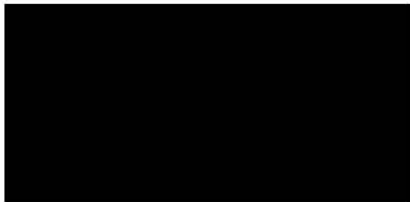


Dec 30, 2015

Office of Appeal Hearings  
Dept. of Children and FamiliesSTATE OF FLORIDA  
DEPARTMENT OF CHILDREN AND FAMILIES  
OFFICE OF APPEAL HEARINGSAPPEAL NO. 15F-08268  
15F-08269

PETITIONER,

Vs.

CASE NO. FLORIDA DEPARTMENT  
OF CHILDREN AND FAMILIES  
CIRCUIT: 05 Lake  
UNIT: 88585RESPONDENT.  

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**FINAL ORDER**

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on October 29, 2015 at 9:03 a.m. and reconvened on December 1, 2015 at 1:00 p.m. All parties appeared telephonically from different locations.

**APPEARANCES**For the petitioner:  pro se.

For the respondent: Sharon Ashley, ACCESS Supervisor.

**STATEMENT OF ISSUE**

Petitioner is appealing the Department's failure to make a determination on his application for Temporary Cash Assistance (TCA) benefits. Petitioner is also appealing the Department's action to deny his SSI-Related Medicaid application. The petitioner carries the burden of proof by the preponderance of evidence on both issues.

### **PRELIMINARY STATEMENT**

By notice dated August 4, 2015, the respondent notified the petitioner that he was denied Medicaid. The respondent did not issue a notice to the petitioner to inform him that he was denied TCA benefits. The respondent explained that because the petitioner doesn't meet the eligibility requirements for the TCA program, their computer system doesn't create those benefits in order for them to generate a denial notice. The petitioner timely requested this administrative hearing to challenge the Department's actions.

The petitioner presented a total of 62 pages of evidence for the undersigned to consider, which was entered into the record as Petitioner's Composite Exhibits 1 and 2. The Department presented a total of 54 pages of evidence for the undersigned to consider, which was entered into the record as Respondent's Exhibits 1 through 9. The record was closed on December 1, 2015.

### **FINDINGS OF FACT**

1. The petitioner's household consists of the petitioner [REDACTED] his wife [REDACTED] and their son [REDACTED]

2. On July 13, 2015 the petitioner submitted an online application for TCA, Food Assistance Program (FAP), and Medicaid benefits. He indicated on this application that he was disabled.

3. The petitioner filed a disability application with the Social Security Administration (SSA) on May 6, 2014. SSA denied the petitioner's disability claim on August 18, 2014. On October 15, 2014, the petitioner requested a reconsideration of his disability denial through SSA. On December 4, 2014, SSA sent a Notice of

Reconsideration to the petitioner notifying him that he was “not eligible for SSI.” Said notice states in part: “You asked us to take another look at your claim for Supplemental Security Income (SSI) payments. Someone who did not make the first decision reviewed your case, including any new facts we received, and found that the first decision was correct.” The petitioner filed an appeal on February 3, 2015 for the SSA denial and that appeal is currently pending.

4. On July 30, 2015, the respondent forwarded the information obtained from the petitioner to the Division of Disability Determination (DDD), which conducts disability determinations for the Department.

5. DDD did not conduct an independent review; instead, it denied the petitioner’s disability claim by adopting the December 4, 2014 SSA denial.

6. The Disability Determination and Transmittal returned from DDD indicates the petitioner’s primary diagnosis as [REDACTED] and his secondary diagnosis as [REDACTED]. The denial code is “N32” which means “impairment of insufficient severity to preclude individual’s engaging in all Substantial Gainful Activities (SGA).”

7. The petitioner disagreed with the diagnoses listed on the Disability Determination and Transmittal from DDD.

8. The petitioner describes his disabling conditions as severe [REDACTED] [REDACTED]. All these conditions have left him unable to work. The petitioner submitted a new statement from his psychiatrist dated August 17, 2015 confirming these conditions. The petitioner has reported all of these conditions and new information to the SSA.

9. The petitioner alleges his disabling conditions have worsened as he has not been able to seek the necessary medical treatment.

10. The respondent did not make an independent disability decision on the petitioner's SSI-Related Medicaid application; it adopted the SSA decision and denied the petitioner's application as he did not meet the technical requirements of age (at least age 65) or disability.

11. The petitioner argued that SSA incorrectly denied his disability application and that the respondent must make an independent disability determination and approve his Medicaid benefits.

12. The petitioner asserted the respondent did not follow their own rules which state cash assistance must be provided to disabled individuals.

