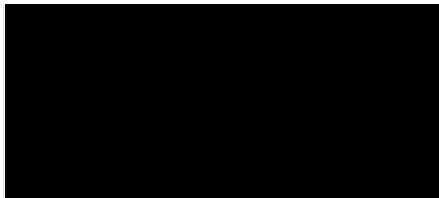


STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

FILED

APR 29 2015

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES



APPEAL NO. 15F-01070

PETITIONER,

Vs.

CASE NO.



FLORIDA DEPT OF CHILDREN AND FAMILIES
CIRCUIT: 15 Palm Beach
UNIT: 88322

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on April 7, 2015, at 10:30 a.m.

APPEARANCES

For the Petitioner: Carrie Suarez, Public Benefits Coordinator, JFK Medical Center.

For the Respondent: Barbara Dean, Economic Self Sufficiency Specialist Supervisor, Department of Children and Families (DCF).

STATEMENT OF ISSUE

At issue is the Department's action to deny the petitioner's application for SSI-Related Medicaid benefits on the basis that he did not meet the disability requirements of the program.

PRELIMINARY STATEMENT

Present as an observer was Carol Goldberg from DCF.

The respondent submitted into evidence Respondent Exhibits 1 through 3. The petitioner submitted into evidence Petitioner Exhibit 1.

FINDINGS OF FACT

1. The petitioner filed an application for Medicaid with the Department on November 3, 2014. To be eligible for SSI- Related Medicaid, an individual must be disabled, blind, or aged (65 years or older). As the petitioner has not turned sixty-five years and is fifty-nine years of age, then her application was forwarded to DDD (Disability Determination Department) for disability consideration.

2. The petitioner applied for disability benefits through the Social Security Administration (SSA) in late 2014. This application was denied by SSA on January 16, 2015 with a N-35 code. N- 35 means "Lack of duration." The petitioner filed an appeal with SSA on February 16, 2015. As of the date of this hearing, the petitioner's SSA appeal remains pending. DDD adopted the SSA decision for the petitioner's application on January 16, 2015 also with a N-35 code. The Department denied the petitioner's application for Medicaid benefits on January 20, 2015.

3. The petitioner's representative did not allege a new condition for the petitioner since the SSA decision.

CONCLUSIONS OF LAW

4. 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 § 409.285, Fla. Stat.

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

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

7. In accordance with the Federal Regulations at 42 C.F.R. § 435.541:

(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)(i) An SSA disability determination is binding on an agency until the determination is changed by SSA... (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 (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...

8. As shown in the Findings of Fact, the Department denied the petitioner's application for SSI-Related Medicaid benefit on the basis that she did not meet the disability requirements of the program. DDD adopted the Social Security Administration decision. The petitioner did not allege a new condition not previously considered by the Social Security Administration.

9. The petitioner was denied by the Social Security Administration and she has appealed that decision. As noted in the above cited Regulation, "[a]n SSA disability determination is binding on an agency until the determination is changed by SSA....The agency must refer to SSA all applicants who allege new information or evidence affecting previous SSA determinations." Thus, the petitioner must continue her appeal with the Social Security Administration as their decision is binding on the Department and cannot be overturned by this hearing officer.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, this appeal is denied and the Department action 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 29th day of April, 2015,

in Tallahassee, Florida.

Robert Akel
Robert Akel
Hearing Officer
Building 5, Room 255

FINAL ORDER (Cont.)
15F-01070
PAGE -5

1317 Winewood Boulevard
Tallahassee, FL 32399-0700
Office: 850-488-1429
Fax: 850-487-0662
Email: Appeal_Hearings@dcf.state.fl.us

Copies Furnished To: [REDACTED] Petitioner
Office of Economic Self Sufficiency