

Dec 29, 2015

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

APPEAL NO. 15F-08266

PETITIONER,

Vs.

CASE NO. FLORIDA DEPARTMENT OF  
CHILDREN AND FAMILIES  
CIRCUIT: 12 Sarasota  
UNIT: 88326RESPONDENT.  

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**FINAL ORDER**

The undersigned convened a telephonic administrative hearing in the above-referenced matter on October 26, 2015 at 1:05 p.m.

**APPEARANCES**For Petitioner:  petitioner

For Respondent: Signe Jacobson, Economic Self Sufficiency Specialist II

**STATEMENT OF ISSUE**

At issue is whether respondent's action to deny petitioner's application for SSI-Related Medicaid benefits is correct. The burden of proof is assigned to the petitioner by the preponderance of the evidence.

**PRELIMINARY STATEMENT**

Petitioner was present and testified. Petitioner submitted no exhibits at the hearing. Respondent was represented by Signe Jacobson with the Department of Children and Families (hereafter "DCF", "Respondent" or "Agency"). Ms. Jacobson

testified. Respondent submitted eight exhibits, which were accepted into evidence and marked as Respondent's Exhibits "1" through "8". The record closed on October 26, 2015.

### **FINDINGS OF FACT**

1. On May 5, 2015, the petitioner applied for Supplemental Security Income (SSI) benefits from the Social Security Administration (SSA). On August 24, 2015, SSA denied petitioner's SSI application using the code N32. N32 means "Non-pay-Capacity for substantial gainful activity – other work, no visual impairment". On September 9, 2015, petitioner appealed the denial of her SSI application.
2. On July 20, 2015, the petitioner submitted an application for Food Assistance (FA) and Medicaid benefits. FA benefits are not an issue. The application listed petitioner as not disabled; as a [REDACTED] year old female; as applying for Social Security; and as requiring medical assistance as she does not have any money for out of pocket medical expenses.
3. On September 30, 2015, the respondent mailed petitioner a Notice of Case Action that indicated petitioner's Medicaid application dated July 20, 2015 was denied as, "You or a member(s) of your household do not meet the disability requirement and No household members are eligible for this program".
4. Respondent determined petitioner not eligible for Family-Related Medicaid benefits as she has no children under the age of eighteen living with her or is not pregnant; and is not eligible for SSI-Related Medicaid benefits as she is under the age of 65 and has not been found disabled by SSA.

5. Petitioner requires medications, various treatments, and physician visits for her medical conditions. On July 30, 2015 the petitioner had [REDACTED] The [REDACTED] [REDACTED] is the only new condition claimed by the petitioner and the surgery is known to the SSA. Furthermore, petitioner cannot fill her prescriptions or see her physicians without the Medicaid benefits.

### **CONCLUSIONS OF LAW**

6. 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.

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

8. The Fla. Admin. Code R. 65A-1.705(7)(c) Family-Related Medicaid General Eligibility Criteria, in part states:

If assistance is requested for the parent of a deprived child, the parent and any deprived children who have no income must be included in the SFU. Any deprived siblings who have income, or any other related fully deprived children, are optional members of the SFU. If the parent is married and the spouse lives in the home, income must be deemed from the spouse to the parent. For the parent to be eligible, there must be at least one child under age 18, with or without income, in the SFU, or who would be in the SFU if not receiving SSI...

9. According to the above authority, to be eligible for Family-Related Medicaid benefits, petitioner must have a minor child under age 18 living in the household with her or she must be pregnant. Since petitioner does not have a minor child under age 18 living in the household and since she is not pregnant, she does not meet the technical

requirements to be eligible for Family-Related Medicaid benefits.

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 and 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. Pursuant to the above authority, to be eligible for SSI-Related Medicaid, petitioner must be deemed disabled by DDD as she is under the age of 65 and is currently not considered disabled by the SSA.

12. Federal Regulation at 42 C.F.R. § 435.541 provides standards for state disability determinations and states, in 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 §435.912 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:

(1) The individual applies for Medicaid as a non-cash beneficiary and has not applied to SSA for SSI cash benefits, whether or not a State has a section 1634 agreement with SSA; or an individual applies for Medicaid and has applied to SSA for SSI benefits and is found ineligible for SSI for a reason other than disability.

(2) The individual applies both to SSA for SSI and to the State Medicaid agency for Medicaid, the State agency has a section 1634 agreement with SSA, and SSA has not made an SSI disability determination within 90 days from the date of the individual's application for Medicaid.

(3) The individual applies to SSA for SSI and to the State Medicaid agency for Medicaid, the State does not have a section 1634 agreement with SSA, and either the State uses more restrictive criteria than SSI for determining Medicaid eligibility under its section 1902(f) option or, in the case of a State that uses SSI criteria, SSA has not made an SSI disability determination in time for the State to comply with the Medicaid time limit for making a prompt determination on an individual's application for Medicaid.

(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.

13. Petitioner was denied SSI benefits on August 24, 2015 pursuant to code N32.

On July 20, 2015, the petitioner applied for Medicaid benefits with the respondent.

Respondent determined petitioner not to be disabled and denied her application for SSI-Related Medicaid benefits as the respondent adopted SSA's denial decision.

14. Petitioner is appealing her SSA denial; therefore, SSA is reconsidering its denial of petitioner's SSA application through its appeal process. Petitioner has a new medical condition, but it is known to the SSA. Under these circumstances, the controlling authorities preclude the respondent from rendering an independent disability determination. Accordingly, the SSA federal determination remains binding on the respondent.

15. Therefore, the respondent was correct to adopt SSA's denial decision as petitioner's SSI denial was within twelve months of her Medicaid application and petitioner also has a new medical condition known to the SSA.

16. In careful review of the cited authorities and evidence, the undersigned concludes that petitioner has not met her burden of proof to indicate the respondent incorrectly denied her July 20, 2015 application for SSI-Related Medicaid benefits.

**DECISION**

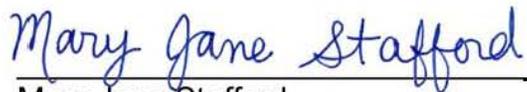
Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is DENIED.

**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 29 day of December, 2015,

in Tallahassee, Florida.



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