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OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

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

[redacted]

PETITIONER,

vs.

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 05 Marion
UNIT: 88000

RESPONDENT.
_____/

APPEAL NO. 15F-04880

CASE NO. [redacted]

FINAL ORDER

Pursuant to notice and agreement, administrative hearing in the above-captioned matter first convened before Hearing Officer Patricia Antonucci on August 5, 2015 at approximately 3:00 p.m. All participants appeared via teleconference.

APPEARANCES

For the Petitioner: [redacted] Petitioner

For the Respondent: Evelyn Ross, ESS Supervisor,
Department of Children and Families

STATEMENT OF ISSUE

At issue is whether Respondent, the Department of Children and Families (DCF or 'the Department'), was correct to deny Petitioner's request for disability-based Medicaid. Petitioner bears the burden of proving, by a preponderance of the evidence, that this denial was improper.

PRELIMINARY STATEMENT

During all administrative proceedings in the above-captioned matter, Petitioner appeared as her own representative. Petitioner noted that she was represented by an attorney in her appeal to the Social Security Administration (SSA), and by a separate attorney in a private law suit resulting from an [redacted] however, she confirmed that she had not retained counsel for the instant appeal. Respondent was represented by Evelyn Ross, Supervisor with DCF. No additional witnesses appeared on behalf of either party.

This matter was initially scheduled to convene on July 7, 2015 at 1:00 p.m. Just prior to hearing, Respondent noted that the Department conferred with Petitioner and received information of new/worsening conditions (reported on Petitioner's application for benefits), which the Department had yet to consider. Respondent requested a continuance to receive and review documentation of Petitioner's alleged new/worsening conditions, and Petitioner agreed. The case was rescheduled to convene for hearing on August 5, 2015.

On August 5, 2015 at 3:00 p.m., both parties appeared, as scheduled. At that time, Respondent noted that in reviewing Petitioner's case for hearing, it was discovered that the Department had never actually processed Petitioner's application. More specifically, although the Department issued a denial letter, the Department had not pended the case for more information, had not requested or reviewed Petitioner's records, and had not forwarded her review to the Division of Disability Determination (DDD). Respondent noted the denial letter was thus issued in error.

As Respondent had not received any medical records from Petitioner prior to August 5, 2015, the Department took no further action on Petitioner's case in preparation for the August 5th hearing. As such, the parties agreed to exchange documentation and convene for a telephonic status conference on August 25, 2015 at 1:00 p.m.

At the status conference on August 25, 2015, Respondent noted it had received the requested information from Petitioner, forwarded same to DDD, and only received the Disability Determination Transmittal (the decision) from the Department's DDD office just prior to the conference call. Respondent forwarded this documentation to the undersigned and to Petitioner for use at final hearing. The parties agreed to convene for final hearing on September 10, 2015 at 1:00 p.m.

At final hearing on September 10, 2015, Respondent's Exhibits 1 through 8, inclusive, were entered into evidence. Testimony was secured, and the record was held open to allow Petitioner opportunity to supplement the record with documentation she had attempted to submit to Respondent, but which was only partially transmitted via facsimile. Petitioner also requested and was granted permission to file an [redacted]record submitted to the Department on or about August 21, 2015.

The initial record, an October 17, 2014 Psychological Evaluation by [redacted] [redacted](9 pages) was timely received and copied to Respondent, and has been entered into evidence as Petitioner's Exhibit 1. No further proposed evidence was received from either party. This Order follows.

FINDINGS OF FACT

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

1. Petitioner is a [redacted], born [redacted] She has a medical history that includes, but is not limited to, [redacted] and [redacted]

2. Prior to the state/Medicaid action at issue, Petitioner applied for disability benefits with the Social Security Administration (SSA). On or about May 2, 2014, SSA issued to Petitioner a letter denying her application. This letter stated, in pertinent parts:

> The following evidence was used to decide your claim:
> [redacted] report received 02/28/2014
> [redacted] report received 02/26/2014
> [redacted] report received 03/11/2014
>
> We have determined that your condition is not severe enough to keep you from working. We considered the medical record and other information, your age, education, training and work experience in determining how your condition affects your ability to work.
>
> You state that you are disabled and unable to work because of [redacted]

3. On or about August 5, 2014, Petitioner filed an appeal of SSA's determination. Petitioner advises that she is represented by an attorney in her SSA case, which is currently pending hearing.

4. On December 21, 2014, Petitioner was involved in an automobile accident. Petitioner states that said accident both generated new medical conditions (specifically with regard to her neck) and worsened those already in existence at the time of the

incident. Petitioner is represented by separate legal counsel in a lawsuit over this accident.

