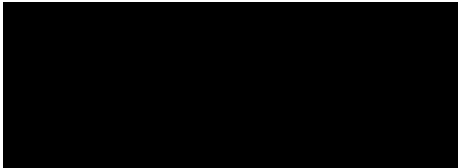


Jan 29, 2016

Office of Appeal Hearings
Dept. of Children and Families

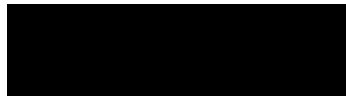
STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS



APPEAL NO. 15F-08249

PETITIONER,

Vs.



FLORIDA DEPARTMENT
OF CHILDREN AND FAMILIES
CIRCUIT: 04 Clay
UNIT: 03DDD

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened an in-person administrative hearing in the above-referenced matter on December 11, 2015 at 10:15 a.m. at the respondent's facility located in Jacksonville, Florida.

APPEARANCES

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

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

ISSUE

The petitioner is appealing the Department's action on September 9, 2015 to terminate her SSI-Related Medicaid benefits effective September 30, 2015 as she no longer met the disability requirement.

The respondent holds the burden of proof by the preponderance of evidence.

PRELIMINARY STATEMENT

The hearing originally convened on November 5, 2015 at 10:15 a.m. The petitioner did not appear. On November 6, 2015, the petitioner contacted the undersigned and requested to reschedule as she was confused as to when the hearing was scheduled to take place. Her request was granted and the hearing was scheduled for December 11, 2015. On December 2, 2015, the petitioner contacted the undersigned to request an in-person hearing. Her request was granted and the hearing location was changed to an in-person hearing, same date and time.

The record was held open until 5:00 p.m. on December 15, 2015 to allow time for the petitioner to submit additional evidence. Evidence was submitted and entered as the Petitioner Exhibit 2.

FINDINGS OF FACT

1. Prior to the action under appeal, the petitioner (age 44) was determined disabled by the Division of Disability Determination (DDD) in February 2015 and was approved for SSI-Related Medicaid. A review was set for July 2015. The petitioner completed an application to recertify for SSI-Related Medicaid on July 24, 2015. The petitioner completed an application for Supplemental Security Income (SSI) on July 30, 2015.

2. The petitioner's SSI-Related Medicaid application was forwarded to the DDD on August 21, 2015. The Respondent Exhibit 2 includes the "Disability Determination and Transmittal" (Transmittal), signed on September 8, 2015. The Transmittal

completed by the DDD lists the petitioner's primary diagnosis as

[REDACTED] with a code in Part II, section 11a. The secondary diagnosis is listed as [REDACTED] under section 11b. On September 8, 2015, the Social Security Administration (SSA) determined the petitioner to not be disabled and denied her application for SSI with a denial code of "N32." The Department explained that the denial code of "N32" means the petitioner is "not disabled". Therefore, the Department adopted the SSA decision and terminated the petitioner's SSI-Related Medicaid benefits effective September 30, 2015.

3. The petitioner timely appealed the Department's action on September 29, 2015.

4. The petitioner does not agree with the Department's action to terminate her SSI-Related Medicaid benefits as she had foot surgery on September 30, 2015. The petitioner argues that the SSA had already denied her disability claim by the time she had her surgery. The petitioner argues that she needs follow-up treatment to give her a better prognosis as a result of the surgery. The petitioner argues that the surgical procedure would have been done in vain if she does not receive the follow-up treatment. The petitioner explained that she needs the recommended therapy and corrective boots to get the optimal results from the surgery. The petitioner would like Medicaid for an additional three or four months to assist her.

5. The petitioner does not understand why she was granted Medicaid before without having the new medical conditions on file. The petitioner filed an appeal for the SSA denial on November 9, 2015.

6. The petitioner contends that she falls a lot, which could stem from her brain injury. She also has [REDACTED] from a car accident in 1994, which caused a "drop foot" medical condition. The petitioner's other medical conditions include a [REDACTED], [REDACTED] and [REDACTED] [REDACTED]. The petitioner believes these conditions were reviewed in the SSA disability determination. The petitioner believes her [REDACTED] diagnosed in 2002 is a new medical condition it was not included in the review completed by the SSA to determine her claim for disability.

7. The Petitioner Exhibit 1 includes the report dated February 15, 2002 from physician, Dennis Dewey, M.D. The report is labeled: [REDACTED] and [REDACTED]. The report includes in its notes the following statements: [REDACTED] and [REDACTED]. The "Impression" section of the report states: [REDACTED]
[REDACTED]
[REDACTED]

8. The Petitioner Exhibit 2 includes the "Explanation of Determination" from the SSA. The "Explanation of Determination" states:

You state that you are disabled and unable to work due to chronic pain, [REDACTED], [REDACTED], a history of a [REDACTED], [REDACTED] and [REDACTED]. We realize that you may feel that you are disabled at this time. However, we were unable to obtain sufficient evidence to show that your condition was disabling as of 09/30/2011...

