

Jan 25, 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-09407

PETITIONER,

Vs.



FLORIDA DEPARTMENT  
OF CHILDREN AND FAMILIES  
CIRCUIT: 17 Broward  
UNIT: 88249

RESPONDENT.

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**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on December 15, 2015 at 1:05 p.m.

**APPEARANCES**

For the Petitioner:  pro se

For the Respondent: Mary Triplett, ACCESS Supervisor

**STATEMENT OF ISSUE**

At issue is Respondent's action in denying Petitioner's application for SSI-Related Medicaid. Petitioner held the burden of proof by a preponderance of the evidence.

**PRELIMINARY STATEMENT**

The Florida Department of Children and Families ("Department" or "DCF") determines eligibility for SSI-Related Medicaid programs. In addition to other technical requirements, an individual must be disabled, blind, or aged (65 years or older) to be

eligible for SSI- Related Medicaid. The Department of Health's Division of Disability Determinations ("DDD") conducts disability reviews regarding medical eligibility for individuals applying for disability benefits under the federal Social Security and Supplemental Security Income programs and the state Medically Needy program. Once a disability review is completed, the claim is returned to DCF for a final determination of non-medical eligibility and effectuation of any benefits due.

Petitioner's sister, [REDACTED] was present as Petitioner's witness. Petitioner purposely disconnected from the call prior to the close of the hearing. The evidence was marked and entered without her presence. Respondent's exhibits 1 through 4 were marked and entered into evidence. Petitioner submitted no exhibits into evidence.

#### **FINDINGS OF FACT**

Based upon the oral and documentary evidence presented at the final hearing and on the entire proceeding, the following Findings of Fact are made:

1. Petitioner submitted a paper application with Florida DCF on August 7, 2015 for SSI-Related Medicaid. The Department advised her to submit an application for disability to the Social Security Administration ("SSA") as part of her application for Florida SSI-Related Medicaid.
2. Petitioner submitted an application for disability with the SSA on August 19, 2015. SSA issued an unfavorable determination (N32) on November 2, 2015. Decision code N32 indicates Petitioner has the capacity for substantial gainful activity. The SSA determined that Petitioner's impairment was not sufficient to preclude her from engaging in all substantial gainful activity (SGA).

3. Petitioner did not yet appeal the SSA denial. Petitioner alleges no new condition/s not previously considered by SSA.

4. On November 3, 2015, DCF informed Petitioner of a denial of Medicaid eligibility for the months of August 2015 through December 2015. The reason for this decision is no household member met the disability requirement. The Division of Disability Determinations adopted the SSA's decision as Petitioner had a disability decision by the SSA within the past 12 months. There is no evidence that the Department conducted an independent disability determination.

5. Respondent contends that an adult without children may be eligible for Florida Medicaid coverage only if the adult is aged (over 65), disabled, or pregnant. Petitioner is not over 65 years old nor is she pregnant. Therefore, her eligibility is limited to the disabled category if she meets criteria for disability.

6. Respondent contends if SSA has denied disability within the past year and the decision is under appeal with SSA then the Department is bound by that federal decision, in accordance with Policy Manual sections 1440.1204 and 1440.1205 Technical Requirements (MSSI, SFP).

7. Petitioner moved to Florida due to hardship. She received Medicaid in Pennsylvania prior to her move. Since the move, her [REDACTED] has remained untreated because she doesn't have medical coverage in Florida. She believes without Medicaid coverage, she will remain untreated and will die. She contends it is unfair that simply moving states impacts her health care and she should be eligible in Florida as she was in Pennsylvania.

### **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. § 120.80. This order is the final administrative decision of the Department of Children and Families under Fla. Stat. § 409.285.

9. This hearing was held as a de novo proceeding pursuant to Fla. Admin. Code R. 65-2.056.

10. Fla. Admin. Code R. 65A-1.710 sets forth the rules of eligibility for SSI-Related Medicaid Coverage Groups. The MEDS-AD Demonstration Waiver is a coverage group for aged and disabled individuals (or couples), as provided in 42 U.S.C. § 1396a(m). For an individual less than 65 years of age to receive benefits, 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.

11. 42 C.F.R. § 435.541 sets the standards for state disability determinations and states in relevant part:

(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 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.

(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 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

....

(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.

12. Petitioner was denied Social Security benefits as she was determined not to be disabled. Petitioner did not claim any new conditions not reviewed by the Social

Security Administration in making the determination of the denial. The Department adopted the unfavorable disability decision made by the Social Security Administration rather than making an independent disability determination. According to the above regulations, the Social Security Administration's denial of the petitioner's disability is binding and must be relied upon by the Department. Therefore, the Department correctly denied the petitioner's application for SSI-Related Medicaid benefits as she was determined not disabled.

13. After careful review of the evidence submitted and the relevant laws set forth above, the undersigned concludes the Department's action was proper.

**DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, the Petitioner's appeal is hereby 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 25 day of January, 2016,

in Tallahassee, Florida.



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