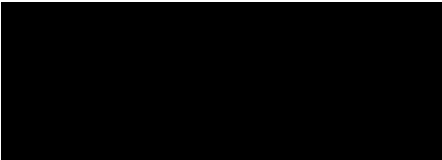


STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

FILED

MAR 31 2015

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES



APPEAL NO. 15F-00780

PETITIONER,

Vs.

CASE NO. 

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 06 Pasco
UNIT: 883CF

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on March 18, 2015 at 3:08 p.m.

APPEARANCES

For the Petitioner: 

For the Respondent: Shawnee Daniels, program specialist

STATEMENT OF ISSUE

Whether the Department improperly denied the petitioner's application for Institutional Care Program (ICP) Medicaid.

PRELIMINARY STATEMENT

The Florida Department of Children and Families (Department or DCF or respondent) determines eligibility for Family-Related and SSI-Related Medicaid programs.

By notice dated November 14, 2014, the Department informed the petitioner that her application for ICP Medicaid was denied. The notice reads in relevant part: "We did not receive all the information needed to determine eligibility."

The petitioner timely filed a request for hearing on January 7, 2015.

There were no additional witnesses for either party. Petitioner's Composite Exhibit 1 and Respondent's Composite Exhibit 1 were admitted into evidence.

The record was held open until close of business on March 19, 2015 for the submission of additional evidence. Evidence was received from the Department and admitted as Respondent's Exhibit 2.

FINDINGS OF FACT

1. The petitioner was a resident at [REDACTED] [REDACTED] in Dade City, Florida May 20, 2014 – November 26, 2014. She was in the facility recovering from an illness. The petitioner has returned to her family home. She has an outstanding nursing home bill with [REDACTED]

2. [REDACTED] and the petitioner's authorized representative, filed an application for ICP Medicaid benefits (Medicaid that pays nursing home expenses) for the petitioner on October 14, 2014 to pay for the

outstanding nursing home bill. The petitioner requested retroactive Medicaid coverage effective September 1, 2014 through November 30, 2014.

3. The Department issued a written request for additional information (a pending notice) to the petitioner on October 16, 2014. The notice reads in relevant part:

We need the following information by October 27, 2014.

Please Complete and sign the "Financial Information Release" form
Other - please see comments below

CASE PENDING LOC, VERIF OF LIBERTY PREMIUM, BK STMTS FOR 7/14 TO CURRENT, FINANCIAL
RELEASE FORM (2613) SIGNED BY THE CLIENT OR A COPY OF THE POA OR DESIGNATED REP FORM FOR
THE PERSON WHO DOES SIGN. PLEASE LEAVE DATES BLANK

4. The Department denied the petitioner's application on November 14, 2014 for failure to return the Financial Information Release form, CF-ES-2613. The petitioner submitted all of the other requested information.

5. The petitioner's representative asserted that she did not receive any written notices from the Department, neither the request for additional information/pending notice nor the denial. The representative works at the front desk at [REDACTED] and is the person who receives the facility's mail from the postal worker. She discovered that the application was denied in late 2014 or early 2015 by accessing her online account which allows her to electronically monitor the case status. She was locked out of her online account for several weeks, around the time of the application, due to password issues and did not regain access to the account until after the application was denied.

6. When questioned about how she knew to submit the other items listed on the pending notice without reading the notice, the representative explained that she processes of all the Medicaid applications for [REDACTED] residents. She is familiar with

the information needed by the Department to process ICP Medicaid applications and submits that verification on or soon after the date of application on her own initiative.

7. Both notices (pending and denial) were sent to the address of record on the petitioner's file [REDACTED] via the U.S. Postal service, regular mail. The pending notice was addressed to [REDACTED]. The denial notice was addressed to [REDACTED] (see pages 9 and 16 of Respondent Exhibit 1). The Department makes a note in the electronic case record when mail returns. In addition, the Department scans a copy of the returned document(s) into its Document Imaging system. There is no record of returned mail in the instant case during the period at issue.

