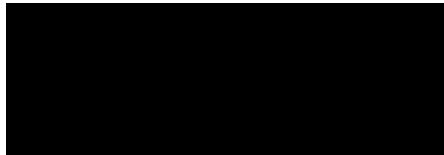


Jan 05, 2016

Office of Appeal Hearings
Dept. of Children and Families

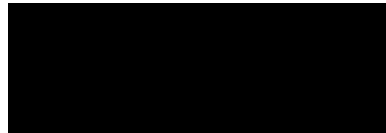
STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS



APPEAL NO. 15F-07662

PETITIONER,

Vs.



FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 07 Volusia
UNIT: 88370

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned reconvened an administrative hearing telephonically in the above-referenced matter on November 17, 2015 at 10:23 a.m.

APPEARANCES

For the Petitioner: The petitioner was present and represented herself.

For the Respondent: Viola Dickinson, Economic Self-Sufficiency Specialist II for the Department of Children and Families (DCF).

STATEMENT OF ISSUE

Petitioner is appealing the Department's action of October 21, 2015 to deny her application for SSI-Related Medicaid.

The petitioner carries the burden of proof by the preponderance of evidence.

PRELIMINARY STATEMENT

The hearing originally convened on October 15, 2015 at 10:16 a.m. The Department requested a continuance to allow time for the Division of Disability Determination (DDD) to make a disability determination on the petitioner's case. The petitioner did not object. The hearing was scheduled to reconvene on November 17, 2015 at 10:15 a.m.

The record was held open to allow the petitioner to submit additional evidence. Evidence was received and entered as the Petitioner Exhibit 4.

FINDINGS OF FACT

1. Prior to the action under appeal, the petitioner (age 50) was receiving Family-Related Medicaid for herself and her now 18 year old son. The petitioner's coverage received under the Family-Related Medicaid program was terminated effective July 30, 2015 after her son turned 18 in June 2015.

2. The petitioner completed an application for SSI-Related Medicaid on September 22, 2015. The petitioner's disability information was submitted to DDD to review the petitioner's claim for disability.

3. The DDD did not make an independent disability determination because the SSA determined that the petitioner was not disabled in July 2014 and the denial is under appeal. The Department adopted the SSA unfavorable decision and denied the petitioner's application for SSI-Related Medicaid.

4. The petitioner argues that she was receiving Medicaid but was terminated. The petitioner believes she is entitled to Medicaid because her medical conditions

cause severe pain. The petitioner explained that she has to take several medications for her illnesses. The petitioner believes the Department does not understand all of her conditions. The petitioner lists her medical conditions as [REDACTED] and

[REDACTED] The petitioner explained that her problems with her ankle are permanent. The petitioner has [REDACTED] in her joints and ligaments and does not have mobility. She has severe [REDACTED], [REDACTED], [REDACTED]

[REDACTED] and a [REDACTED] The Petitioner Exhibit 1, page 3, lists the medical conditions the petitioner believes were reviewed in the SSA disability determination. The petitioner did not have a copy of the SSA denial letter at the time of the hearing and one was not provided post-hearing.

5. The Department explained that the petitioner was no longer eligible for Medicaid as her eligibility was derived from a child under the age of 18. The Department explained that it explored other Medicaid programs for which the petitioner could be potentially eligible. The Department referred the petitioner's application for SSI-Related Medicaid to DDD to explore her potential eligibility for Medicaid due to a disability, as she has not yet reached age 65. The DDD denied the petitioner's claim for disability because her medical allegations are the same as the ones reviewed in the SSA determination of disability and that decision is under appeal (Respondent Exhibit 2).

6. The petitioner first applied for SSA disability on October 19, 2013 and was denied. The petitioner applied a second time for disability on March 3, 2014 and was denied on April 25, 2014. The petitioner appealed on June 6, 2014 and was denied on

July 16, 2014 (Petitioner Exhibit 4). The petitioner's denial is currently under appeal and is awaiting a hearing. The petitioner contends that she does not have any new medical conditions since the denial.

CONCLUSIONS OF LAW

7. 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.

