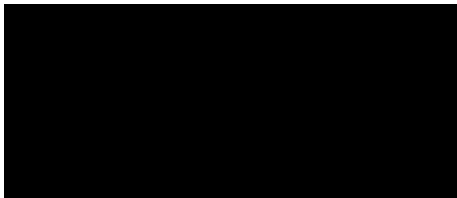


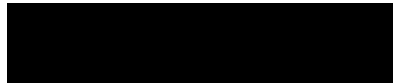
STATE OF FLORIDA  
DEPARTMENT OF CHILDREN AND FAMILIES  
OFFICE OF APPEAL HEARINGS



APPEAL NO. 15F-09267

PETITIONER,

Vs.



FLORIDA DEPARTMENT  
OF CHILDREN AND FAMILIES  
CIRCUIT: 09 Orange  
UNIT: 88999

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned telephonically convened an administrative hearing in the above-referenced matter on December 1, 2015 at 10:45 a.m.

**APPEARANCES**

For the petitioner:  petitioner's designated representative

For the respondent: Susan Long, ACCESS Supervisor

**STATEMENT OF ISSUE**

The petitioner's representative is appealing the respondent's action to deny the petitioner's applications for Adult-Related Medicaid benefits. The petitioner carries the burden of proof by the preponderance of evidence.

### **PRELIMINARY STATEMENT**

No Notice of Case Action describing the action under appeal was issued to the petitioner by the respondent. The respondent explained no notices were issued to the petitioner regarding applications submitted on May 21, 2015 and July 14, 2015.

On November 3, 2015, petitioner's representative filed an appeal to challenge the respondent's denial of petitioner's applications. The appeal is considered to be timely filed for the May 21, 2015 and July 14, 2015 applications since the respondent failed to properly notify the petitioner that these applications were denied.

Petitioner did not submit any exhibits. Respondent submitted seven exhibits, entered as Respondent Exhibits "1" through "7". The record was held open until close of business on December 14, 2015 for submission of additional evidence from the respondent. On December 3, 2015, additional evidence was received and entered as Respondent Exhibit "8". The record closed on December 3, 2015.

### **FINDINGS OF FACT**

1. On May 21, 2015 and July 14, 2015, the petitioner's representative submitted applications for Adult-Related Medicaid benefits for the petitioner (60). The petitioner was not aged or blind and did not have any minor children.
2. On the applications, the petitioner is reported to be disabled and born in Cuba. Petitioner arrived under an order of supervision on June 9, 2011, petitioner did not have an immigration status. This was documented by the respondent's use of the Department of Homeland Security's SAVE Program; it was further corroborated by the petitioner's copy of his form I-220B. The petitioner had been battling with bone cancer

since 2014. Petitioner's condition had worsened and he was placed in Hospice care on May 11, 2015. He passed away on July 27, 2015.

3. The respondent reviewed the State of Florida Social Security Administration (SSA) State on-line query screen. The system showed that the petitioner applied for disability benefits with SSA on January 26, 2015. On March 2, 2015, SSA denied the petitioner's disability claim with a decision code N-13. Decision code N-13 indicates the petitioner was denied due not being a citizen or eligible alien. No disability determination was made by SSA.

4. The Department's Division of Disability (DDD) is responsible for making a State disability determination on behalf of the respondent when an applicant applies for Medicaid disability. The respondent did not complete a Medicaid disability interview or refer the petitioner's applications to DDD to complete a disability determination.

5. The petitioner's representative did not understand why the petitioner's applications were not referred to DDD in order to have a disability determination completed. The representative requested posthumous benefits because petitioner was alive when she submitted an application on July 14, 2015 (he passed away on July 27, 2015). The petitioner's representative is seeking Adult-Related Medicaid benefits for the petitioner for three calendar months preceding the month of the May 21, 2015 and July 14, 2015 applications. According to the submitted applications, the petitioner's representative is seeking retroactive Medicaid benefits for the months of February, March, April, May and June 2015.

6. The respondent explained the Department's Policy on "qualified noncitizen" Medicaid Assistance Program and who qualifies. Petitioner did not have citizenship

status; therefore, the respondent was to determine if the petitioner qualified for Emergency Medicaid Assistance for Aliens (EMA).

7. The respondent's position is that the petitioner's applications were forwarded to DDD for a disability determination because it must adopt SSA's March 2, 2015 denial decision.

### **CONCLUSIONS OF LAW**

8. 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.

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

10. Fla. Admin. Code. 65A-1.711 et seq. sets forth the rules of eligibility for elderly and disabled individuals. For an individual under 65 years of age to receive benefits, he or she must meet the disability criteria of Title XVI of the Social Security Act (SSA) appearing in 20 C.F.R. §416.905. The regulations state, 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.

