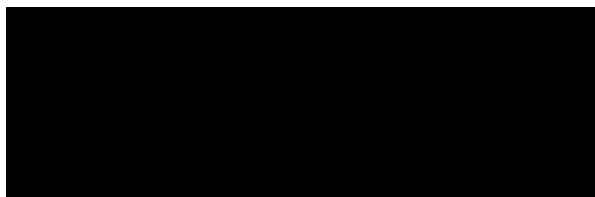


FILED

Jan 14, 2016

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

Office of Appeal Hearings
Dept. of Children and Families



APPEAL NO. 15F-08957

PETITIONER,

Vs.



FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 15 Palm Beach
UNIT: 88701

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing telephonically in the above-referenced matter on December 9, 2015 at 11:34am.

APPEARANCES

For the Petitioner:



For the Respondent:

Mary Triplett, ACCESS Supervisor

STATEMENT OF ISSUE

Petitioner is appealing the Department's action of August 24, 2015 denying Medicaid eligibility for the petitioner for February 2015. The petitioner carries the burden of proof by the preponderance of evidence.

PRELIMINARY STATEMENT

[REDACTED] appeared as an observer with no objection. The petitioner submitted evidence on December 8, 2015, which was entered as Petitioner Exhibit 1.

The Department submitted evidence on November 23, 2015, which was entered as Respondent Exhibit 1.

FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following findings of fact are made:

1. An application for SSI-Related Medicaid for the petitioner was filed on June 25, 2015 by [REDACTED]
2. The petitioner is a 54-year-old man who resides alone.
3. The Department submitted the disability report to the Division of Disability Determinations (DDD) on July 31, 2015.
4. DDD approved the petitioner's disability beginning with March 2015, which included three months of retroactive coverage prior to the date of application.
5. The Department issued a Notice of Case Action on August 24, 2015 approving the petitioner for Medicaid beginning June 2015 and ongoing. The Department also approved the retroactive months of March through May 2015.
6. The petitioner was admitted to the hospital on February 9, 2015 due to having a stroke. The petitioner had a previous stroke in February 2014.
7. The petitioner had a Supplemental Security Income (SSI) application that was denied on May 8, 2014. The SSI application was denied with a reason code "N30:

Slight impairment; medical consideration alone, no visual impairment.” The SSI decision was appealed. A decision on the appeal has not been rendered.

8. The Department submitted a 2931 Disability Report to DDD inquiring for disability approval for February 2015. DDD responded to this request by informing the Department the petitioner has a pending appeal with Social Security. DDD further advised month of eligibility in question cannot be reviewed by DDD while the appeal with Social Security is pending.

9. Applications for SSI-Related Medicaid were also filed on February 23, 2015 and April 2, 2015.

10. The Department reported no disability report was received with either the February 23, 2015 or April 2, 2015 application. Each of these applications were denied for failure to return the necessary information.

11. The Department confirmed the petitioner’s applications filed in February 2015 and April 2015 protect the petitioner’s potential eligibility for February 2015 once disability has been established.

CONCLUSIONS OF LAW

12. 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.

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

14. The definition of MEDS-AD Demonstration Waiver is found in Fla. Admin.

Code § 65A-1.701 and states:

(20) MEDS-AD Demonstration Waiver: Medicaid coverage group for aged or disabled individuals who meet all SSI-related Medicaid non-financial eligibility criteria, whose resources do not exceed the limit in the Medically Needy Program, whose income is at or below 88 percent of the federal poverty level and are not receiving Medicare or if receiving Medicare are also eligible for Medicaid covered institutional care services, hospice services or home and community based services.

15. Fla. Admin. Code R. 65A-1.711 “SSI-Related Medicaid Non-Financial

Eligibility Criteria” states in part:

To qualify for Medicaid an individual must meet the general and categorical requirements in 42 C.F.R. Part 435, subparts E and F (2007) (incorporated by reference), with the exception that individuals who are neither aged nor disabled may qualify for breast and cervical cancer treatment, and the following program specific requirements as appropriate. Individuals who are in Florida temporarily may be considered residents of the state on a case-by-case basis, if they indicate an intent to reside in Florida and can verify that they are residing in Florida.

(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 (2007) (incorporated by reference).

16. Federal Medicaid Regulations 42 C.F.R. § 435.541 “Determinations of disability” states in relevant 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.

(1) If the agency has an agreement with the Social Security Administration (SSA) under section 1634 of the Act, the agency may not make a determination of disability when the only application is filed with SSA.

(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—

(i) Alleges a disabling condition different from, or in addition to, that considered by SSA in making its determination; (emphasis added)

17. Fla. Admin. Code R. 65A-1.702 “Special Provisions” states in relevant part:

(1) Rules 65A-1.701 through 65A-1.716, F.A.C., implement Medicaid coverage provisions and options available to states under Titles XVI and XIX of the Social Security Act.

(2) Date of Eligibility. The date eligibility for Medicaid begins. This was formerly called the date of entitlement. The date of eligibility includes the three months immediately preceding the month of application (called the retroactive period).

18. The petitioner is 54 years old. As he is under age 65, a disability determination is required for the SSI-related Medicaid program.

19. The petitioner applied for Medicaid with the Department on February 23, 2015 and April 2, 2015. The findings also show the applications from February and April 2015 did not include a disability report to have disability established by the DDD office. The findings show SSA made a determination the petitioner was not disabled on May 8, 2014. The petitioner asserted that he had a second stroke on February 9, 2015

causing additional problems. DDD determined the petitioner's onset of disability beginning March 2015, as it was the first month retroactive to the June 2015 application. However, the petitioner has an application dated April 2, 2015. Three months of retroactive coverage to the April 2, 2015 application includes February 2015, which is the month for which the petitioner is seeking eligibility. In accordance with the above controlling authorities, the undersigned concludes the petitioner's eligibility for February 2015 is a retroactive month to an application.

20. Based on the evidence and testimony presented, the above-cited rules and regulations, the undersigned concludes the Department's action to deny Medicaid under the SSI-Related (Adult) Medicaid Program without considering February 2015 a retroactive month from a prior application was an oversight. The undersigned remands the case to the Department for a determination of eligibility for the month of February 2015.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is granted and remanded to the Department for a determination of eligibility. The Department is to determine eligibility for the month of February 2015 following its policy on retroactive Medicaid and issue written notice to include appeal rights, to both petitioner and the representative.

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 14 day of January, 2016,

in Tallahassee, Florida.



Melissa Roedel
Hearing Officer
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Copies Furnished To: [REDACTED] Petitioner
Office of Economic Self Sufficiency