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OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

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

APPEAL NO. 09F-06396

PETITIONER,

Vs.

CASE NO. 1243177896

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 01 Escambia
UNIT: 88638

RESPONDENT.

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FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on November 18, 2009, at 3:45 p.m., in Pensacola, Florida. The petitioner was not present but was represented by his wife . The Department was represented by Marixsa Griffith, economic self-sufficiency specialist II. Testifying on behalf of the Department was Shanta Jones, economic self-sufficiency specialist I.

The hearing was originally scheduled to be held on November 10, 2009 but was continued because the service center was closed as a result of Tropical Storm Ida. Subsequent to the hearing, the record was held open for 14 days or until December 2, 2009 to allow both parties to present additional evidence. The Department presented additional evidence which was entered as Respondent's Exhibit 17.

ISSUE

1. The petitioner is appealing the Department's action of August 31, 2009 to terminate Institutional Care Program (ICP) and Medicaid benefits based on the contention that household income is too high to qualify for this program. The Department bears the burden of proof.
2. Also at issue is the petitioner's patient responsibility for the months of April through September 2009. The petitioner bears the burden of proof in this matter.

FINDINGS OF FACT

1. The petitioner is a resident of a nursing home in Escambia County, Florida. His income consists of retirement from International Paper Company of $827.52 and Social Security income of $1,242. The petitioner's total income is $2,069.52. As the petitioner's income exceeded allowable income limits for the Institutional Care Program (ICP), he was required to establish and fund an Irrevocable Medicaid Income Trust.
2. The Declaration of Trust and Trust Agreement, Irrevocable Medicaid Income Trust was entered into on May 23, 2006 naming the petitioner's wife, ;, as the trustee. The trust document states, "the Settlor's gross monthly entitlement, pension, and retirement income from Social Security and other sources is more than the Florida Medicaid Institutional Care Program (Medicaid ICP) income cap, thus making the Settlor ineligible

for said Medicaid ICP benefits." The trust also states, "the Trustee...shall receive, deposit, or cause to be deposited into the trust or trust account all of the Settlor's monthly entitlements, pension, and retirement income and any other income received by the Settlor from any source whatsoever at any time in the future."

3. The representative and trustee ˉunded the income trust and established ICP Medicaid eligibility effective from at least June 1, 2007 (Respondent's Exhibit 3).
4. The trustee of the qualified income trust is required to provide quarterly statements identifying the deposits made to the trust for each month (Respondent's Exhibit 15). The Department sent the petitioner Request for Information forms dated March 5, 2008, June 4, 2008 and August 25, 2008 requesting copies of the last three months of income trust bank accounts be provided (Respondent's Exhibit 15 and 8). The bank statements were submitted as requested. The statements show the trust account was funded in March 2008, April 2008, June 2008 and August 2008. The petitioner failed to make deposits for the month of May and July 2008.
5. On July 15, 2009, the representative was pended for Income Trust bank statements for the months of September 2008 through June 2009. The bank statements show the trust was funded from September through November

2008. It was noted that the trust had not been funded from December 2008 through at least August 2009.

6. The Department determined the petitioner was no longer eligible for ICP and Medicaid benefits because the trustee failed to fund the trust resulting in excess income. A termination notice was mailed to the petitioner on August 31, 2009 ending ICP benefits effective September 30, 2009.
7. The trustee began to make deposits to the Irrevocable Medicaid Income Trust in September 2009 and reestablished eligibility. The petitioner has lost no benefits as a result of the Department's action.
8. The Department made a referral to the Benefit Recovery Program (BRP) for possible overpayment for the months the trustee failed to fund the income trust. The BRP unit has not yet determined if there is to be an overpayment claim. The petitioner's wife was advised that she may appeal this action should BRP establish an overpayment claim.
9. The petitioner is also appealing the Department's action to increase the patient responsibility for the months of April 2009 through September 2009. Prior to this action, the petitioner has a zero patient responsibility. On or about March 14, 2009, the representative reported that she began receiving rental income of $900 monthly. Based on the reported income, the Department determined the patient responsibility would increase from zero to $195.52 for the months of April 2009 through September 2009.

10. The Department determined the increased patient responsibility for April 1, through September 2009 as follows. The petitioner's gross income was $2.069.52. His spouse's rental income was $900. The spouse was allowed a standard utility allowance of $198, mortgage, homeowner's insurance and property taxes totaling $1,608.55. There was no evidence provided to show the amount of the mortgage, homeowner's insurance or property taxes on her homestead used by the Department in its calculation of shelter costs. The Minimum Monthly Maintenance Income Allowance (MMMIA) is the basic monthly allowance the state recognizes for a community spouse. The state's minimum monthly maintenance income allowance is based on 150% of the poverty level for two individuals. The MMMIA used was $1,750. The Department subtracted 30% of the MMMIA ($525) from the shelter costs to arrive at excess shelter costs of $1,083.55. This was added to the MMMIA of $1,750 to arrive at $2,833.55. The state's MMMIA plus the community spouse excess shelter cost cannot exceed the state's cap on community spouse income allowance which is $2,739. The allowable shelter deduction was $2,739. The Department subtracted the community spouse's income (rental income) of $900 from the allowable shelter deduction to arrive at the community spouse income allowance of $1,839. The personal needs allowance for the petitioner of $35 and community spouse maintenance need

allowance of $1,839 were subtracted from the petitioner's total gross unearned income of $2,069.52 to arrive at a patient responsibility of $195.52.

