

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

**FILED**

Dec 18, 2015

Office of Appeal Hearings  
Dept. of Children and Families



APPEAL NO. 15F-08068

PETITIONER,

Vs.

CASE NO. 

FLORIDA DEPARTMENT OF  
CHILDREN AND FAMILIES  
CIRCUIT: 06 Pasco  
UNIT: 88265

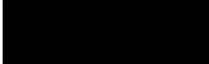
RESPONDENT.

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**FINAL ORDER**

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on October 21, 2015 at 9:32 a.m. All parties appeared telephonically from different locations.

**APPEARANCES**

For the petitioner:  petitioner's authorized representative and owner of 

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

**STATEMENT OF ISSUE**

Petitioner is appealing the Department's action to deny her application for Medicaid. The petitioner carries the burden of proof by the preponderance of evidence.

### **PRELIMINARY STATEMENT**

On June 10, 2015, the Department sent the petitioner a Notice of Case Action (NOCA) denying her application for Medicaid because "you or a member(s) of your household do not meet the disability requirement." A subsequent NOCA was mailed on August 3, 2015 denying her application for Medicaid because "you or a member(s) of your household do not meet the disability requirement." The petitioner requested a hearing on September 21, 2015.

The petitioner presented a total of 26 pages of evidence for the undersigned to consider, which were entered into the record as Petitioner's Exhibit 1. The Department presented a total of 132 pages of evidence for the undersigned to consider, which were entered into the record as Respondent's Exhibits 1 through 14. The record was closed on October 21, 2015.

### **FINDINGS OF FACT**

1. The petitioner had applied for Medicaid on April 18, 2014 claiming she was disabled. The respondent forwarded that application and medical records to the Division of Disability Determination (DDD) on May 2, 2014. On May 30, 2014, DDD denied the application with a code N36, which is non-pay-insufficient or no medical data furnished. The primary diagnosis was 12-Affective Disorder from the Social Security Administration (SSA) Blue Book.

2. The petitioner filed a disability application with SSA on May 8, 2014. On June 25, 2014, the SSA denied her application. The petitioner appealed the SSA denial on June 25, 2014 and that appeal is currently pending.

3. On June 4, 2015, the petitioner's representative applied for Medicaid on her behalf. The petitioner is [REDACTED] years old and claimed to be disabled. She has no children, is not pregnant and is not aged (65 or older). A new and worsening condition was reported on this application. On June 10, 2015, the Department sent a NOCA denying her application for Medicaid because "you or a member(s) of your household do not meet the disability requirement." The petitioner requested an appeal for this issue on September 21, 2015.

4. On July 27, 2015, the petitioner's representative submitted another application on her behalf for Medicaid claiming she was disabled. The Department sent her a NOCA on July 28, 2015 requesting for her to complete an interview on or before August 3, 2015, complete and sign the Authorization to Disclose Information Form, and to complete and sign the Affidavit for Designated Representative Form. Her representative, [REDACTED] sent the requested information and the same medical records that were submitted in April 2014. The interview was not completed. During the hearing, the Department initially stated that the interview was required.

5. The petitioner was not present to describe her disabling conditions. Her representative described that she has [REDACTED]. The medical records provided show that she was diagnosed with [REDACTED]. This condition is under [REDACTED] in the SSA Blue Book. Testimony was given by the petitioner's representative indicating that no new medical records were sent to verify the alleged new and worsening condition as the petitioner has been unable to receive recent medical care without insurance.

6. The Department's final position is that it must adopt the determination made by SSA as no additional evidence was provided to reflect that she has a new or worsening condition. The lack of interview completed had no effect on the Department's action to adopt the SSA denial decision.

#### **CONCLUSIONS OF LAW**

7. 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.

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

#### **IN REGARDS TO THE JUNE 10, 2015 MEDICAID DENIAL:**

9. Fla. Admin. Code R. 65-2.046 "Time Limits in Which to Request a Hearing" states in relevant part:

(1) The appellant or authorized representative must exercise the right to appeal within 90 calendar days in all programs. Additionally, in the Food Stamp Program, a household may request a fair hearing at any time within a certification period to dispute its current level of benefits. The time period begins with the date following:

(a) The date on the written notification of the decision on an application.

(b) The date on the written notification of reduction or termination of program benefits.

(c) The date of the Department's written notification of denial or a request or other action which aggrieves the petitioner when that denial or action is other than an application decision or a decision to reduce or terminate program benefits.

10. On June 10, 2015, the Department sent a NOCA to the petitioner denying her application for Medicaid. This NOCA gave the petitioner the right to appeal within

90 days. The petitioner would have had to request an appeal by September 8, 2015. The appeal was requested on September 21, 2015. The undersigned concludes the petitioner did not request this appeal timely; therefore, the issue regarding the June 10, 2015 Medicaid denial, is dismissed as non-jurisdictional.

**IN REGARDS TO THE AUGUST 3, 2015 MEDICAID DENIAL:**

11. On August 3, 2015, the Department sent the petitioner a NOCA denying her application for Medicaid. The petitioner timely appealed this action on September 21, 2015. The undersigned concludes that she does have jurisdiction to decide on this issue.

12. Florida Administrative 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 Determination 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's representative confirmed all of her medical conditions have been reported to SSA. SSA denied the petitioner's disability claim on June 25, 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 June 25, 2014, and denying the petitioner's Medicaid disability application.

#### **DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal concerning the June 10, 2015 Medicaid denial is dismissed as non-jurisdictional and the appeal concerning the August 3, 2015 Medicaid denial 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 18 day of December, 2015,

in Tallahassee, Florida.



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