

Aug 19, 2016

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

APPEAL NO. 16F-04016

PETITIONER,

Vs.

CASE NO. FLORIDA DEPARTMENT  
OF CHILDREN AND FAMILIES  
CIRCUIT: 18 Brevard  
UNIT: 55118RESPONDENT.  

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**FINAL ORDER**

Pursuant to notice, the undersigned telephonically convened an administrative hearing in the above-referenced matter at 10:45 a.m. on June 29, 2016.

**APPEARANCES**

For the Petitioner:



For the Respondent:

Sylma Dekony, ACCESS  
Economic Self-Sufficiency Specialist II**STATEMENT OF ISSUE**

At issue is whether the respondent's action to deny the petitioner Medicaid Disability is proper. The petitioner carries the burden of proof by the preponderance of evidence.

**PRELIMINARY STATEMENT**

By notices dated June 2, 2016 and June 22, 2016, the respondent (or the Department) notified the petitioner he was denied Medicaid disability. Petitioner timely requested a hearing to challenge the Medicaid denial.

[REDACTED], petitioner's mother, appeared as a witness for the petitioner. Petitioner submitted one Exhibit, entered as Petitioner Exhibit "1". Respondent submitted seven exhibits, entered as Respondent Exhibits "1" through "7". The record was closed on June 29, 2016.

**FINDINGS OF FACT**

1. On May 9, 2016, the petitioner (age 39) submitted a Food Assistance and SSI-Related Medicaid application for himself and his mother; petitioner does not have children. Medicaid for the petitioner is the only issue.
2. To be eligible for SSI-Related Medicaid, petitioner must be age 65 or older, or considered disabled by the Social Security Administration (SSA) or the Division of Disability Determination (DDD). DDD is responsible for making disability determinations on behalf of the Department.
3. Petitioner last applied for disability through the SSA in February 2015. SSA denied petitioner in September 2015. Petitioner appealed the SSA denial in October 2015 through an attorney; a hearing date has not been scheduled.
4. Petitioner described his disabilities as [REDACTED], [REDACTED] problems. Petitioner does not have any new or worsened medical conditions that the SSA is unaware of.

5. On June 2, 2016, the Department incorrectly mailed the petitioner a Notice of Case Action (NOCA) denying the May 9, 2016 Medicaid application.
6. On June 16, 2016, the Department forwarded petitioner's disability documents to DDD for review. DDD denied petitioner Medicaid Disability on June 21, 2016; due to adopting the SSA denial decision.
7. On June 22, 2016, the Department mailed the petitioner another NOCA, denying his May 9, 2016 Medicaid application, "Reason: You or a member(s) of your household do not meet the disability requirement."

#### **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 § 409.285, Fla. Stat. This order is the final administrative decision of the Department of Children and Families under § 409.285, Fla. Stat.
9. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code R. 65-2.056.
10. The Code of Federal Regulations at 42 C.F.R. § 435.541, Determinations of Disability, in part 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.

(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 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...

11. The above authority explains the SSA determination is binding on the Department.

12. In accordance with the above authority, the respondent denied petitioner's May 9, 2016 Medicaid application; due to adopting the SSA September 2015 denial decision.

13. In careful review of the cited authority, evidence and testimony, the undersigned concludes the petitioner did not meet the burden of proof. The undersigned agrees with the Department's action to deny petitioner Medicaid; due to adopting the SSA disability denial.

**DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is denied and the respondent'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   19   day of   August  , 2016,

in Tallahassee, Florida.



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