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

[redacted]

APPEAL NO. 15F-07747

PETITIONER,

Vs.

[redacted]

FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES
CIRCUIT: 04 Duval
UNIT: 88323

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on October 23, 2015 at 9:13 a.m.

APPEARANCES

For the Petitioner: The petitioner was present and was represented by [redacted], designated Medicaid representative.

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

ISSUE

At issue is the Department's action to not approve the petitioner's request for Medicaid coverage for the months of October 2012 and October 2013.

The petitioner holds the burden of proof in this case.

PRELIMINARY STATEMENT

The record was held open until 5:00 p.m. on October 30, 2015 to allow time for the respondent to submit additional evidence; however, the deadline was extended until November 23, 2015 to allow the petitioner to submit additional evidence. Evidence was received and entered as the Petitioner Exhibits 2 through 4 and the Respondent Exhibits 2 through 3.

FINDINGS OF FACT

1. The petitioner's representative is requesting Medicaid coverage for the months of October 2012 and October 2013. The petitioner's representative believes the petitioner is eligible for those months because the petitioner was approved for Social Security disability income in October 2014 and was determined to be disabled beginning May 2012.

2. The petitioner's representative contends that the petitioner's Medicaid application was referred to the Department's Division of Disability Determination (DDD) in April 2012 and that he was determined to not be disabled due to a Hankerson decision; therefore, the Department denied his application for Medicaid. The petitioner filed another application for Medicaid in April 2014 and was denied. It is not known which medical conditions were reviewed.

3. The petitioner's representative explained that the petitioner received notification in October 2014 that he was deemed disabled by the Social Security Administration (SSA) retroactively to May 2012 and was approved for Social Security disability income (Petitioner Exhibit 1). The petitioner's representative believes the

Department's policy requires the DDD determinations made in May 2012, March 2013, and April 2014, to be overturned due to the petitioner's subsequent approval for Social Security disability and for the petitioner to be approved for Medicaid for the months of October 2012 and October 2013. The petitioner's representative completed an application on the petitioner's behalf for SSI-Related Medicaid on October 24, 2014.

4. The Department's representative contends that there was not an application filed for the months of October 2012 and October 2013; the petitioner's representative submitted medical bills for October 21, 2012 and October 13, 2013. Therefore, there were no Notices of Case Action sent to the petitioner to inform him of the Department's denial of the petitioner's requests for Medicaid coverage for October 2012 and October 2013. The Department mailed to the petitioner on April 14, 2014, the Notice of Case Action informing him of its denial of his application for SSI-Related Medicaid. The petitioner was mailed a Notice of Case Action on October 30, 2014 to inform him of his approval for the Medically Needy program with an estimated share of cost of $1068 (Respondent Exhibit 4).

5. The petitioner's representative explained that she is not requesting retroactive Medicaid for October 2012 and October 2013; she believes the Department's policy under passage 1440.1206 gives it the authority to re-evaluate the denials for the SSI-Related Medicaid applications submitted on May 21, 2012, March 25, 2013, and on April 9, 2014, and to approve those applications based on the subsequent and favorable disability determination completed in October 2014; the petitioner was determined to be disabled retroactively to May 2012. Therefore, the petitioner's representative believes

the petitioner is entitled to Medicaid coverage for October 2012 and October 2013 since he was determined to be disabled beginning May 2012 and because he has applications on file for those time periods.

6. The Department's representative explained that the passage 1440.1206 can only be applied to current situations according to its standard application processing policy and that it does not allow the Department to approve of Medicaid applications from years prior. The Department explained that its program specialist clarified its policy on the standard application processing to mean that it can review the petitioner's request for coverage for October 2012 and October 2013 only if there is a corresponding application for the months retroactive Medicaid is requested; there has to be an application for Medicaid for months requested (Respondent Exhibit 1, page 4). They can review months retroactively.

