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SEP 24 2009

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

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DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-04323

PETITIONER,

Vs.

CASE NO. 1170873031

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 19 Martin
UNIT: 88500

RESPONDENT.
_____ /

FINAL ORDER

Pursuant to notice, an administrative hearing convened before the undersigned hearing officer on August 27, 2009, at 10:55 a.m., in Stuart, Florida. The petitioner was not present. Her son, _____ was present and allowed _____; director of social services, _____ to represent his mother. Peter Burbine, ACCESS supervisor, represented the Department.

A continuance was granted for a prior scheduled hearing to give the opportunity to get written authorization from the petitioner's son to represent the petitioner in this matter.

ISSUE

At issue is the action taken by the Department to terminate and subsequently deny Institutional Care Program (ICP) Medicaid for February 2009.

FINDINGS OF FACT

1. Prior to the action under appeal, the petitioner was receiving ICP Medicaid. On May 17, 2008, the petitioner moved into a different nursing home. The Department's representative believes the certification period for those benefits expired on December 31, 2008. The evidence presented at the hearing shows that ICP Medicaid was closed effective January 31, 2009. The Department's case record notes show the case was closed for failure to return an Interim Contact form (Respondent's Exhibits 5 & 3).
2. The Department asserts it sent an Interim Contact form to the petitioner on November 21, 2008 in order to determine her continued eligibility for ICP benefits. The Department did not reproduce the notice to show when it was sent, to what address it was sent, to whom it was sent, or the deadline date for its return, but believes it would have been sent to the petitioner with a nursing facility's address. It was unknown if it was sent to the current facility or the previous facility. The Department's representative further explained that if her son's name was listed as an authorized representative, he would have received an Interim Contact form also.
3. Neither the petitioner's son nor the current facility recall receiving an Interim Contact form, citing that if they did, they would have completed it and sent it to the Department as directed. The petitioner's son asserts that he does not receive any correspondence from the Department concerning his mother, only from the Social

Security Administration. The petitioner's representative suggested that it could have gone to the previous facility, but it was not forwarded to the current facility. She explained that her facility's practice is to notify the Department of the new facility and address when a resident transfers from their facility. She assumed the transferring facility notified the Department of the change in facility and address, but thought she notified the Department of the address change before December 31, 2008. The Department noted in its Running Record Comments that no one reported a change of address for the case to be updated until the current application (Respondent's Exhibit 3).

4. The undersigned cannot make a finding that the Interim Contact form was sent, as asserted by the Department.

5. When the Interim Contact form was not returned timely, the Department closed the ICP Medicaid.

6. On June 22, 2009, an application for ICP was submitted to the Department on the petitioner's behalf. Retroactive Medicaid was requested for February 2009 forward. The Department explained that it could only provide retroactive Medicaid for three months prior to the application date, and approved ICP Medicaid effective March 2009 and ongoing (Respondent's Exhibit 1). Notice of denial for the retroactive request was sent on June 30, 2009 (Respondent's Exhibit 1). The Department could not explain why the Notice of Case Action had Temporary Cash Assistance/Refugee Assistance Program as the heading.

CONCLUSIONS OF LAW

The Department's ACCESS CUSTOMER SERVICE CENTER GUIDE on pages 29 and 30 explain the process for an Interim Contact and states:

Interim Contact Process:

Review and process data exchange. Telephone the customer or representative. During the call:

- Determine if case information is current.
 - Discuss any information received via data exchange.
 - Discuss any changes.
 - Discuss any discrepancies.
 - Process the interim contact within ten calendar days of completing the call or from the date the department receives the form.
 - When interim contact information is received from recipient, update IMS.
 - If verification is required, attempt to obtain by phone. If unsuccessful, send a pending letter via FLORIDA or IMS.
 - If the customer or representative fails to return the Interim Contact Form or fails to provide the required verification; process the case according to policy for the various programs.
 - Determine the appropriate track for the case after completing the current action.
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- Update AITR if there is a change in the track. Enter the Interim Contact date in the "INTERVIEW DATE" field at the top of the AITR screen for **green track** cases.
 - Following verification receipt and eligibility determination, authorize benefits and document CLRC.
 - Assign a new twelve-month certification period on FLORIDA.

Note: If the specialist is unable to contact the customer by telephone, send an Interim Contact Form via FLORIDA, requiring the customer or representative to contact the specialist or return the form within ten days. For HCBS waiver programs, contact the case manager who ensures the customer or designated representative follows through with the eligibility review. Interim Contacts do not require the Rights and Responsibilities form.

The petitioner is a resident in a skilled nursing facility. She moved from one facility to another in May 2008. Her ICP Medicaid benefits ended on January 31, 2009 when the Department closed her case.

The Department held the burden of proof. The Department argues that an Interim Contact form was sent on November 21, 2008 for information to determine the petitioner's continued eligibility for ICP Medicaid. The Interim Contact form was not presented as evidence and the Department speculated as to whom and where it was sent. The petitioner's family and representative argue that they did not receive it, and if they had, they would have completed it and sent it back. The undersigned cannot make a finding that this form was sent.

According to the above cited authority, the Department is instructed to make a phone call first to the member or representative to gather information, send an Interim Contact form if they cannot be reached, and process the interim contact within 10 days from completing the call or receiving the form. Even if the Department chose not to make a phone contact with the petitioner or family member for the review, there is no finding that the Interim Contact form was sent. Therefore, the Department's action to terminate ICP Medicaid effective February 2009 cannot be upheld and is reversed. The Department is hereby ordered to authorize ICP Medicaid beginning February 2009.

DECISION

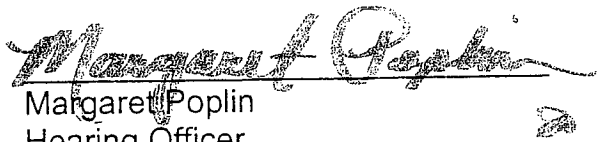
The appeal is granted for the reasons stated in the Conclusions of Law. The Department's termination action is reversed.

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 24th day of September, 2009,

in Tallahassee, Florida.



Margaret Poplin
Hearing Officer
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