8. The petitioner disputed receipt of the pending and denial notices. Due to the disputed fact, the undersigned must make the finding. The Department issued the notices through its standard business practices to the address of record for the petitioner. The notices did not return to the Department. The undersigned relied on *Brown v. Giffen*, 281 So.2d 897 (Fla. 1973) for the presumption of receipt when no evidence to the contrary. The undersigned finds that the petitioner's designated representative did receive the pending and denial notices.

CONCLUSIONS OF LAW

9. 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 § 409.285, Fla. Stat.

10. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code § 65-2.056.

11. In accordance with Fla. Admin. Code § 65-2.060 (1), the burden of proof was assigned to the petitioner.

12. The Fla. Admin. Code R. 65A-1.203(9) defines representative:
"Authorized/Designated Representative: An individual who has knowledge of the assistance group's circumstances and is authorized to act responsibly on their behalf."

13. [REDACTED] is the petitioner's authorized represented and acted on her behalf in this case.

14. The Fla. Admin. Code R 65A-1.205, Eligibility Determination Process, sets forth the time frame for an applicant to provide additional information:

(1)(c) If the eligibility specialist determines during the interview or at any time during the application process that the applicant must provide additional information...the eligibility specialist must give the applicant written notice to provide the requested information or to comply, allowing ten calendar days from request or the interview, whichever is later... If the applicant does not provide required verifications or information by the deadline date the application will be denied, unless the applicant requests an extension or there are extenuating circumstances justifying an additional extension.

15. The cited authority explains that the Department must issue a written notice to an applicant when additional information is need to complete the determine eligibility.

The Department must allow 10 calendar days from the date of the pending notice for the applicant to provide the information. When not provided, the application will be denied unless there is a request for an extension or there are extenuating circumstances.

There was no evidence of either of the exceptions.

16. Fla. Admin. Code 65A-1.713 (2) "SSI-related Medicaid Income Eligibility Criteria" explains that for all SSI-related coverage groups, the Department follows SSI policy specified in 20 C.F.R. Fla. Admin. Code 65A-1.712 (2), "SSI-Related Medicaid Resource eligibility Criteria" also explains that the Department follows SSI policy in 20 C.F.R.

17. Federal Regulations at 20 C.F.R. §416.207 "You do not give us permission to contact financial institutions" states in relevant part:

(a) To be eligible for SSI payments you must give us permission to contact any financial institution and request any financial records that financial institution may have about you. You must give us this permission when you apply for SSI payments or when we ask for it at a later time. You must also provide us with permission from anyone whose income and resources we consider as being available to you, i.e., deemors (see §§416.1160, 416.1202, 416.1203, and 416.1204)... (g) If you don't give us permission to contact any financial institution and request any financial records about you when we think it is necessary to determine your SSI eligibility or payment amount, or if you cancel the permission, you cannot be eligible for SSI payments. Also, except as noted in paragraph (h), if anyone whose income and resources we consider as being available to you (see §§416.1160, 416.1202, 416.1203, and 416.1204) doesn't give us permission to contact any financial institution and request any financial records about that person when we think it is necessary to determine your eligibility or payment amount, or if that person cancels the permission, you cannot be eligible for SSI payments. This means that if you are applying for SSI payments, you cannot receive them. If you are receiving SSI payments, we will stop your payments.

18. January 11, 2013, the Department's Chief of Program Policy issued

Transmittal No.: I-13-01-0001. The transmittal explains that a Financial Information Release form, CF-ES-2613, must be received for all SSI-Related Medicaid applicants, this includes ICP Medicaid applicants.

19. The findings show that the Department issued a written request for additional information to the petitioner's authorized representative on October 16, 2014. The information needed was a financial release form due on October 27, 2014. The petitioner's authorized representative did not provide all of the requested information required to complete the ICP application. The Department denied the application on November 14, 2014.

20. After carefully reviewing the evidence and controlling legal authorities, the undersigned concludes that the petitioner failed to meet her burden of proof. The Department's decision was correct.

DECISION

The appeal is denied. The Department's decision 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.

FINAL ORDER (Cont.)

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DONE and ORDERED this 31st day of March, 2015,

in Tallahassee, Florida.



Leslie Green

Hearing Officer

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