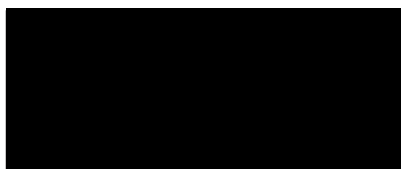


STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

FILED

APR 28 2015

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES



PETITIONER,

Vs.

APPEAL NO. 15F-01328

CASE NO. 

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 06 Pinellas
UNIT: 88266

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on March 20, 2015 at 1:46 p.m.

APPEARANCES

For the Petitioner: Ken Denman, president Outreach Patient Advocacy

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

STATEMENT OF ISSUE

The petitioner is appealing the respondent's action to deny Medicaid Program benefits.

PRELIMINARY STATEMENT

The respondent presented nine exhibits which were accepted into evidence and marked as Respondent Exhibits "1" through "9", respectively. The record was left open

ten days for the petitioner to submit a copy of the petitioner's Social Security application and the Social Security Explanation of Determination. On March 26, 2015, the petitioner submitted the Social Security Explanation of Determination which was entered into record as Petitioner's Exhibit 1. On March 30, 2015, the record was closed.

FINDINGS OF FACT

1. On January 10, 2014, the petitioner applied for disability with Social Security. On June 25, 2014, Social Security denied disability with code N31, capacity for substantial gainful activity- customary past work, no visual impairment. On September 13, 2014, the petitioner appealed the Social Security denial.

2. On December 21, 2014, an application for Medicaid Program benefits was submitted on behalf of the petitioner as a household of one. The petitioner's date of birth is [REDACTED]. She is 55 years old. The petitioner's condition listed on the Disability Report was chronic obstructive pulmonary disease (COPD) hypertension, coronary artery disease, and heart failure, and the date the condition began was January 2010.

3. The application was reviewed. It was determined that the petitioner was not eligible for Family-Related Medicaid Program benefits, as there was no dependent child in the petitioner's household. Eligibility for SSI-Related Medicaid Program benefits for the blind, aged and disabled was reviewed. The petitioner did not allege blindness. The petitioner did not meet the aged criteria of 65 years of age. The respondent forwarded the case to the Division of Disability Determination (DDD) for a determination of disability for the petitioner.

4. The DDD reviewed the petitioner's case. The DDD has access to Social Security information. The DDD wrote on the transmittal: "same/related allegations, hearing pending". The DDD did not complete independent determination, and adopted the Social Security decision that the petitioner was not disabled. The DDD returned the case to the respondent.

5. As the petitioner did not meet the disability criteria, the respondent denied petitioner's application for Medicaid Program benefits. On January 6, 2015, a Notice of Case Action was sent to the petitioner informing her that her application for Medicaid Program benefits was denied.

6. The petitioner's representative asserted that the petitioner's impairment of COPD was not reviewed by Social Security, and DDD should complete independent determination. The Social Security Explanation of Determination indicated that that petitioner reported impairments of depression, migraines, coronary artery disease, and anger issues, and Social Security reviewed the information in the petitioner's file from the Clearwater Free Clinic report, and the Morton Plant Hospital report.

7. The medical evidence submitted into evidence was from Morton Plant Hospital from January 2014 through June 2014. The January 8, 2014 medical evidence indicated the petitioner was seen at the hospital for a COPD exacerbation. Each of the hospital visits and consultations indicated COPD as a diagnosis.

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

§ 409.285, Fla. Stat. 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.

11. 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...

12. 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.

13. 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.

When the individual files an application within 12 months after the last unfavorable disability determination by SSA and provides evidence of a new condition not previously considered by SSA, the state must conduct an independent disability determination. Request a copy of the SSA denial letter. The SSA denial letter contains an explanation of all the conditions considered and the reason for denial.

14. The policy further explains the regulation that the applicant is to provide evidence of the new condition not previously considered by Social Security. The petitioner is alleging COPD as new condition. The Disability Report indicated the petitioner's condition as COPD, hypertension, CAD and heart failure; and the condition began January 2010. The medical evidence submitted into evidence was from Morton Plant Hospital from January 2014 through June 2014. The January 8, 2014 medical evidence indicated the petitioner was seen at the hospital for a COPD exacerbation. Each of the hospital visits and consultations indicated COPD as a diagnosis. Social Security did not list COPD as a condition reported by the petitioner; however, Social Security reviewed the information in the petitioner's file from the Clearwater Free Clinic report and the Morton Plant Hospital report. DDD wrote on the transmittal, after comparing the impairments reported by the petitioner and the impairments reviewed by

Social Security, that the same/related allegations were reviewed and a hearing was pending. The petitioner has not met her burden of proof that her condition of COPD is a new disabling condition, and that the medical evidence regarding the petitioner's COPD was not available for Social Security to review.

15. A Social Security disability determination is binding on an agency until the determination is changed by Social Security. Based on the regulations, the DDD cannot make a decision independent of Social Security. It is concluded that the action of the DDD and 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 eligibility criteria of blind, 65 years of age or disability for SSI-Related Medicaid Program benefits.

16. The hearing officer explored all other Medicaid groups. The only other Medicaid group was Family-Related Medicaid. The petitioner applied for herself. She has no minor children residing with her. The Family-Related Medicaid rules are set forth in the Florida Administrative Code at 65A-1.705, Family-Related Medicaid General Eligibility Criteria. The rules set forth that for Family-Related Medicaid a child must be living in the home. The petitioner does not meet the criteria for Family-Related Medicaid Program benefits.

17. The petitioner did not meet the criteria for either SSI-Related Medicaid Program benefits or Family-Related Medicaid Program benefits. Therefore, the respondent's denial of the petitioner's application for Medicaid was within the rules of the Program.

DECISION

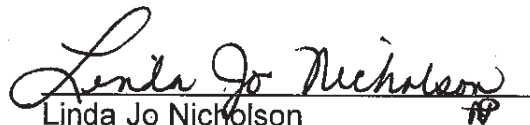
Based upon the foregoing Findings of Fact and Conclusion of Law, the appeal is denied.

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 petitioner is responsible for any financial obligations incurred as the Department has no funds to assist in this review.

DONE and ORDERED this 28th day of April, 2015,

in Tallahassee, Florida.



Linda Jo Nicholson
Hearing Officer
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Copies Furnished To: [REDACTED] Petitioner
Office of Economic Self Sufficiency