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

[redacted]

APPEAL NO. 15F-09145

PETITIONER,

Vs.

[redacted]

FLORIDA DEPARTMENT
OF CHILDREN AND FAMILIES
CIRCUIT: 06 Pinellas
UNIT: 88287

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on December 3, 2015 at 1:00 p.m. All parties appeared telephonically from different locations.

APPEARANCES

For the petitioner: [redacted] pro se.

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

STATEMENT OF ISSUE

Petitioner is appealing the Department's action to close her full Medicaid coverage. At the hearing the burden of proof was assigned to the petitioner but after further review it is determined that the burden falls to the Department by the preponderance of evidence.

PRELIMINARY STATEMENT

On October 9, 2015, the Department sent the petitioner a Notice of Case Action (NOCA) informing her that her Medicaid would end as of October 31, 2015 because" a household member has left the home and can no longer be included in this program." On October 27, 2015, the Department sent the petitioner a subsequent NOCA informing her that her application for Medicaid dated October 7, 2015 was denied. The petitioner timely appealed this action on October 30, 2015.

The petitioner presented no evidence for the undersigned to consider. The Department presented a total of 94 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 3, 2015.

FINDINGS OF FACT

1. The Department explained during the hearing that the petitioner lost her full Medicaid eligibility once her eldest child turned 18 years old. The petitioner did not contest this action.

2. On October 7, 2015, the petitioner applied for full Medicaid for herself. She is 40 years old and has no other children under the age of 18 in her home. She claimed to be disabled. On October 19, 2015, the Department sent a Disability Determination and Transmittal form to the Division of Disability Determination (DDD) to make a disability determination.

3. The petitioner filed a disability application with the Social Security Administration (SSA) which was denied on December 24, 2014. The petitioner appealed the SSA's decision on January 5, 2015 and that appeal is currently pending.

4. On October 23, 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.

5. The code used to deny was N32, which is non-pay-capacity for substantial gainful activity-other work. The primary diagnosis was [redacted] and the secondary diagnosis was [redacted] from the SSA Blue Book. During the hearing, the petitioner reported her disabling conditions to be: knee pain, bone condition, obesity, high blood pressure, joint pain and mental conditions. All of these conditions were considered by the SSA as indicated in its "Explanation of Determination" denying the petitioner's claim. The petitioner reports that her knee pain and bone condition have worsened. She reported no new disabling conditions, only worsening of her existing conditions.

6. On October 27, 2015, the Department sent the petitioner a NOCA informing her that she was ineligible for Medicaid. The Department explained that the petitioner did not meet the disability requirement to be eligible for Medicaid. The petitioner did not agree with the Department's action to adopt SSA's disability denial.

7. On October 30, 2015, the petitioner submitted additional medical documentation to the Department. She provided this to show worsening of her conditions. The petitioner was concerned that the Department did not consider this additional documentation as the timeframe from when she returned it to when it was denied was too short. The Department did not resend the DDD transmittal and new documentation as no new disabling conditions were reported. The Department testified

that it cannot make an independent disability determination if the petitioner was previously denied by the SSA within one year, unless a new disabling condition(s) occurred and medical documentation supporting that is returned.

8. In the additional medical evidence provided by the petitioner on October 30, 2015, only two items were found that had not been previously submitted to DDD. The first was dated just "October" and was a prescription written by [redacted] It states, "due to ongoing medical conditions, [redacted] is disabled and unable to work for 2 months." There is no year listed on this prescription. The second page was signed by [redacted] on October 27, 2015 and states, "[redacted] has been under my care on 10/27/2015 and pt is restricted from work due to joint dysfunction in her lower extremities." Neither of these doctor notes report or verify a new disabling condition.

9. No other medical evidence was provided by the petitioner to support a new disabling condition. The petitioner testified that her conditions have worsened. The Department cannot re-submit to DDD as no evidence of a new disabling condition has been reported and verified.

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 Fla. Stat. § 409.285.

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

12. 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…

13. The Code of Federal Regulations at 42 C.F.R. § 435.541 Determinations 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.

14. 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 confirmed all of her medical conditions have been reported to SSA to the best of her knowledge. SSA denied the petitioner's disability claim on December 24, 2014 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.

15. 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 December 24, 2014 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

Brandy Ricklefs
Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
Office: 850-488-1429
Fax: 850-487-0662
Email: Appeal.Hearings@myflfamilies.com

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