

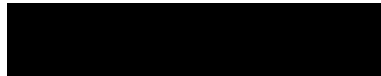
Jan 26, 2016

Office of Appeal Hearings
Dept. of Children and FamiliesSTATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

APPEAL NO. 15F-08793

PETITIONER,

Vs.

FLORIDA DEPARTMENT
OF CHILDREN AND FAMILIES
CIRCUIT: 04 Duval
UNIT: 88781RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned reconvened an administrative hearing telephonically in the above-referenced matter on December 15, 2015 at 1:33 p.m.

APPEARANCES

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

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

STATEMENT OF ISSUE

The petitioner is appealing the Department's action on September 24, 2015 to deny his application for SSI-Related Medicaid.

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

PRELIMINARY STATEMENT

The hearing originally convened on December 3, 2015 at 9:00 a.m. The petitioner was present but requested to reschedule to allow additional time for him to prepare for the hearing. The petitioner's request was granted and rescheduled for December 15, 2015 at 1:30 p.m.

Appearing as an observer for the respondent was Ernestine Bethune, ESSS II for DCF.

Pamela Vance, hearing officer, appeared as an observer.

The record was held open until 5:00 p.m. on December 18, 2015 to allow the petitioner to submit additional evidence. Evidence was not received.

FINDINGS OF FACT

1. On August 27, 2015, the petitioner (age 43) applied for SSI-Related Medicaid for self only. The petitioner's disability information was submitted to the Division of Disability Determination (DDD) to review the petitioner's claim for disability.

2. The DDD did not make an independent disability determination because the Social Security Administration (SSA) determined that the petitioner was not disabled in September 2015. The DDD determined that the petitioner was not disabled and denied his claim for disability using code "N39." The *Respondent Exhibit 2* includes the "State On-line Query (SOLQ) User Guide", which defines code "N39" as "Non-pay-Applicant willfully fails to follow prescribed treatment." The Department adopted the SSA unfavorable decision and denied the petitioner's application for SSI-Related Medicaid.

3. The petitioner disputes the Department's denial because he needs Medicaid to obtain the medications needed to treat his medical conditions. The petitioner argues

that his Supplemental Security Income (SSI) was denied because he was not adhering to his treatment plan. The petitioner argues that he is not able to adhere to his treatment plan because he does not have Medicaid to obtain the prescriptions he needs. The petitioner argues that he admits himself into the hospital in order to receive the necessary medications to treat his mental health condition.

4. The petitioner believes SSA reviewed his medical conditions of [REDACTED]

[REDACTED] issues. The petitioner contends that he has no new medical conditions but that his conditions have gotten worse.

5. The petitioner applied for SSI on March 30, 2015 and was denied on September 9, 2015.

CONCLUSIONS OF LAW

6. 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.

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

8. Fla. Admin. 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, 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...

9. Additionally, 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)...

(i) An SSA disability determination is binding on an agency until the determination is changed by SSA.

(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 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 –

(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.

10. The Department's Program 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.

11. The above authorities indicate that the Department may not make an independent determination of disability if SSA has made a disability determination on the same issues presented in the Medicaid application (within 12 months of the date of the Medicaid application). The regulation also states that the Department must make a determination of disability if the individual applies for Medicaid as a non-cash recipient, whether or not the State has a section 1634 agreement with SSA and alleges a disabling condition different from, or in addition to, that considered by SSA in making its determination or alleges more than 12 months after the most recent SSA determination. The Department is bound by the federal agency's decision unless there is evidence of a new disabling condition not reviewed in its unfavorable determination.

12. In this case, the Department adopted the unfavorable disability determination made by the SSA.

13. In this case, the petitioner is under 65 and has medical conditions of seizures, high blood pressure, blood clots, and mental health issues. The findings show that the petitioner's medical conditions have been reviewed by the SSA but have worsened. The undersigned concludes that the petitioner did not meet his burden of proof to show that the Department's action was incorrect. The undersigned concludes that the Department was correct to adopt the SSA disability denial from September 2015. 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, appeal is denied.

NOTICE OF RIGHT TO APPEAL

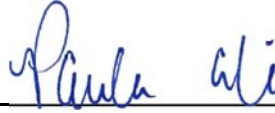
This decision is final and binding on the part of the Department. If the petitioner disagrees with this decision, the petitioner may seek a judicial review. To begin the judicial review, the petitioner must file one copy of a "Notice of Appeal" with the Agency Clerk, Office of Legal Services, Bldg. 2, 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 26 day of January, 2016,
in Tallahassee, Florida.

FINAL ORDER (Cont.)

15F-08793

PAGE -7



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