7. The Department explained that it was unable to review the retroactive months of October 2012 and October 2013 as there were no corresponding applications for Medicaid submitted for the months at issue. The Department's records indicate that there is not an application for Medicaid on file for the months of October 2012 and October 2013; the Department's records indicate that the applications on file for October 2012 and October 2013 are for Food Assistance Program benefits only (Respondent Exhibit 1, page 1).

8. The petitioner's representative believes the Department's standard application process is interpreted to mean that an unfavorable decision made by DDD may be overturned when a favorable SSA disability decision is made at a later date. The

petitioner's representative argues that the Department's policy regarding standard application processing requires a year's certification for a disabled person and makes no reference to retroactive Medicaid. The petitioner's representative argues that the Department must overturn its denial of the petitioner's applications for Medicaid submitted in May 2012, March 2013, and April 2014 and approve coverage for Medicaid for October 2012 and October 2013 by adopting the subsequent SSA disability decision.

9. It is an undisputed fact that the petitioner requested a hearing in September 2015; however, based on the evidence and testimony presented, the undersigned finds that the application submitted in October 2014 constitutes a request for a re-evaluation since the Department became aware of the petitioner's disability status at this point.

CONCLUSIONS OF LAW

10. 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 § 409.285, Fla. Stat.

11. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code § 65-2.056.

12. Fla. Admin. Code 65A-1.702 Special Provisions states in part:

> (7) Re-evaluating Medicaid Adverse Actions. The department shall re-evaluate any adverse Medicaid determination upon a showing of good cause by the individual that the previous determination was incorrect and that the individual did not request a hearing within the time prescribed in Chapter 65-2, Part IV, F.A.C. This provision applies only when benefits were terminated or denied erroneously or a share of cost or patient responsibility was determined erroneously.
> (a) Good cause exists if evidence is presented which shows any of the

following:
…
3. New and Material Evidence – The department's determination was correct when made but new and material evidence that the department did not previously consider establishes that a different decision should be made.
(c) A re-evaluation must be requested before the expiration of 12 months from the effective date of the notice of adverse action.
(d) The public assistance specialist (PAS) is responsible for the initial determination of good cause. All initial decisions must be reviewed by the PAS's supervisor. If both the PAS and the supervisor determine that good cause does not exist the operational program administrator must review the good cause determination in consultation with the District Program Office. The operational program administrator's decision is final. If a final determination is made that good cause does not exist, the individual will be notified of the decision and of the right to request a hearing.

13. The Department's Program Policy Manual, CPOF 165-22, passage

1440.1206 Change in Disability Determination by SSA (MSSI, SFP), states in part:

When the Social Security Administration (SSA) renders a disability decision that is different than that made by DCF, the SSA decision must be adopted unless the SSA decision was based on a condition different than that which the state reviewed.

If SSA renders a favorable disability decision on a case previously determined not disabled by the Department, the Department must adopt the SSA decision. Standard application processing policy applies.

14. The Department's Program Policy Manual, CPOF 165-22, passage

0440.0610 Reevaluating Medicaid Adverse Actions (MSSI, SFP) states:

The Department must reevaluate any Medicaid determination where there is evidence of good cause that the previous determination was incorrect. The request for reevaluation applies to the following situations:
1. benefits terminated or denied in error;
2. an overstated patient responsibility/share of cost; and
3. an error in the calculation of the level of benefits.

If a participant requests a reevaluation:
1. Within 90 days of the mailing date of the notice, follow hearing policy and continue to work on resolution.

2. After 90 days from the mailing date of the notice **but no more than 12 months following the effective date of the adverse action**, review the request to determine if good cause exists.

3. After 12 months from the effective date of the notice, deny the eligibility on FLORIDA and inform the individual of hearing rights on the electronic notice (emphasis added).

