

Dec 21, 2015

Office of Appeal Hearings
Dept. of Children and Families

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



APPEAL NO. 15F-08127

PETITIONER,

Vs.

CASE NO. 

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 09 Osceola
UNIT: 66292

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter at 11:40 a.m. on October 28, 2015, at the Department of Children and Families in Kissimmee, Florida.

APPEARANCES

For the Petitioner:

 pro se

For the Respondent:

Evelyn Ross, ACCESS supervisor
appeared by telephone

STATEMENT OF ISSUE

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

PRELIMINARY STATEMENT

By notice dated September 24, 2015, the respondent (or the Department) notified petitioner her Medicaid application dated August 20, 2015 was denied. Petitioner timely requested a hearing to challenge the denial.

██████████ Language Line Solutions, appeared as an interpreter for the first five minutes. ██████████ got disconnected from the call and ██████████ Language Line Solutions, appeared as an interpreter for the remainder of the hearing. ██████████ petitioner's husband, appeared and provided testimony. Pamela Vance, Hearing Officer, and Zenaida Rodriguez, ACCESS Interviewing Clerk, appeared as observers.

Petitioner submitted one exhibit, entered as Petitioner Exhibit "1". Respondent submitted four exhibits, entered as Respondent Exhibits "1" through "4". The record was closed on October 28, 2015.

FINDINGS OF FACT

1. Prior to the action under appeal, petitioner received Adult-Related (referred to SSI-Related) Medicaid. In July 2015 the respondent terminated petitioner's Medicaid.
2. On August 20, 2015, petitioner (age 47) submitted a Food Assistance and Medicaid (SSI and Family) application for herself and her husband. Medicaid for petitioner is the only issue.
3. To be eligible for Family-Related Medicaid, petitioner must have minor children in the home or be pregnant. Petitioner does not have minor children and is not pregnant. Therefore, she is not eligible for Family-Related Medicaid.

4. To be eligible for SSI-Related Medicaid, petitioner must be age 65 or older; blind or considered disabled by the Social Security Administration (SSA) or the Division of Disability Determination (DDD).

5. Petitioner described her disabilities as:

[REDACTED]

6. On August 21, 2014, petitioner applied for disability through the SSA. The SSA denied petitioner disability on December 17, 2014. Petitioner appealed the SSA denial on April 20, 2015, through an attorney. An appeal date has not been scheduled.

7. DDD makes Medicaid disability determinations on behalf of the Department. On September 1, 2015, the Department forwarded petitioner's medical documents to DDD for review.

8. On September 21, 2015, DDD denied petitioner disability, due to adopting the December 17, 2014, SSA denial.

9. On September 24, 2015, the respondent mailed petitioner a Notice of Case Action, notifying her Medicaid application, dated August 20, 2015, was denied.

10. Petitioner stated that she does not have a worsened or new medical condition that the SSA and/or her attorney are not aware of.

CONCLUSIONS OF LAW

11. 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.

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

13. Florida Administrative Code R. 65A-1.703 addresses Family-Related Medicaid and in part states:

(1) The department provides mandatory Medicaid coverage for individuals, families and children described in Section 409.903, F.S., Section 1931 of the Social Security Act and other relevant provisions of Title XIX of the Social Security Act. The optional family-related Title XIX and Title XXI coverage groups served by the department are stated in each subsection of this rule...

(5) Medicaid for pregnant women...

14. In accordance with the above authority, to be eligible for Family-Related Medicaid petitioner must have minor children or be pregnant. Petitioner does not have minor children and is not pregnant. Therefore, she is not eligible for Family-Related Medicaid.

15. Florida Administrative Code R. 65A-1.711 addresses SSI-Related Medicaid and in part states:

(1) For MEDS-AD Demonstration Waiver, the individual must be age 65 or older, or disabled as defined in 20 C.F.R. §416.905...

16. Title 20 Code of Federal Regulations § 416.903, addresses disability and blindness determinations and in part states:

(b) Social Security Administration. The Social Security Administration will make disability and blindness determinations...

17. In accordance with the above authorities, to be eligible for SSI-Related Medicaid petitioner must be age 65 or older; or be considered disabled or blind.

18. The Code of Federal Regulations at 42 C.F.R. § 435.541, explains Determination of disability and 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.

19. The above authority explains that the SSA determination is binding on the

Department.

20. In accordance with the above authority, the respondent denied petitioner's August 20, 2015 Medicaid application, due to adopting the SSA December 17, 2014, denial decision.

21. Petitioner appealed the SSA denial decision and is awaiting an appeal date.

22. Petitioner does not have a worsened or new medical condition the SSA is unaware of.

23. In careful review of the cited authorities and evidence, the undersigned concludes the respondent followed Rule in denying petitioner Medicaid benefits.

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 21 day of December , 2015,

in Tallahassee, Florida.



Priscilla Peterson
Hearing Officer
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Copies Furnished To: [REDACTED] Petitioner
Office of Economic Self Sufficiency