

FILED

Nov 03 2015

Office of Appeal Hearings
Dept. of Children and Families

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



APPEAL NO. 15F-4216

PETITIONER,

Vs.

CASE NO. 

FLORIDA DEPT OF CHILDREN AND FAMILIES
CIRCUIT: 10 POLK
UNIT: 88222

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on September 3rd, 2015 at 1:00 p.m.

APPEARANCES

For the Petitioner: Petitioner was not present, but was represented by 
 and 

For the Respondent: Stephanie Camfield, Esq., District Legal Counsel for the Department of Children and Families.

STATEMENT OF ISSUE

The petitioner is appealing the denial of Institutional Care Program (ICP) benefits for June 2014 through November 2014. The petitioner carries the burden of proving his position by a preponderance of the evidence.

PRELIMINARY STATEMENT

Appearing as a witness for the petitioner was [REDACTED] the petitioner's legal guardian.

Appearing as a witness for the respondent was Kane Lamberty, Senior Human Services Program Specialist for the Department of Children and Families.

The petitioner submitted documents pre-marked A-F which were moved into evidence as exhibits 1 through 6.

Respondent's Exhibits 1 through 6 were moved into evidence. (The respondent also submitted copies of excerpts from the Department's Manual Policy Manual to support its position at the hearing. Administrative note was made of these documents, but they were not marked as exhibits.)

The hearing was originally scheduled for June 17th, 2015. Continuances were granted for July 30th, and September 3rd, 2015, both times at the request of the petitioner.

The record was held open until the close of business September 18th, 2015 to allow counsel for both parties to submit proposed orders. Petitioner submitted a proposed order within the allowed time frame. Respondent did not submit a proposed order, and did not request an extension to do so.

By way of a Notice of Case Action dated August 12th, 2014, the respondent informed the petitioner that his Medicaid application/review dated June 12th, 2014 was

denied for June 2014 through September 2014. The reason stated on the notice is "We did not receive all the information requested to determine eligibility."

By way of a Notice of Case Action dated October 3rd, 2014, the respondent informed the petitioner that his Medicaid application/review dated September 2nd, 2014 was denied for September 2014. The reason stated on the notice is "We did not receive all the information requested to determine eligibility."

By way of a Notice of Case Action dated November 18th, 2014, the respondent informed the petitioner that his Medicaid application/review dated October 17th, 2014 was denied for July 2014 through December 2014. The reason stated on the notice is "We did not receive proof of the value of assets."

By way of a Notice of Case Action dated December 29th, 2014, the respondent informed the petitioner that his Medicaid application/review dated November 24th, 2014 was denied for August 2014 through February 2015. The reason stated on the notice is "The value of your assets is too high for this program."

By way of a Notice of Case Action dated January 30th, 2015, the respondent informed the petitioner that his Medicaid application/review dated December 30th, 2014 was denied for September 2014 through March 2015. The reason stated on the notice is "We did not receive all the information requested to determine eligibility."

The respondent subsequently established eligibility for the petitioner for ICP benefits effective December 2014 and ongoing. With this last action, the petitioner was also seeking, and still seeks, eligibility for June 2014 through November 2014. However,

no Notice of Case Action to this effect was submitted into evidence. The petitioner was seeking eligibility for June 2014 through November 2014.

On May 7th, 2015, the petitioner filed an appeal to challenge the respondent's position that eligibility could not be established for June 2014 through November 2014. Absent evidence to the contrary, the appeal is considered to have been filed timely.

FINDINGS OF FACT

1. The petitioner, then [REDACTED] years of age, was admitted to [REDACTED] [REDACTED] on [REDACTED]. At the time of admittance, the petitioner was found to be [REDACTED] and not capable of either acting for himself or making his own decisions. There was nobody known, family or non-family, who could either act or make decisions in the petitioner's stead.

2. On June 12th, 2014, a representative of [REDACTED] submitted an application for ICP Medicaid benefits on the petitioner's behalf. (ICP Medicaid covers the cost of nursing home residence.)

3. As part of the application process, the respondent is required to explore and verify all factors of eligibility which include, but are not limited to, the value of all countable assets.

4. The respondent issued a Notice of Case Action dated August 12th, 2014 notifying the [REDACTED] representative that the petitioner's application was denied. The reason stated on the notice was "We did not receive all the information requested to

determine eligibility.” The respondent did not submit any evidence that any information had been requested.

5. On September 2nd, 2014, a representative of ██████ submitted an application for ICP Medicaid benefits on the petitioner’s behalf.

6. The respondent issued a Notice of Case Action dated October 3rd, 2014 notifying the ██████ representative that the petitioner’s application was denied. The reason stated on the notice was “We did not receive all the information requested to determine eligibility.” The respondent did not submit any evidence that any information had been requested.

7. On October 17th, 2014, a representative of ██████ submitted an application for ICP Medicaid benefits on the petitioner’s behalf.