13. The respondent explained that to be eligible for TCA benefits (cash assistance), an applicant must have a minor child in the home or be pregnant and in the ninth month of pregnancy. The petitioner is male and not pregnant. He does not have any children that meet this requirement; therefore, he is not eligible for TCA benefits.

#### **CONCLUSIONS OF LAW**

14. 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.

15. This proceeding is a de novo proceeding pursuant to Florida Administrative Code R. 65-2.056.

**TEMPORARY CASH ASSISTANCE ISSUE**

16. Fla. Stat. § 414.095, Determining eligibility for temporary cash assistance states in relevant part:

(1) ELIGIBILITY.—An applicant must meet eligibility requirements of this section before receiving services or temporary cash assistance...

(2) (a) To be eligible for services or temporary cash assistance and Medicaid:

1. An applicant must be a United States citizen, or a qualified noncitizen, as defined in this section.

2. An applicant must be a legal resident of the state.

3. Each member of a family must provide to the department the member's social security number or shall provide proof of application for a social security number. An individual who fails to provide a social security number, or proof of application for a social security number, is not eligible to participate in the program.

4. **A minor child must reside with a parent or parents...** [emphasis added]

5. **Each family must have a minor child and meet the income and resource requirements of the program.** [emphasis added]

17. Fla. Stat. § 414.0252 defines a minor child as "a child under 18 years of age, or under 19 years of age if the child is a full-time student in a secondary school or at the equivalent level of career training, and does not include anyone who is married or divorced."

18. The petitioner's son is [REDACTED] old and does not meet the definition of a minor child as defined by the above regulation.

19. The Department's Policy Manual, CFOP165-22, passage 3420.0205, Notification of Case Action/Denial (TCA) states "the individual must be notified when an application is denied. The notice will also provide the reason assistance was denied."

20. According to the above cited authorities, to be eligible for TCA benefits, an applicant must have a minor child. The petitioner does not meet this eligibility

requirement; therefore, he is not eligible for TCA benefits. Although the undersigned finds the Department erred in not issuing a denial notice to the petitioner informing him he was not eligible for TCA benefits, there is no remedy for this error since the petitioner does not qualify for TCA benefits.

**SSI-RELATED MEDICAID ISSUE**

21. Florida Administrative Code, Section 65A-1.710 et seq., sets forth the rules of eligibility for elderly and disabled individuals with income less than the Federal Poverty Level. For an individual to receive Medicaid who are less than 65 years of age, 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 regulation states, in part:

(a) 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(s) that makes you unable to do your past relevant work or any other substantial gainful work that exists in the national economy...

22. The Code of Federal Regulations at 42 C.F.R. § 435.541 Determination of Disability states:

- (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 § 435.912 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 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. [emphasis added]**
- (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 following circumstances exist...
  - (4) The individual applies for Medicaid as a non-cash beneficiary, 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; or
    - (ii) Alleges more than 12 months after the most recent SSA determination denying disability that his or her condition has changed or deteriorated since that SSA determination and alleges a new period of disability which meets the durational requirements of the Act, and has not applied to SSA for a determination with respect to these allegations.
    - (iii) Alleges less than 12 months after the most recent SSA determination denying disability that his or her condition has changed or deteriorated since that SSA determination, alleges a new period of disability which meets the durational requirements of the Act, and—
      - (A) Has applied to SSA for reconsideration or reopening of its disability decision and SSA refused to consider the new allegations; and/or
      - (B) He or she no longer meets the nondisability requirements for SSI but may meet the State's nondisability requirements for Medicaid eligibility.

23. The above federal regulation explains that the respondent may not make an independent determination of disability if SSA has made a disability determination within the time limits set forth in § 435.912 on the same issues presented in the Medicaid application. The respondent is bound by the federal agency's decision unless there is evidence of a new disabling condition not reviewed by SSA. The petitioner confirmed all of his medical conditions have been reported to SSA. SSA denied the petitioner's disability claim on August 18, 2014 because it determined he was not disabled. The petitioner filed a reconsideration request with SSA on October 15, 2014

and informed SSA of his new medical conditions. SSA reviewed the petitioner's disability claim and issued him a Notice of Reconsideration on December 4, 2014 informing him that "someone who did not make the first decision reviewed your case, **including any new facts we received**, and found that the first decision was correct." The petitioner disagreed with the action taken by SSA and has filed an appeal with SSA, which is still pending. The respondent adopted SSA's decision and denied the petitioner's Medicaid application.

24. In careful review of the evidence and controlling legal authorities, the undersigned concludes that the respondent followed rule in adopting the SSA disability denial from December 4, 2014 and denying the petitioner's Medicaid disability application.

#### **DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeals are denied and the Department's actions are 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 30 day of December, 2015,

in Tallahassee, Florida.



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Copies Furnished To: [REDACTED] Petitioner  
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