

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

FILED

SEP 10 2009

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-01722

PETITIONER,

Vs.

CASE NO.

FLORIDA DEPT OF CHILDREN AND FAMILIES
CIRCUIT: 09 Orange
UNIT: ADA Waiver

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned hearing officer convened an administrative hearing in the above-referenced matter on April 16, 2009, in Orlando, Florida. The petitioner did not appear. The petitioner's mother and authorized representative, _____ appeared for the petitioner. Brevin Brown, senior attorney for the Agency for Health Care Administration, appeared and represented the Agency via telephone. Carol Schultz, medical health care program analyst, and Wendy Smith, program administrator for Medicaid services, appeared as witnesses for the Agency via telephone. Lissette Knott, human services program specialist with the Agency, and Sidney Lewis, senior human services program specialist with the Agency, appeared as witnesses in person.

The hearing was placed into continuance and re-convened on August 4, 2009, at 3:30 p.m. in Orlando, Florida. _____ appeared for the petitioner. William Porter, assistant general counsel for the Agency, appeared via

telephone. Carol Schultz, medical health care program analyst, and Dan Gabric, medical health care program analyst, appeared as witnesses for the Agency via telephone.

ISSUE

At issue is the agency's alleged denial of medical services and equipment requested by the petitioner. The petitioner bears the burden of proof in this appeal.

FINDINGS OF FACT

1. The petitioner informed her waiver support coordinator that she was in need of certain medical supplies and equipment. She was told by the support coordinator that those needs would be relayed to the Agency for approval or denial. This was never done. The waiver support coordinator is no longer in the employ of the Agency.
2. At the hearing on April 16, 2009, it was established that the waiver support coordinator did not forward any type of supply or equipment request to the Agency for consideration so no action occurred. The hearing officer ordered the petitioner to provide the Agency with a list requesting the supplies and equipment at issue and in turn, the Agency was ordered to inform the petitioner what documentation would be needed to justify approval or certification for such requests.
3. Upon receipt of such documentation, the Agency was to issue notice approving or denying each request for the hearing officer to review at the rescheduled hearing.

4. At the rescheduled hearing on August 4, 2009, the Agency moved to dismiss the appeal because the petitioner failed to provide any of the required and requested documentation needed to process a supply/equipment request. As a result, the Agency had not issued a single notice of approval or denial, leaving no action to appeal. The petitioner admitted no documentation was submitted as she was under the impression that the second hearing was the vehicle to be used for that process.

CONCLUSIONS OF LAW

Fla. Admin. Code 65-2.056 establishes:

Basis of Hearings. [emphasis original] The Hearing shall include consideration of:

(1) Any Agency action, or failure to act with reasonable promptness, on a claim of Financial Assistance, Social Services, Medical Assistance, or Food Stamp Program Benefits, which includes delay in reaching a decision on eligibility or in making a payment, refusal to consider a request for or undue delay in making an adjustment in payment, and discontinuance, termination or reduction of such assistance. (2) Agency's decision regarding eligibility for Financial Assistance, Social Services, Medical Assistance or Food Stamp Program Benefits in both initial and subsequent determination, the amount of Financial or Medical Assistance or a change in payments. ...

The above rule grants the hearing officer jurisdiction over matters which are ripe for appeal including action or failure to act by the Agency. In this case, the Agency neither approved nor denied the petitioner's request for services. What did occur was the former waiver support coordinator's failure to relay the petitioner's service and supply request to the Agency so that the Agency might

actually issue a decision of denial or approval or both. Until the Agency does so, the hearing officer lacks jurisdiction and the appeal must be dismissed. Should the petitioner receive a future denial from the Agency, she is free to appeal that decision.

DECISION

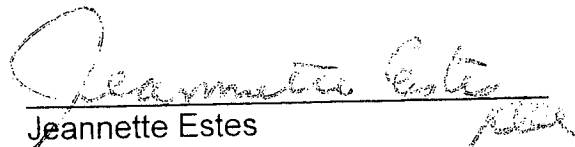
The appeal is denied and dismissed for lack of jurisdiction.

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 department has no funds to assist in this review, and any financial obligations incurred will be the petitioner's responsibility.

DONE and ORDERED this 10th day of September 2009,

in Tallahassee, Florida.


Jeannette Estes
Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
850-488-1429

Copies Furnished To