9. The Department's position is that the petitioner received a favorable DDD disability decision in February 2015 since her SSA application had not been filed yet. Once the SSA made its disability decision, the Department had to adopt the SSA decision. The Department explained that the petitioner reported on her application the same conditions reviewed by the SSA and did not include the new conditions. The Department contends that the petitioner may complete another application for SSI-Related Medicaid in order for it to submit the medical records for SSA to review her new medical condition of a brain injury.

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 § 409.285, Fla. Stat. 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 R. 65-2.056.

12. Florida Administrative Code, R. 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, 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...

13. Federal Medicaid Regulations at 42 C.F.R. § 435.541 Determinations of disability states in relevant part:

(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 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 and 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. (emphasis added)

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

If the individual has not received a disability decision from SSA, a blindness/disability application must be submitted to the Division of Disability Determinations (DDD) for individuals under age 65 who are requesting Community Medicaid under community MEDS-AD, Medically Needy, and Emergency Medicaid for Alien Programs.

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.

15. The above authority explains that a disability application must be sent to the DDD to be reviewed for applicants who are under the age of 65, who are requesting Community Medicaid under community MEDS-AD, Medically Needy, and Emergency Medicaid for Alien programs. However, if SSA has denied disability within the past year, or if the denial is under appeal, the SSA decision is to be adopted. If the individual applies for Medicaid within one year of an SSA denial and provides evidence of a new disabling condition that was not considered by SSA, the Department must make an independent disability decision.

16. In this case, the petitioner is under age 65 and alleges that she has a new medical condition of a [REDACTED] that was not reviewed by SSA. The petitioner provided evidence of [REDACTED] through an MRI report dated February 15, 2002. The petitioner's evidence shows that the [REDACTED] was not included as one of the medical conditions reviewed by the SSA.

17. The Policy Manual, passage 0440.0604 Continuation of Benefits (MSSI, SFP) states:

If an individual requests a hearing by the end of the last day of the month prior to the effective date of the adverse action, reinstate the benefits to the prior level within 10 calendar days, unless the individual makes a written request to have the benefits terminated or reduced. If the last day of the month falls on a weekend or holiday, allow until the next working day for the request.

Inform recipients that they are liable for any overpayment caused by the continuation of benefits, pending the hearing decision

18. The Department's ACCESS Florida Program Policy Manual, 165-22 section 1440.1206 Change in Disability Determination by SSA (MSSI, SFP)

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 determines the individual is not disabled or that the disability has ceased, action must be taken to close the SSI-Related Medicaid benefits on FLORIDA that are based upon disability, allowing for ten days advance notice of adverse action. **Should the individual file a timely appeal with SSA, Medicaid benefits must be continued, pending a final decision by SSA.** (emphasis added)

19. The above authorities explain that the Department is directed to continue SSI-Related Medicaid benefits if the fair hearing is requested prior to the date of the adverse action, unless the petitioner requests to have the benefits terminated. In this case, the findings show that the petitioner requested a hearing on September 29, 2015, which is prior to the effective date of September 30, 2015. Therefore, the undersigned concludes that the petitioner's SSI-Related Medicaid benefits should have been continued as she requested a fair hearing prior to the effective date of the adverse action.

20. The above authorities also explain that the Department is to continue SSI-Related Medicaid benefits if the SSA renders a decision different from the DDD determination if the individual files a timely appeal (within 60 days) with the SSA; the SSI-Related Medicaid benefits are to continue until the outcome of the SSA appeal. The findings show that the SSA denied the petitioner's claim for disability on September 8, 2015. The findings also show that the petitioner filed an appeal on November 9, 2015. Since the 60th day fell on November 7, 2015, which was a Saturday, the undersigned concludes that the petitioner timely appealed with the SSA.

21. Based on the above findings and authorities, the undersigned concludes that the Department was premature in its termination of the petitioner's SSI-Related Medicaid benefits. The Department is remanded with instructions to reinstate the petitioner's SSI-Related Medicaid. The Department must continue the petitioner's SSI-Related Medicaid benefits while it waits on the disability decision from the SSA. Once the SSA makes its determination, the Department is to issue notice with appeal rights.

22. Should the SSA decision be unfavorable, the petitioner may reapply for SSI-Related Medicaid and include her new medical conditions not previously reviewed by the SSA.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is granted and remanded to the Department with instructions to reinstate petitioner's Medicaid coverage pending the disability decision from the SSA. Once that decision is made, the Department is to issue a written notice to include appeal rights.

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 29 day of January , 2016,

in Tallahassee, Florida.



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