5. On or about May 26, 2015, Petitioner's application for disability-based Medicaid was filed with DCF. No copy of this application was submitted into evidence; however, Respondent notes that Petitioner advised the Department at the time of application that new/worsening conditions had emerged since her most recent SSA denial.

6. In reviewing Petitioner's case in preparation for hearing, Respondent discovered that Petitioner's application for benefits was not processed according to standard Department procedure. Per Respondent, the Department denied Petitioner's application without requesting a copy of her SSA denial letter or any/all medical records, to assist in its evaluation of her case. Although no copy of the Department's initial Notice of Case Action/denial of Medicaid was proffered into evidence, the Department concedes that said Notice was issued in error and thus, Respondent does not rely upon same.

7. Following continuation of the initial hearing, Respondent contacted Petitioner to request additional information for review. The Department received 11 total pages from Petitioner, including the following (page numbers as shown on the fax stamp):

- An Authorization to Disclose Information to the Department, signed May 7, 2015;
- Faxed Page 10: First page of a Psychological Evaluation conducted on October 17, 2014;
- Faxed Page number undecipherable (likely Page 01): additional page of Psychological Evaluation, marked in the heading with Petitioner's name and "October 17, 2014 Page 4 of 9";
- Faxed pages 02 through 09: pages from a May 2, 2014 SSA denial letter (some duplicates included).

8. Review of the Department's Running Record Comments from August 10, 2015 reflects the notation, "CLT SENT IN PAPERWORK FROM PSYCHOLOGIST AND FROM SS... INFO SENT TO ODD FOR REVIEW TO SEE IF CLT MEETS DISABILITY REQUIREMENTS ABOVE SS DENIAL."

9. On August 20, 2015, Lauren Coe of DDD affixed her stamp to a DDD Determination and Transmittal (Transmittal), denying Petitioner's Medicaid application with the handwritten notation "Hankerson 7/14 same allegations, hearing pending." Ms. Coe also checked a box to indicate that DDD staff had not found Petitioner disabled after reviewing a primary diagnosis of [redacted] and secondary diagnosis of [redacted] Although DDD notated that the claim was received on August 8, 2015, both the Running Records Comments and the top portion of the Transmittal (completed by Department staff) reflect that the claim was not forwarded to DDD until August 10, 2015.

10. At hearing, Petitioner testified that she had also sent to the Department copies of an MRI report regarding [redacted] Respondent confirmed that these were received on August 21, 2015, but stated that because DDD issued its Transmittal on August 20th, the Department did not review the MRI and would not consider it unless Petitioner applied for benefits again, at least 90 days from the date of Respondent's denial.

11. On or about August 20, 2015, the Department completed its "Elderly/Incap/Disab Information" screen, based upon the DDD Transmittal. This screen reflects that Petitioner's case was sent to DDD on August 10, 2015 and was reviewed on August 18, 2015. All of the following questions on the screen were answered with an indication of "N" (No):

- Has disability already been established?

- Has SSA determined individual qualified working disabled (QDWI)?
- Has individual applied for and been denied disability be SSA/SSI?
- If Denied for disability, has timely appeal been filed with SSA/SSI?
- Has it been more than one year since denial?
- Does individual have a new condition not considered by SSA/SSI?
- Has individual been terminated for disability by SSA/SSI?
- Will incap/disab exceed 30 days? 12 months?

12. At hearing, DCF clarified that the question "Will incap/disab exceed 30 days? 12 months?" is answered "No" whenever the Department has not made a specific determination regarding duration. As such, an answer of "No" in this section does not necessarily mean the condition will *not* exceed these time frames, but rather, that DCF has not reached a conclusion one way or the other. With regard to the rest of the screen, the Department noted that it had completed some of the fields with erroneous responses.

13. Via Notice of Case Action dated August 21, 2015, Respondent notified the Petitioner, "Your Medicaid application/review dated May 26, 2015 is **denied**... Reason: You or a member(s) of your household do not meet the disability requirement" (emphasis original). A separate copy of this Notice was issued to Petitioner for each month from May to September of 2015.

14. At hearing, Respondent explained that because SSA denied disability, and because a final decision is still pending on Petitioner's SSA appeal, the Department did not make an independent determination with regard to establishing disability. In reviewing the Petitioner's medical records, the Department decided there were no new/worsened conditions. Therefore, instead of conducting a new review, DCF adopted Social Security's decision that the Petitioner is not disabled.

15. When asked how DDD could make a determination that no new/worsening conditions exist based upon two pages of what is clearly marked as a nine-page document, Respondent indicated that because DDD had all it needed to reach its decision, it did not request the remaining pages of the Psychological Evaluation.

