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JUL 14 2009

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

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DEPT. OF CHILDREN & FAMILIES

PETITIONER,
Vs.

APPEAL NO. 09F-02729

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 05 Hernando
UNIT: 88006

CASE NO. 1277525919

RESPONDENT.
_____ /

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned-hearing officer on May 14, 2009, at 3:10 p.m., in Brooksville, Florida. The hearing officer appeared by telephone. The petitioner was not present. Present representing the petitioner was her son, _____ Present as witnesses for the petitioner were _____ officer manager, _____ and _____ director of social services, _____

The Department was represented by Norman Crum with the Benefit Recovery Program.

ISSUE

The petitioner is appealing the Department's action of March 23, 2009, to establish a Medicaid overpayment claim of \$36,989.39 which occurred from April 2008 through February 2009. The overpayment is considered client error.

The Department had the burden of proof.

FINDINGS OF FACT

1. On December 29, 2007, the petitioner was admitted into [redacted] and Rehabilitation Center, a skilled nursing facility. On January 10, 2008, the petitioner's son submitted an application for Institutional Care Program (ICP) benefits on behalf of the petitioner. The Department of Elder Affairs, CARES completed a level of care determination and on January 28, 2008 they determined that the petitioner met the level of care criteria effective December 28, 2007.

2. On February 15, 2008 the petitioner was discharged from [redacted] to an assisted living facility as she no longer was in need of skilled nursing services. On February 18, 2008, the petitioner was hospitalized. On February 27, 2008 the petitioner was discharged from the hospital and was admitted into [redacted] a skilled nursing facility.

3. The petitioner incurred expenses while she was a resident of [redacted] from at least April 2008 through at least February 2009 that Medicaid paid. The total amount paid by Medicaid during this period was \$36,989.39.

4. On February 9, 2009, the petitioner submitted an application for ICP benefits. On the application, the petitioner indicated that she was a resident of [redacted]

[redacted] This was the first time that the Department became aware that the petitioner was not a resident of [redacted]

and that she was residing at [redacted]. The Department requested a level of care determination from the Department of Elder

Affairs, CARES. The notification of level of care was dated March 30, 2009, which stated that the petitioner met the level of care and that the effective date of the level of care was April 3, 2008 (Respondent's Composite Exhibit 14).

5. The Department determined that the petitioner was not eligible to receive ICP Medicaid from April 2008 through February 2009 because she did not meet the criteria of appropriate placement because a level of care was not established when she was admitted to

6. On March 23, 2009, the Department notified the petitioner that she received a Medicaid overpayment of \$36,989.39 which occurred from April 2008 through February 2009. The overpayment is considered client error because the petitioner did not report that she had been admitted to

7. During the hearing, the Department determined that the petitioner did not receive a Medicaid overpayment during the retroactive months of November 2008, December 2008 and January 2009 and for February 2009 because CARES determined that she met the level of care criteria when she applied for ICP benefits on February 9, 2009.

8. Subsequent to the hearing, the Department submitted a Notice of Overpayment dated May 29, 2009, that was mailed to the petitioner stating that the Medicaid overpayment from April 2008 through February 2009 was \$23,451.98. Attached to the above notice was a Report of Claim Determination that listed the monthly Medicaid overpayment amounts from April 2008 through October 2008. The total overpayment amount was \$23,451.98.

CONCLUSIONS OF LAW

Florida Administrative Code 65-2.060 in part states:

Evidence.

(1) The burden of proof, except where otherwise required by statutes, is on the party asserting the affirmative of an issue. The burden is upon the Department when the Department takes action which would reduce or terminate the benefits or payments being received by the recipient. The burden is upon the petitioner if an application for benefits or payments is denied. The party having the burden shall establish his/her position, by a preponderance of evidence, to the satisfaction of the hearing officer.

The Department asserts an overpayment from April 2008 through February 2009. The findings show that on January 28, 2008, the Department of Elder Affairs, CARES completed a level of care determination and determined that the petitioner met the level of care criteria effective December 28, 2007. The evidence presented did not show that subsequent to that determination that the petitioner did not meet the level of care criteria. In fact, on March 30, 2009, the Department of Elder Affairs, CARES, determined the level of care was met effective April 3, 2008. There was no evidence of any month in which the petitioner did not meet level of care where an overpayment is asserted. Therefore, the Department did not meet the burden of proof to show that an ICP overpayment occurred. Based on the above, it is concluded that the petitioner did not receive a Medicaid overpayment from April 2008 through February 2009.


DECISION

The appeal is granted. The Department's action to establish a Medicaid ICP overpayment claim from April 2008 through February 2009 is to be voided.

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 14th day of July, 2009,
in Tallahassee, Florida.


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

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