

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

FILED

Dec 16, 2015

Office of Appeal Hearings
Dept. of Children and Families



APPEAL NO. 15F-07639

PETITIONER,

Vs.

CASE NO. [REDACTED]

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

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on November 5, 2015, at 11:30 a.m.

APPEARANCES

For the Petitioner: [REDACTED] pro se.

For the Respondent: Rosa Alvarez Casado, Economic Self Sufficiency Specialist Supervisor, Department of Children and Families (DCF).

STATEMENT OF ISSUE

At issue is the Department's action in denying the petitioner's application for SSI-Related Medicaid benefits on the basis that she did not meet the disability requirements of the program. The petitioner carries the burden of proving her case by a preponderance of the evidence.

PRELIMINARY STATEMENT

The record was left open for fourteen days in order for the petitioner to submit additional information. Additional information was submitted within the timeframe allotted, accepted as Petitioner Exhibit 2 and 3.

The respondent submitted into evidence Respondent Exhibit 1 through 3.

The petitioner submitted into evidence Petitioner Exhibit 1 through 3.

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. The petitioner filed an application for Medicaid with the Department on August 24, 2015. To be eligible for SSI- Related Medicaid, an individual must be disabled, blind, or aged (65 years or older). As the petitioner has not turned sixty-five years of age and is [REDACTED] her application was forwarded to DDD (Division of Disability Determinations) for disability consideration.

2. The petitioner applied for disability benefits through the Social Security Administration (SSA) on or about January 29, 2014. This application was denied by Social Security on or about March 6, 2014 with an N-32 code. N-32 means "Capacity for other work." The petitioner filed an appeal with SSA in July 2014. The petitioner has an ALJ hearing scheduled with SSA on December 8, 2015.

3. DDD adopted the SSA decision for the petitioner's DCF application on August 28, 2015, also with an N-32 code. The Department denied the petitioner's application for Medicaid benefits on August 28, 2015.

4. The petitioner alleged new and worsening conditions since the SSA decision was initially made. However, the information provided in Petitioner Exhibit 1 shows these alleged new conditions were already reported by the petitioner to the SSA reconsideration adjudicator.

CONCLUSIONS OF LAW

5. 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.

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

7. In accordance with Fla. Admin. Code R. 65-2.060 (1), the party having the burden shall establish his/her position by a preponderance of the evidence, to the satisfaction of the hearing officer.

8. Federal Regulations at 42 C.F.R. § 435.541 states in part:

Determinations of disability.

(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 for 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—

(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** [emphasis added].

9. As shown in the Findings of Fact, the Department denied the petitioner's application for SSI-Related Medicaid on the basis that she did not meet the disability requirements of the program. DDD adopted the SSA decision. The petitioner alleged new conditions not previously considered by SSA, but the evidence presented shows the alleged new conditions have been provided to SSA for that appeal process.

10. The petitioner was denied by the SSA and she appealed that decision. As noted in the above cited Regulation, "[a]n SSA disability determination is binding on an agency until the determination is changed by SSA....The agency must refer to SSA all applicants who allege new information or evidence affecting previous SSA

determinations." Thus, the petitioner must continue the appeal with SSA as its decision is binding on the Department and cannot be overturned by this hearing officer.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, this appeal is denied and the Department action 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 16 day of December, 2015,

in Tallahassee, Florida.



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Copies Furnished To: [REDACTED] Petitioner
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