Good cause exists when:
1. The Department made mistakes in mathematical computations.
2. The Department made an error in the determination.
3. The participant presents new information that was not considered when the previous determination was completed and it may result in a different conclusion. The information must have been unavailable due to circumstances beyond the participant's control.
Once good cause is established, determine eligibility, authorize benefits as appropriate and send a new notice of case action. Notify the participant of the decision for all months as required below.
For applications: Review eligibility each month and authorize as appropriate back to the month of application, including any requested retroactive months.

15. The Department's Questions and Answers-Detail page, ID: 148, dated June 1, 2007, includes a question and answer regarding re-evaluation of a previous denial of an application for SSI-Related Medicaid and is listed below:

Question: If we deny Medicaid based on a SSA disability denial, and then the client contacts us within a year of our denial with evidence that they won their SSA appeal, must we go back to determine eligibility per 0440.0610, using our original application date? The client could not have provided us with the disability information at the time because it was under appeal. Must we treat this as a new application if they don't contact us within a year of DCF's denial of Medicaid?

Answer: You are correct on both accounts. Good cause for evaluating Medicaid adverse action exists when an individual wins an SSA appeal because it is information that was beyond their control when the Department initially denied Medicaid. If the individual presents the new evidence within a year of the Department's most recent denial, determine eligibility based on the application date associated with the denial, and three retro months if applicable. **If the SSA decision is presented over**

a year after the Department's most recent Medicaid denial, treat as a new application (emphasis added).

16. The above authorities explain that the Department must re-evaluate a previous adverse action related to the Medicaid program if the applicant shows good cause that a previous determination was incorrect and the request for a re-evaluation was made after 90 days but within 12 months of adverse action. A good cause example is when an applicant presents new information that was not previously considered at the time of the determination and which may reverse a previous decision. If the re-evaluation is requested as a result of a favorable SSA decision over one year after the Department's most recent Medicaid denial, the Department is instructed to treat the request as a new application.

17. In this case, the findings show that the petitioner requested a re-evaluation of his applications submitted in May 2012, March 2013, and April 2014. The above authorities limit requests for re-evaluations with good cause to a period of up to 12 months after the most recent denial action. Therefore, the undersigned concludes that the denials for the applications submitted in May 2012 and March 2013 cannot be included in the petitioner's request for a re-evaluation. The Department is to issue notice with appeal rights as directed in its policy, denying the petitioner's request for a re-evaluation of applications submitted in May 2012 and March 2013.

18. The findings also show that the petitioner submitted evidence verifying his disability when he submitted an application on October 24, 2014; this is within the 12 month re-evaluation timeframe to review his application submitted on April 9, 2014. The undersigned recognizes that the petitioner is seeking Medicaid coverage for the months

of October 2012 and October 2013; however, the exceptions in the above regulation restricts the Department to complete a re-evaluation only on requests made within 12 months from the date of the adverse action.

19. After considering the evidence and all of the appropriate authorities set forth above, the hearing officer concludes that the Department's action to deny the petitioner's request to re-evaluate the applications for the months of May 2012 and March 2013, which would have provided the requested Medicaid coverage months of October 2012 and October 2013, is correct. There is no evidence of a denial notice for these two months. Therefore, the Department is to issue a notice with appeal rights denying this request, as directed in its policy. However, the undersigned concludes that the Department will need to complete a Medicaid eligibility determination to re-evaluate the denial action that occurred during the month of April 2014 and to include a consideration of the three retroactive months prior to that application.

DECISION

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

The appeal is denied in that the Department's action to deny the petitioner's request for a re-evaluation for applications submitted in May 2012 and March 2013, which would provide Medicaid coverage for the months of October 2012 and October 2013, is affirmed.

The appeal is granted in that the appeal is remanded with instructions as set forth in the above Conclusions of Law for the re-evaluation of the application for April

2014 and the retroactive months. Once a determination is made, the Department is to issue a notice to both petitioner and the representative.

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 15 day of January, 2016, in Tallahassee, Florida.

Paula Ali
Hearing Officer
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Copies Furnished To: [redacted] Petitioner
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