11. Federal Regulation 42 C.F.R. § 435.541 provides that a state Medicaid determination of disability must be in accordance with the requirements for evaluating evidence under the SSI program specified in 20 C.F.R. § 416.901 through 416.998:

(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 §435.911 on the same issue presented in the Medicaid application. A determination of eligibility for SSI payments based on disability that is made by SSA automatically confers Medicaid eligibility...

(b) Effect of SSA determinations. (1)(i) **An SSA disability determination is binding on an agency until the determination is changed by SSA.** (emphasis added)

...  
(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:

...  
(e) Medical and nonmedical evidence. The agency must obtain a medical report and other nonmedical evidence for individuals applying for Medicaid on the basis of disability. The medical report and nonmedical evidence must include diagnosis and other information in accordance with the requirements for evidence applicable to disability determinations under the SSI program specified in 20 CFR part 416, subpart I.

(f) Disability review teams—(1) Function. A review team must review the medical report and other evidence required under paragraph (e) of this section and determine on behalf of the agency whether the individual's condition meets the definition of disability.

12. The Department's Program Policy Manual (Policy Manual), CFOP 165-22, passage 1440.0116, Assistance for Ineligible Noncitizens (MSSI, SFP):

Any noncitizen who does not have an eligible qualified noncitizen status is not eligible for Medicaid on the factor of citizenship. These noncitizens may be eligible for Medicaid through Emergency Medical Assistance for Aliens (EMA), if they meet all other eligibility criteria.

13. The Policy Manual at 1440.1203, Blind/Disability Requirement (MSSI, SFP) explains:

If an individual is not aged, he must meet the factor of blindness and/or disability.

Blindness is defined as central visual acuity of 20/200 or less in the better eye with the use of a corrective lens.

Note: Blindness does not apply to the MEDS-AD Program.

Disability is defined as:

1. the inability to engage in any substantial activity due to any medically determinable physical or mental impairment, and
2. a disability which has lasted or can be expected to last for a period of at least 12 consecutive months or **result in death**. (emphasis added)

14. The Policy Manual at 0640.0104, Expedited Service for Disability-Related Medicaid

(MSSI, SFP) explains:

Screen applications for disability related Medicaid to see if an expedited interview is necessary. Provide eligible AGs expedited services regardless of whether or not they are requested.

Individuals or families are entitled to expedited services if an AG member is:

1. under age 65 and claiming a disability; and
2. not currently receiving SSI or SSDI benefits from the Social Security Administration (SSA),...

Provide the individual a copy of the Screening for Expedited Medicaid Appointments form. Inform the individual that the Department uses all recorded information to determine eligibility for an expedited interview. Provide individuals eligible for expedited services with a notice of the time and date of the scheduled interview.

Schedule an interview for an expedited applicant within three working days; conduct an interview and complete the disability packet within seven calendar days of the date of application. If the application is dropped off or mailed, contact the household by phone to tell them of the scheduled appointment, and mail a follow-up appointment notice. If unable to reach the applicant by phone, schedule the appointment five to seven calendar days from the application date.

Provide individuals with a brochure titled Notice of Disability Information and Request Form. The brochure includes a list of the information the individual will need to bring to the interview to complete the disability forms used by the Division of Disability Determinations to determine whether the applicant is disabled. The date of the scheduled interview is the verification due date for these households. The notice/brochure will also advise the individual that failure to show for the interview or to bring the requested information to the interview may delay application processing. Document the date the applicant receives the notice/brochure.

15. The cited authorities explain an independent decision cannot be made on a SSA disability denial decision. However, SSA did not make a disability determination in this case, it denied petitioner's disability claim due to his non-citizenship status.

16. The above-cited authorities set forth the rules for processing applications and determining eligibility in the Adult-Related Medicaid Program. The respondent should have addressed the petitioner's request for disability Medicaid within the required 90-days time standard from the date of the applications.

17. The undersigned concludes that a State disability determination should have been completed. However, a favorable disability determination by DDD cannot be guaranteed. Delay by the respondent does not create automatic eligibility as the State must follow the Social Security disability standards in accordance with federal regulations found at 42 C.F.R. § 435.540: "Definition of disability. (a) Definition. The agency must use the same definition of disability as used under Supplemental Security Income (SSI)..."

18. While a final determination of disability cannot be guaranteed because of federal definitions, the respondent's processing delay needs to be remedied as quickly as possible. Therefore, this matter is remanded back to the Department to obtain the necessary information and forward all the required documentation to DDD to complete a disability determination. The respondent is to preserve and honor the petitioner's applications dated May 21, 2015 and July 14, 2015, including the retroactive months of February, March, April, May and June 2015. The respondent is to issue a written Notice of Case Action (NOCA) to the petitioner and his representative as soon as possible,

including his appeal rights, upon competition of the Adult-Related Medicaid eligibility determination.

**DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is granted and remanded back to the Department to take correction action as specified in the Conclusions of Law.

**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   01   day of   February  , 2016,  
in Tallahassee, Florida.



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