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

9. Fla. Admin. Code R. Section 65A-1.705 Family-Related Medicaid General Eligibility Criteria states in part:

(c) If assistance is requested for the parent of a deprived child, the parent and any deprived children who have no income must be included in the SFU. Any deprived siblings who have income, or any other related fully deprived children, are optional members of the SFU. If the parent is married and the spouse lives in the home, income must be deemed from the spouse to the parent. For the parent to be eligible, there must be at least one child under age 18, with or without income, in the SFU, or who would be in the SFU if not receiving SSI.

10. The Department's Program Policy Manual, CFOP 165-22, passage 2230.0401 Definition of Terms (MFAM) states:

1. A child is an individual under the age of 21, who has never been emancipated, is not married or whose marriage was annulled, and whose eligibility is being determined.

2. A child (for parents or other caretaker relatives who derive eligibility for themselves) is an individual under the age of 18, who has never been emancipated, is not married or whose marriage was annulled.

3. Parent or other caretaker relatives includes mother, father, adoptive mother and adoptive father, grandmother, grandfather, stepfather, stepmother, siblings (including natural, adopted, step, and half), uncle, aunt, first cousin (including first cousin once removed), nephew or niece and individuals of preceding generations as denoted by prefixes of, great, great-great, or great-great-great. Include the spouse of such parent or relative even after the marriage is terminated by death or divorce.

11. The Department's Program Policy Manual, CFOP 165-22, passage

2230.0402 Parents and Other Caretaker Relatives (MFAM) states:

A parent or other caretaker relative must live with a child to derive their Medicaid eligibility. The child does not have to be a tax dependent of the adult parent or other caretaker relative to be potentially eligible. Include all countable income of the parent or other caretaker relative when they are a member of the SFU.

12. The above authorities explain that a parent seeking coverage under the Family-Related Medicaid program must be the caretaker of a deprived child under the age of 18 to be eligible for Medicaid herself. In this case, the petitioner was receiving Family-Related Medicaid for both herself and her son until her son turned 18 years of age in June 2015. Therefore, the undersigned concludes that the petitioner was no longer eligible for coverage under the Family-Related Medicaid as her son was no longer under the age of 18 at the time of the Department's termination action.

13. Fla. Admin. Code R. 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 less than 65 years of age to receive Medicaid, 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 (see §416.960(b)) or any other substantial gainful work that exists in the national economy...

14. Additionally, 42 C.F.R. § 435.541 Determination of Disability, states:

(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; 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 requirement of the Act, and has not applied to SSA for a determination with respect to these allegations.

15. The Department's ACCESS Florida Program Policy Manual, CPOF 165-22, passage 1440.1205 Exceptions to State Determination of Disability (MSSI, SFP) states:

The state does not make a disability determination under the following conditions:

1. When an individual only applies to SSA (no application is filed with DCF and no SSI denial or ex parte is involved).

2. When an individual receives Title II disability or SSI benefits based on their own disability (not dependent or early retirement benefits).

3. When an earlier favorable federal or state determination of blindness/disability is still in effect and no unfavorable decision has been rendered by SSA.

4. When an individual is no longer eligible for SSI solely due to institutionalization.

5. When the applicant is appealing an earlier decision from SSA and claims no new disabling condition (condition not previously considered by SSA). (emphasis added)

16. The above authorities explain that the Department must make an independent disability determination if it has been more than 12 months since the most current SSA disability determination and the applicant alleges a new period of disability which meets the durational requirement of the Act, and he or she has not filed a disability claim with the SSA regarding the alleged medical conditions. Petitioner does not fit this criteria.

17. In this case, the petitioner is under age 65 and has several medical conditions such as [REDACTED]. The findings show that these medical conditions were reviewed in the SSA disability determination. The findings show petitioner applied for SSI-Related Medicaid more than 12 months after the most recent SSA denial. However, the petitioner has applied for and been denied SSA disability benefits with the alleged medical conditions; the SSA denial is also currently under appeal. Therefore, the undersigned concludes that the petitioner did not meet her burden of proof to show that the Department's action was incorrect. The undersigned concludes that the Department was correct to not make an independent disability decision. Until petitioner meets the federal disability criteria (while under age 65) Medicaid cannot be approved.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is denied.

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 05 day of January , 2016,

in Tallahassee, Florida.



Paula Ali
Hearing Officer
Building 5, Room 255
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Tallahassee, FL 32399-0700
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Email: Appeal.Hearings@myflfamilies.com

Copies Furnished To: [REDACTED] Petitioner
Office of Economic Self Sufficiency