

FILED

Dec 31, 2015

Office of Appeal Hearings
Dept. of Children and Families

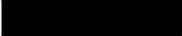
STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS



APPEAL NO. 15F-08193

PETITIONER,

Vs.

CASE NO. 

FLORIDA DEPARTMENT
OF CHILDREN AND FAMILIES
CIRCUIT: 11 DADE
UNIT: 66701

D - DDD - Disability

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on December 16th, 2015 at 1:30 p.m. in Miami, Florida.

APPEARANCES

For the Petitioner:  pro se.

For the Respondent: Marcela Osorio, Operations Management Consultant for the Economic Self-Sufficiency program.

STATEMENT OF ISSUE

The petitioner is appealing the termination of his Medicaid benefits. The respondent carries the burden of proving its position by a preponderance of the evidence.

PRELIMINARY STATEMENT

The hearing was originally scheduled to be held telephonically on November 18th, 2015. The petitioner requested that the hearing be rescheduled as an in-person forum. A continuance was granted, and the hearing convened as described above.

Petitioner's exhibits 1 through 13 were moved into evidence.

Respondent's exhibits 1 through 3 were moved into evidence.

No Notice of Case Action setting forth the issue under appeal was presented at the hearing. On September 25th, 2015, the petitioner filed an appeal to challenge the respondent's action.

The record was held open until the close of business December 23rd, 2015, to allow the respondent to submit the Notice of Case Action in question. The respondent submitted a notice dated May 13th, 2015 indicating that his Medicaid would end on May 31st, 2015. However, the Findings of Fact will show that the action under appeal was taken on July 23rd, 2015, 62 days following the date of the notice submitted. No Notice of Case Action corresponding to the July 23rd action was submitted. Therefore, the hearing officer will consider the appeal to have been timely filed, and the merits of the appeal will be addressed.

FINDINGS OF FACT

1. Prior to the action under appeal, the petitioner was a recipient of SSI-related Medicaid benefits due to having been determined disabled by the Department of Health's Division of Disability Determinations (DDD).

2. The petitioner is a single male, [REDACTED]. The petitioner alleges that he suffers from [REDACTED] which results in shortness of breath if he speaks for too long, [REDACTED] and [REDACTED] due to [REDACTED]. Additionally, the petitioner has a [REDACTED] occasioned by a [REDACTED] and three subsequent [REDACTED]. The petitioner also suffered a skiing accident in February of 2001, which required [REDACTED]. The petitioner's exhibits are medical statements attesting to his various conditions.

3. On May 1st, 2011, DDD found the petitioner to be disabled, and determined that a review of the petitioner's disabling conditions would be necessary in August 2014.

4. The respondent neglected to take the appropriate timely action to review the petitioner's eligibility for ongoing Medicaid effective September 2014. Consequently, the petitioner continued to receive Medicaid through at least May 2015.

5. On June 29th, 2015, the respondent completed a disability determination interview with the petitioner. The respondent then forwarded medical records supplied by the petitioner to DDD for a determination of the petitioner's continuing eligibility for SSI-related Medicaid.

6. On July 23rd, 2015, DDD found the petitioner no longer to be disabled, and denied the petitioner's application with reason code N31, which states "Nonpay Capacity for SGA [*Substantial Gainful Activity*] – customary past work, no visual impairment."

7. There was no representative from DDD at the hearing to attest to the actions it took.

CONCLUSIONS OF LAW

8. The Department of Children and Families Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties, pursuant to §120.80, Fla. Stat. This order is the final administrative decision of the Department of Children and Families under § 409.285, Fla. Stat.

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

10. Hearsay is defined by § 90.801(1)(c), Fla. Stat. as “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.”

11. Fla. Stat. § 120.57(1)(c) states in pertinent part:

“[h]earsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.”

12. Florida Administrative Code 28-106.213 Evidence, states in relevant part:

(3) Hearsay evidence, whether received in evidence over objection or not, may be used to supplement or explain other evidence, but shall not be sufficient in itself to support a finding unless the evidence falls within an exception to the hearsay rule as found in Sections 90.801-.805, F.S.

13. Florida Statutes 90.803 addresses hearsay exceptions, and states in relative part:

(6) RECORDS OF REGULARLY CONDUCTED BUSINESS ACTIVITY.-
a) A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinion, or diagnosis, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity and if it was the regular practice of that business activity to make such memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, or as shown by a certification or declaration that complies with paragraph (c) and s. [90.902](#)(11), unless the sources of information or other circumstances show lack of trustworthiness. The term "business" as used in this paragraph includes a business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

14. The Fla. Admin. Code R. 65-2.060 addresses burden of proof, and states as follows:

(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.

15. Indisputably, the respondent took action to terminate the petitioner's Medicaid based on instruction from DDD. However, testimony regarding DDD's decision constitutes hearsay, as there was no representative from DDD to explain its decision or to address the petitioner's contentions.

16. Authorities cited above set forth the rules for assigning the burden of proof in an administrative hearing. The respondent carries the burden of proof in this appeal as

it terminated the petitioner's benefits due to DDD's decision that the petitioner was no longer disabled. However, there was no evidence or testimony that could be relied on to prove the correctness of DDD's decision. Therefore, the hearing officer concludes that the respondent failed to meet its burden of proof at the hearing that termination of Medicaid benefits was correct.

17. Given that the respondent could not explain the reason DDD determined that the petitioner was no longer disabled, the hearing officer hereby remands the appeal to the respondent. The respondent will, within ten days from the date of this order, reinstate the petitioner's Medicaid for any months lost due to its action to terminate said benefits. The respondent will also complete a new Medicaid disability determination. The petitioner will need to cooperate in this process. The respondent will then issue written notice with the outcome of the determination, and the notice will include appeal rights should the petitioner disagree with the outcome. This order does not guarantee ongoing future Medicaid eligibility for the petitioner; it merely affords the petitioner another opportunity for a complete eligibility review.

DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, this appeal is granted and remanded to the respondent in accordance with the above conclusions.

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 31 day of December, 2015,

in Tallahassee, Florida.



Justin Enfinger
Hearing Officer
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Copies Furnished To: [REDACTED] Petitioner
Office of Economic Self Sufficiency