

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-08302

PETITIONER,

Vs.

CASE NO. FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 05 Citrus
UNIT: 88002RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned telephonically convened an administrative hearing in the above-referenced matter at 8:15 a.m. on October 26, 2015.

APPEARANCESFor the Petitioner:  pro se

For the Respondent: Joseph Corredor, ACCESS Supervisor

STATEMENT OF ISSUE

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

PRELIMINARY STATEMENT

By notice dated September 30, 2015, respondent notified petitioner that her Medicaid application, dated August 10, 2015, was denied. Petitioner timely requested a hearing to challenge the denial.

Petitioner did not submit exhibits. Respondent submitted six exhibits, entered as Respondent Exhibits "1" through "6". The record was held open until October 28, 2015 for petitioner to submit an exhibit. The exhibit was received timely and entered as Petitioner Exhibit "1". The record was closed on October 28, 2015.

FINDINGS OF FACT

1. Petitioner, age [REDACTED] submitted a SSI-Related Medicaid application on August 10, 2015. The application indicates petitioner is disabled.
2. To be eligible for SSI-Related Medicaid, petitioner must be age 65 or older, blind or considered disabled.
3. In 2002 petitioner was involved in an automobile accident. As a result, petitioner alleges she suffers from a [REDACTED] injury. In 2013 petitioner fell; causing her automobile injuries to worsen. Petitioner also suffers from [REDACTED] and [REDACTED]
4. Petitioner applied for disability through the Social Security Administration (SSA) in 2014 and was denied in October 2014. Petitioner, through her legal counsel, appealed the SSA denial the first part of 2015; petitioner is unsure of the date.
5. The Department of Health Division of Disability (DDD) is responsible for determining Medicaid disability eligibility on behalf of the Department.
6. On September 15, 2015, the Department notified DDD of petitioner disability request.
7. On September 28, 2015, DDD notified the Department that they were denying petitioner Medicaid; because they were adopting the SSA October 2014 denial decision.
8. On September 30, 2015, the respondent mailed the petitioner a Notice of Case Action, notifying her Medicaid application, dated August 10, 2015, was denied; due to not meeting the disability requirements.

9. Petitioner alleges that her medical condition has worsened since the SSA denial.

And she has the following new medical conditions: [REDACTED]

[REDACTED]

[REDACTED]

10. Petitioner's legal counsel is aware of her worsened and new medical condition.

Petitioner's attorney advised her not to submit her worsened and new medical condition documents to the SSA, because he will present the documents at the appeal hearing.

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. The Code of Federal Regulations at 42 C.F.R. § 435.541, Determination 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.

14. In accordance with the above authority, respondent denied petitioner's August 10, 2015 Medicaid application; due to adopting the SSA October 2014 denial decision.

15. The above authority states the Department must make a determination of disability if the individual "alleges a disabling condition different from, or in addition to, that considered by the SSA in making its determination".

16. Petitioner alleges that her medical condition has worsened and she has new medical conditions since the SSA denial. However, petitioner's attorney is aware of her worsened and new medical conditions. Petitioner's attorney advised petitioner not to

submit her worsened and new medical condition documents to the SSA; because he will present the documents at the appeal hearing.

17. In careful review of the cited authority and evidence, the undersigned concludes the respondent followed Rule in denying 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 29 day of December, 2015,

in Tallahassee, Florida.



Priscilla Peterson
Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
Office: 850-488-1429
Fax: 850-487-0662
Email: Appeal_Hearings@myffamilies.com

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