

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

**FILED**

**APR 30 2015**

OFFICE OF APPEAL HEARINGS  
DEPT OF CHILDREN & FAMILIES

APPEAL NO. 15F-01117

CASE NO. [REDACTED]

[REDACTED]  
PETITIONER,

Vs.

FLORIDA DEPARTMENT OF  
CHILDREN AND FAMILIES  
CIRCUIT: 20 Charlotte  
UNIT: 883DT

RESPONDENT.  
\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on April 2, 2015 at 11:36 a.m.

**APPEARANCES**

For the Petitioner: [REDACTED]

For the Respondent: Anjali Pant, Economic Self-sufficiency senior human services program specialist

**ISSUE**

The petitioner is appealing the denial of Medicaid Program benefits.

**PRELIMINARY STATEMENT**

[REDACTED] the petitioner's mother appeared telephonically, as a witness for the petitioner. The petitioner presented five exhibits which were accepted into evidence and marked as Respondent Exhibits "1" through "5", respectively. The respondent

presented seven exhibits which were accepted into evidence and marked as Respondent Exhibits "1" through "7", respectively.

#### **FINDINGS OF FACT**

1. In 2010, the petitioner applied for Social Security benefits and was denied. She reapplied on November 15, 2011. She has appealed four denials by Social Security. Her last appeal was filed on January 17, 2014. She reported all of her impairments to Social Security and she has no new impairments.

2. On November 17, 2014, the petitioner applied for Medicaid Program benefits for herself. The petitioner is 49 years old. She has a college degree. She last worked in 2011. Her work history is small clerical jobs. The medical evidence demonstrates that the petitioner's impairments are post-fractures of the right ankle, neuropathy both feet, Hashimoto's disease, depression, anxiety, and panic attacks.

3. The application was reviewed. It was determined that the petitioner did not meet the criteria for Family-Related Medicaid Program benefits, as she applied for herself and has no dependent child residing with her.

4. A computer match with Social Security indicated that the petitioner was denied disability on March 13, 2013 under code N31, non-pay – capacity for substantial gainful activity – customary past work, no visual impairment. The respondent adopted the decision of Social Security that the petitioner was not disabled. It was determined that the petitioner did not meet the disability requirement and she was not eligible for SSI-Medicaid Program benefits. On November 25, 2014, a Notice of Case Action was sent to the petitioner informing her that her application for Medicaid Program benefits was denied.

5. The petitioner and her mother asserted that petitioner needs medical assistance for treatment of both her physical and mental impairments.

### **CONCLUSIONS OF LAW**

6. 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.

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

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

9. The Fla. Admin. Code R. Section 65A-1.710 et seq., sets forth the rules of eligibility for Elderly and Disabled Individuals Who Have Income of Less Than the Federal Poverty Level. 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...

10. The Code of Federal Regulations at 42 C.F.R. § 435.000 sets forth the definition and determination of disability and states in relevant part:

§ 435.540 Definition of disability.

(a) Definition. The agency must use the same definition of disability as used under SSI...

§ 435.541 Determinations of disability.

(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.

(1) If the agency has an agreement with the Social Security Administration (SSA) under section 1634 of the Act, the agency may not make a determination of disability when the only application is filed with SSA.

(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 for under §435.909.

11. The ACCESS Policy Program Manual at passage 1440.1204

"Blindness/Disability Determinations (MSSI, SFP)" states: "...If SSA has denied disability within the past year and the decision is under appeal with SSA, do not consider the case as pending. Use the decision SSA has already rendered. **The SSA denial stands while the case is pending appeal...**" (emphasis added)

12. The ACCESS Policy Program Manual at passage 1440.1205, Exceptions to State Determination of Disability (MSSI, SFP) states, "The state does not make a disability determination under the following conditions...5. When the applicant is appealing an earlier decision from SSA and claims no new disabling condition (condition not previously considered by SSA)."

13. The petitioner is still appealing an earlier decision by Social Security and she is not claiming any new conditions. A Social Security disability determination is binding

on an agency until the determination is changed by Social Security. Based on the regulations, the respondent cannot make a decision independent of Social Security. It is concluded that the action of the respondent to adopt the decision of Social Security that the petitioner was not disabled was within the regulations. The petitioner did not meet the Medicaid eligibility criteria of blind, 65 years of age or disability for disability related Medicaid. It is concluded that the respondent's action to deny the petitioner's application for SSI-related Medicaid Program benefits was within the rules and regulations of the Program.

14. The hearing officer explored all other Medicaid groups. The only other Medicaid group was Family-Related Medicaid Program benefits. The Family-Related Medicaid Program benefit rules are set forth in the Fla. Admin. Code R. 65A-1.705, Family-Related Medicaid General Eligibility Criteria.

15. The petitioner applied for herself, and has no minor child residing with her. The rules set forth that to be eligible for that Medicaid Program a dependent child must be living in the home. The petitioner does not meet the criteria for Family-Related Medicaid Program benefits. It is concluded, the respondent's action to deny the petitioner's application for Medicaid Program benefits was within the rules of the Program.

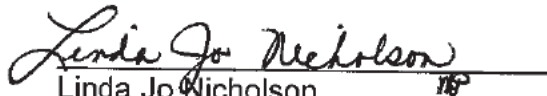
#### **DECISION**

Based upon the foregoing Findings of Fact and Conclusion of Law, the appeals are 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 petitioner is responsible for any financial obligations incurred as the Department has no funds to assist in this review.

DONE and ORDERED this 30<sup>th</sup> day of April, 2015,  
in Tallahassee, Florida.



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