16. Petitioner contends that she has provided the attorney handling her SSA appeal with additional records, but that they have not yet been filed with SSA. It is her understanding that the attorney plans to bring them to the attention of SSA when Petitioner's appeal is heard.

17. Following hearing, Petitioner supplemented the record with a full copy of the Psychological Evaluation, conducted by [redacted] on [redacted] Of particular import, page 6 of 9 notes that Petitioner presents with [redacted] (these are not necessarily diagnoses). Page 8 of 9 notes that "she may require services from Social Security Disability to be successful," and page 9 of 9 lists the following:

Diagnostic Impressions

Axis I	296.5
	300.00
	304.90
	315.9
Axis II	V71.09
Axis III	
Axis IV	
Axis V	

[redacted]

CONCLUSIONS OF LAW

18. 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.

19. This proceeding is a *de novo* proceeding pursuant to Fla. Admin. Code R. 65 2.056. While *de novo* indicates that the hearing officer may consider new evidence, not previously available to either party, it does not mean that the hearing officer is tasked with conducting reviews more properly conducted by the Respondent, itself.

20. In accordance with Fla. Admin. Code R. 65-2.060(1), the burden of proof is assigned to Petitioner, who seeks coverage under Florida's disability-based Medicaid.

21. Federal Regulations at 42 C.F.R. § 435.541, "Determinations of disability," state 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.
>
> (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 ['Timely Determination of Eligibility'] 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.
>
> (b) *Effect of SSA determinations.*
>
> (1) Except in the circumstances specified in paragraph (c)(3) of this section--

> (i) An SSA disability determination is binding on an agency until the determination is changed by SSA.
>
> (ii) If the SSA determination is changed, the new determination is also binding on the agency.
>
> (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, except in cases specified in paragraph (c)(4) of this section.
>
> (c) *Determinations 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 disabling condition different from, or in addition to, that considered by SSA in making its determination....
> (underlined emphasis added)

22. The Department's ACCESS Program Policy Manual, 165-22 section 1440.1204 Blindness/Disability Determinations (MSSI, SFP) states, in part:

> State disability determinations for disability-related Medicaid applications must be done for all applicants with pending Title II or Title XVI claims unless SSA has denied their disability within the past year. 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.
>
> (emphasis added)

23. Petitioner's application for disability-based Medicaid (May 26, 2015) was filed more than 12 months after her most recent SSA denial (May 2, 2014).

Additionally, Petitioner specified that she had new/worsening conditions which needed to be reviewed. In this situation, the above-cited authority clearly indicates that the Department must conduct its own review.

24. DDD/DCF contend that they had sufficient information to determine the conditions Petitioner was alleging were the same as those reviewed by SSA; however, this determination was made based on review of a partial document – i.e., two pages of a Psychological Evaluation, which was clearly marked as nine pages long. Importantly, DDD did not receive or request the last page of the report, which, like with most psychological evaluations, is the page that actually lists the Petitioner's diagnoses.

25. Respondent had in its possession Petitioner's contact information, as well as a signed Authorization to Disclose Information form, dating back to May 7, 2015. No reasonable explanation was proffered for the Department's failure to obtain the full Psychological Evaluation, in order to conduct a thorough review. Had DDD done so, they would have seen that [redacted] amongst others, is one of Petitioner's diagnoses – one that was *not* reviewed by SSA, and one which Petitioner contends has not been presented to SSA, to date.

26. The undersigned notes that the Department must meet certain time standards in processing applications for disability-based Medicaid. However, as noted in 42 CFR 435.911:

> (e) The agency must not use the time standards—
> (1) As a waiting period before determining eligibility; or
> (2) As a reason for denying eligibility (because it has not determined eligibility within the time standards).

27. In Petitioner's case, the Department initially denied her application without any sort of processing, whatsoever. Once this error was discovered, the Department reviewed and reached disposition on her application by relying on incomplete information. This lack of thoroughness is in contravention to the governing legal authority.

28. The undersigned hearing officer does not have sufficient information to complete an independent evaluation. The Department, which holds Petitioner's Authorization to Disclose, and may thus request medical documents and/or speak to the attorney representing Petitioner in her SSA appeal, is in the best position to undertake this task.

29. The undersigned thus concludes that Respondent's disability denial is the result of a prematurely concluded review. Respondent, DCF/ DDD, must be given the opportunity to thoroughly review Petitioner's case. If said review again results in a Medicaid denial, Petitioner will be notified of her right to appeal that, specific decision.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, this case is REMANDED to Respondent for further review, consistent with the legal requirements and policy, cited herein.

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 4th day of November, 2015,

in Tallahassee, Florida.

Patricia C. Antonucci

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