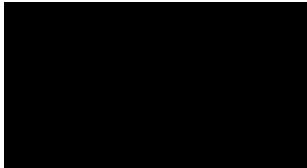


Jan 27, 2016

Office of Appeal Hearings
Dept. of Children and Families

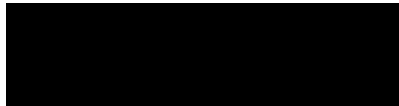
STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS



APPEAL NO. 15F-07001

PETITIONER,

Vs.



FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 06 Pinellas
UNIT: 88269

RESPONDENT.

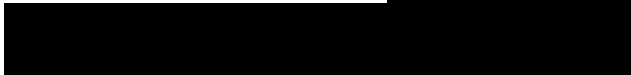
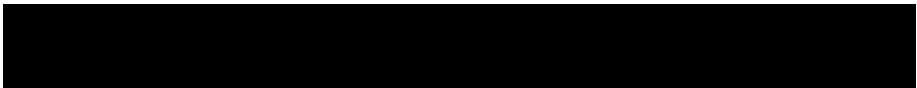
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FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on October 2, 2015 at 9:00 a.m., December 10, 2015 at 9:00 a.m., and December 30, 2015 at 11:00 a.m. All parties appeared telephonically from different locations.

APPEARANCES

For the petitioner



For the respondent: Signe Jacobson, Senior Economic Self Sufficiency Specialist.

STATEMENT OF ISSUE

Petitioner is appealing the Department's action to deny her application for Medicaid. The petitioner carries the burden of proof by the preponderance of evidence.

PRELIMINARY STATEMENT

On July 27, 2015, the Department sent the petitioner a Notice of Case Action (NOCA) informing her that her application for Medicaid was denied because “you or a member(s) of your household do not meet the disability requirement.” The petitioner timely appealed this action on August 13, 2015.

The petitioner presented a total of 116 pages of evidence for the undersigned to consider, which was entered into the record as Petitioner’s Composite Exhibit 1. The Department presented a total of 70 pages of evidence for the undersigned to consider, which was entered into the record as Respondent’s Composite Exhibit 1. The record was closed on December 30, 2015.

FINDINGS OF FACT

1. On July 20, 2015, the petitioner applied for Medicaid for herself. She is 51 years old and has no children under the age of 18 in her household. The petitioner claimed to be disabled. On September 9, 2015, the Department sent a Disability Determination and Transmittal form to the Division of Disability Determination (DDD) to make a disability determination.

2. The petitioner filed a disability application with the Social Security Administration (SSA) which was denied on March 5, 2013. She appealed this decision and was again denied on February 19, 2015 by an Administrative Law Judge (ALJ) for the SSA. The petitioner appealed this denial to the Appeals Council and that appeal is currently pending.

3. On September 15, 2015, DDD returned the transmittal to the Department informing it that an adoption of the SSA’s decision was made. DDD did not conduct an

independent review, instead, it denied the petitioner's disability claim by adopting the SSA denial.

4. The code used to deny was N31, which is non-pay- capacity for substantial gainful activity-customary past work, no visual impairment. The primary diagnosis was [REDACTED] and the secondary diagnosis was [REDACTED] from the SSA Blue Book.

5. On July 27, 2015, the Department sent the petitioner a NOCA informing her that she was ineligible for Medicaid. The Department did not provide a subsequent denial NOCA after DDD adopted the SSA decision on September 15, 2015.

6. The petitioner reported that she had new disabling conditions, which were [REDACTED] and she went from stage 4 to stage 5 in [REDACTED]

[REDACTED] The petitioner indicated that these conditions have been reported to the SSA.

7. In the denial letter from the SSA dated February 19, 2015, the ALJ wrote the following:

"...The claimant testified that she can stand for ten minutes and that her ankles swell if she sits for too long, and that she spends most of her day in a recliner...Dr. Winkler diagnosed the claimant with [REDACTED]

[REDACTED] (Page 5 of ALJ decision)

"...He further indicated that the claimant is a [REDACTED] with a concern with need for dialysis in next 12 months and that the claimant experienced fatigue that affects her ability to concentrate...He further reported that the claimant has [REDACTED] with progressive decline in renal function and that he anticipated her symptoms will worsen over the next 12 months...The undersigned gives the opinion of Dr. Sharma some, albeit little, weight, as his opinion is inconsistent with his own history of minimal findings, as described above...As such, the medical evidence of record is absent an evaluation for [REDACTED]..."(Page 8 of ALJ decision)

8. All of the alleged new disabling conditions the petitioner reported during the hearing were addressed in the ALJ's decision.

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. Fla. Admin. 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...

12. 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.

13. 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

reported that she had new disabling conditions, but the undersigned found reference to each in the ALJ's denial decision dated February 19, 2015. SSA denied the petitioner's disability claim on February 19, 2015 because it determined she was not disabled under their rules. The petitioner disagreed with SSA's disability denial and has filed an appeal with SSA, which is still pending. The respondent adopted SSA's decision and denied the petitioner's Medicaid application.

14. 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 February 19, 2015 and denying the petitioner's Medicaid disability application.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is denied and the Department's action is 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 27 day of January, 2016,

in Tallahassee, Florida.



Brandy Ricklefs
Hearing Officer
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Copies Furnished To 
Office of Economic Self Sufficiency
