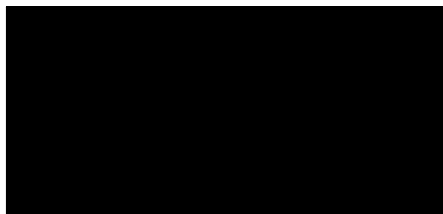


STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

FILED

APR 22 2015

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES



APPEAL NO. 15F-01384

PETITIONER,

Vs.

CASE NO.



FLORIDA DEPT OF CHILDREN AND FAMILIES
CIRCUIT: 06 Pinellas
UNIT: 883CF

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on March 20, 2015, at 10:32 a.m.

APPEARANCES

For the Petitioner: Kenneth Denman, designated representative for the petitioner
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

Robert Baumgarner, senior case manager Outreach Patient Advocacy, appeared telephonically, as a witness for the petitioner. Lauren Coe, program operation

administrator with the Division of Disability Determination (DDD), appeared telephonically, as a witness for the respondent.

The respondent presented seven exhibits, which were accepted into evidence and marked as Respondent Exhibits "1" through "7", respectively. The petitioner did not submit any evidence into record.

FINDINGS OF FACT

1. On October 16, 2014, the representative applied for Medicaid Program benefits on behalf of the petitioner. Retroactive Medicaid Program benefits were requested for February 2014, March 2014 and April 2014. The representative's name and address were entered on the application. The petitioner's date of birth is

[REDACTED]

2. The petitioner signed the Appointment of Designated Representative form, designating Mr. Denman as her representative. The form included the representative's address and phone number. The representative completed and submitted the disability packet.

3. The petitioner's eligibility for Medicaid Program benefits was reviewed. As there are no minor dependent child living with the petitioner, it was determined that the petitioner was not eligible for family-related Medicaid Program benefits.

4. The petitioner's eligibility for SSI-Related Medicaid for the blind, aged and disabled was reviewed. The petitioner is not aged or blind, and she was not determined disabled by Social Security. On October 17, 2104, the case was forwarded to the Division of Disability Determinations to review the petitioner's claim of disability. The representative's phone number was entered on the Disability Determination and

Transmittal, and a copy of the Authorized Representative form with the representative's name, address and phone number were included in the disability packet.

5. The DDD makes their 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 Case Analysis indicated that the claimant's assistance was needed to obtain additional information essential to make a decision; contact with the claimant to obtain information was not successful, and a denial was warranted because claimant failed to cooperate in submitting necessary evidence. On November 17, 2014, the DDD denied disability, and the case was returned to the respondent.

6. As the DDD denied disability, it was determined that the petitioner did not meet the criteria for SSI-related Medicaid Program benefits. On November 24, 2014, a Notice of Case Action was sent to the petitioner informing her that her application for Medicaid Program benefits was denied.

7. The petitioner's representative and witness asserted that they called DDD on November 17, 2014, spoke to the medical examiner, William Atkinson, and requested the Activities of Daily Living (ADL) packet be sent to the representative. The ADL packet was not received.

8. The DDD program operation administrator asserted that there was no record of any call from a representative of the petitioner on November 17, 2014.

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. 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...

13. The ACCESS Policy Program 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...

14. 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...

15. 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.”

16. 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. The petitioner’s representative and witness asserted that on November 17, 2014 a call was placed to the medical examiner. The DDD asserted that there was no record of the November 17, 2014 call in the case record. The only evidence of entries in the case record by the medical examiner was the Case Analysis.

The Case Analysis indicated that the medical examiner contacted the claimant. There was no other entry in the Case Analysis. In general, a lack of entry in a business record means the action did not happen. If it is accepted that there was no call from the petitioner's representative on November 17, 2014 to the medical examiner based on a lack of entry in the Case Analysis, conversely it must be accepted that the medical examiner did not contact the petitioner's representative to obtain the necessary information, as there is no entry of the medical examiner contacting the petitioner's representative in the Case Analysis.

20. It is concluded that the respondent's denial of the petitioner's application for Medicaid Program benefits was premature. 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. 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.

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 22nd day of April, 2015,

in Tallahassee, Florida.


Linda Jo Nicholson

Hearing Officer
Building 5, Room 255
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