8. The respondent issued a Notice of Case Action dated November 18th, 2014 notifying the ██████ representative that the petitioner’s application was denied. The reason stated on the notice was “We did not receive proof of the value of assets.” The respondent did not submit any evidence that proof of any assets had been requested.

9. On November 18th, 2014, the petitioner’s witness was granted Letters of Plenary Guardianship of the Person and Property of the petitioner.

10. On November 24th, 2015, an application for ICP Medicaid benefits was submitted on the petitioner’s behalf.

11. The respondent received an alert dated November 19th, 2014 from its Data Exchange system (the system that collects data from various sources to be used in

determining an individual's eligibility for benefits) indicating that the petitioner was the owner of a bank account at [REDACTED] (account ending in [REDACTED]). The alert ("DEAV") indicates that in June 2014, the account had an ending balance of \$14,526.13; in July, 2014 \$14,517.88; in August and September 2014, \$14,370.94, and October and November 2014, \$14,362.69. The information contained in the system alert is considered to be verified upon receipt.

12. As the monthly balance(s) exceed the asset limit of \$2,000, the respondent determined that the petitioner was ineligible for ICP Medicaid benefits, irrespective of its position that it had not received any verification of assets from the petitioner.

13. The respondent issued a Notice of Case Action dated December 29th, 2014 notifying [REDACTED] that the petitioner's application of November 24th, 2014 was denied. The reason stated on the notice was "The value of your assets is too high for this program."

14. Upon appointment as the petitioner's legal guardian (as described above), the petitioner's witness was allowed access to the petitioner's bank account and was able to transfer the money into a "pooled special needs fund" and spend the balance down, to the extent that the petitioner has since been found eligible for ICP Medicaid funds effective December 2014.

15. As established above, the petitioner seeks eligibility for June 2014 through November 2014. The petitioner contends that because the petitioner was found to be [REDACTED] and not capable of either acting for himself or making his own decisions from the time of his admission into [REDACTED] the assets in question should have been considered to be unavailable to the petitioner. Assets considered to be unavailable are

excluded as countable assets; therefore, the petitioner should have been determined eligible for ICP Medicaid benefits.

PRINCIPLES OF LAW AND ANALYSIS

16. 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.

17. This hearing was held as a *de novo* proceeding pursuant to Fla. Admin. Code R. 65-2.056.

18. The Fla. Admin. Code R. 65A-1.712, SSI-Related Medicaid Resource Eligibility Criteria, sets forth: "(1) Resource Limits. If an individual's total resources are equal to or below the prescribed resource limits at any time during the month the individual is eligible on the factor of resources for that month. The resource limit is the SSI limit specified in Rule 65A-1.716, F.A.C..."

19. The Fla. Admin. Code R. 65A-1.716 sets forth, "(5) SSI-Related Program Standards. (a) SSI (42 U.S.C. §§ 1382 – 1383c) Resource Limits: 1. \$2000 per individual. 2. \$3000 per eligible couple."

20. The Department's Program Policy Manual, 165-22, section 1640.0319 Comatose Individual (MSSI, SFP), states, "Any asset owned by a **comatose** individual will be excluded when there is no known legal guardian or other individual who can access the asset." [*Emphasis added.*]

21. The above guidelines stipulate that in order to qualify for SSI-related Medicaid, an individual must own no more than \$2,000 in countable assets. The undisputed evidence shows that from at least June 2014 through at least November 2014, the petitioner owned at least one bank account that carried monthly balances in excess of \$14,000.

22. The above guidelines also stipulate that an asset will be excluded from consideration if said asset is owned by a comatose individual and there is no legal guardian or other individual who can access the asset. The hearing officer reviewed the regulations and finds nothing to support excluding an asset in any other circumstance. A review of the evidence in its totality indicates that although the petitioner had medical impairments that prevented him from accessing the bank account in question, the petitioner submitted no evidence to indicate that the petitioner was, specifically, comatose. Therefore, the hearing officer affirms the respondent's consideration of this asset in determining the petitioner's eligibility.

23. The hearing officer notes that the stated reason for the respondent's denial of ICP Medicaid benefits for the period of June 2014 through November 2014 was that the petitioner failed to provide proof of the value of his assets. As the respondent submitted no evidence to verify that such proof was properly requested, the hearing officer does not affirm the respondent's reason for denial of these benefits.

24. However, because the evidence shows that the petitioner's assets exceeded the limit as described above, the hearing officer concludes that the petitioner was, in fact, ineligible, and therefore, concludes that the denial of ICP Medicaid from June 2014 through November 2014 is correct.

DECISION

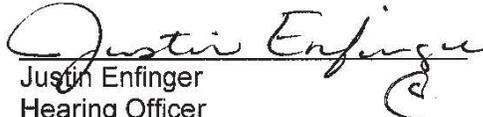
Based on the foregoing Findings of Fact and Principles of Law, this appeal is denied, and the respondent's action is upheld.

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 indigence 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 3rd day of November, 2015,

in Tallahassee, Florida.



Justin Enfinger
Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
Office: 850-488-1429
Fax: 850-487-0662
Email: Appeal.hearings@myFLfamilies.com

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