

FILED

JUL 20 2015

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

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES



APPEAL NO. 15F-03646

PETITIONER,

Vs.

CASE NO.



FLORIDA DEPT OF CHILDREN AND FAMILIES
CIRCUIT: 17 Broward
UNIT: 88249


RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on June 25, 2015, at 10:30 a.m.

APPEARANCES

For the Petitioner:  Pro Se.

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

STATEMENT OF ISSUE

At issue is the Department's action in denying the petitioner's application for SSI-Related Medicaid benefits on the basis that he did not meet the disability requirements

of the program. The petitioner carries the burden of proving his case by a preponderance of the evidence.

PRELIMINARY STATEMENT

The respondent submitted into evidence Respondent Exhibit 1.

FINDINGS OF FACT

Based upon the oral and documentary evidence presented at the final hearing and on the entire proceeding, the following Findings of Fact are made:

1. The petitioner filed an application for Medicaid with the Department on February 2, 2015. 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 of age and is fifty-six years of age, his application was forwarded to DDD (Division of Disability Determinations) for disability consideration.
2. The petitioner applied for disability benefits through the Social Security Administration (SSA) late 2014 and again in early 2015. The first application was denied by Social Security in January 2015 with an N-35 code. N-35 means "Lack of Duration." The second application was denied in June 2015. The petitioner filed an appeal with SSA for the last application denied. As of the date of this hearing, the petitioner's SSA appeal remains pending.
3. DDD adopted the SSA decision for the petitioner's DCF application on March 2, 2015, also with an N-35 code. The Department denied the petitioner's application for Medicaid benefits in March 2015.

4. The petitioner indicated he does not have a new condition, but he cannot understand why he was not found disabled by either SSA or the Department. He argued he should be eligible for disability benefits or Medicaid.

PRINCIPLES OF LAW AND ANALYSIS

5. 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.

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

7. In accordance with Fla. Admin. Code R. 65-2.060 (1), the party having the burden shall establish his/her position by a preponderance of the evidence, to the satisfaction of the hearing officer.

8. Federal Regulations at 42 C.F.R. § 435.541 states in part:

(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...

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

10. The petitioner was denied by the SSA and he 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 his appeal with SSA as its 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 20th day of July, 2015,

in Tallahassee, Florida.



Robert Akel 
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Office of Economic Self Sufficiency