11. The petitioner's wife reapplied for ICP benefits on October 7, 2009. She reported that the rental income stopped. The tenants left the lease property on September 3, 2009. She provided evidence that the Income Trust was funded on September 3, 2009 to the Department. Due to the loss of rental income, the patient responsibility was reduced to zero effective October 2009.

12. The petitioner's wife asserts that she did not receive notice advising her of the increase in patient responsibility effective April 2009. She began receiving bills for the patient responsibility from at least August 31, 2009. The nursing facility bill indicated resident liability with a balance of $1,015.46. She presented a bill dated October 31, 2009 showing zero patient responsibility for October 2009 and reflecting a personal payment of $100. Further, the petitioner's wife presented correspondence dated November 13, 2009 from the business office manager of the nursing facility asserting that it did not receive a change of status notice from the Department advising them of the increase in patient responsibility. The petitioner's wife asserts she had no knowledge of a patient responsibility until she began receiving bills from the nursing home. She believes that the nursing home was advised by a telephone call from the respondent of the change in patient responsibility.

Neither she nor the nursing home received written notices advising of the increase in patient responsibility beginning April 2009.

13. The Department submitted copies of the Notice History screen showing that no notices regarding the ICP program were mailed between December 17, 2008 and August 31, 2009. A copy of the Assistance Group Inquiry (IQAA) screen showed that the notice regarding the ICP program for April 2009 was suppressed (Respondent's Exhibit 17). Based on the evidence presented the undersigned authority finds that neither the petitioner, his wife, nor the nursing facility received written notice of an increase in the patient responsibility.
14. The petitioner verbally requested a hearing on September 4, 2009 through the Department. The Department forwarded the hearing request to the Office of Appeal Hearings on October 1, 2009. The petitioner's wife is dissatisfied with the Department's delay in forwarding her request for hearing to the appropriate department delaying her opportunity for due process.
15. The representative also presented a medical bill for dental expenses incurred by the petitioner in December 2008 and January 2009. The bill was paid by personal check and credit card. The current balance remaining as of statement date September 3, 2009 is $15. She believes that the unreimbursed medical expense should be used to reduce the patient responsibility for the months at issue. The Department explained that the

patient responsibility was zero until April 2009. The medical bill would not have further reduced his patient liability.

16. Finally, the petitioner's wife asserts that she did not clearly understand the terms of the Income Trust. She acknowledged that she did not fund the trust for several months because her husband had no patient responsibility. She did not understand that she was required to make deposits to the trust every month in order to maintain his eligibility for the ICP Medicaid program.

CONCLUSIONS OF LAW

Fla. Admin. Code 65-2.048, Action to Reduce or Discontinue Assistance or Service, states in part:

> (1) In all programs other than the Food Stamp Program a hearing request filed within ten (10) days after the date of mailing or hand delivery of the notice either orally or written, requires that assistance be continued at the current level until the final written decision of the hearings Officer is rendered...

Fla. Admin. Code 65-2.049, District Procedures, states:

> (1) Any Hearing Request, submitted to the District, written or oral, must be sent by the District to the State Hearing Section within three (3) working days excluding holidays and weekends along with a statement of the matters asserted by the Department and a copy of the Notice of Case Action when such Notice exists. This must include a reference to the particular Section of the Statutes or Rules involved and be submitted with the Hearing Request. If it is an oral request, the Request for Hearing Form must be completed by District Staff, omitting the signature of the appellant.
> (2) Upon receipt of the Request for Hearing, a supervisory review is mandated. The supervisory review or interview may satisfy the appellant regarding his/her case so that a request for hearing is withdrawn. Should an error be discovered during this process, immediate action shall be taken to rectify it, and the appellant shall be so advised.

The petitioner believes her right to due process was denied due to the Department's failure to timely submit her request for hearing. The Findings show the hearing was originally requested on September 4, 2009 and again on September 8, 2009. The hearing request was received by the Office of Appeal Hearings on October 1, 2009. Although the Department failed to follow the above cited legal authority to timely submit the hearing request within three working days or September 7, 2009, the undersigned concludes the petitioner has not been denied due process, however the Department's error did cause delay in the petitioner's right to a fair hearing and final order. The Department must not create any delay in submitting hearing requests to the Office of Appeal Hearings.

ISSUE 1 – Termination of ICP based on contention that income was in excess of allowable income limits.

Fla. Admin. Code 65A-1.702(15) "Trusts" in part states:

(a) The department applies trust provisions set forth in 42 U.S.C. § 1396p(d).

(b) Funds transferred into a trust or other similar device established other than by a will prior to October 1, 1993 by the individual, a spouse or a legal representative are available resources if the trust is revocable or the trustee has any discretion over the distribution of the principal. Such funds are a transfer of a resource or income, if the trust is irrevocable and the trustee does not have discretion over distribution of the corpus or the client is not the beneficiary. No penalty can be imposed when the transfer occurs beyond the 36-month look back period. Any disbursements which can be made from the trust to the individual or to someone else on the individual's behalf shall be considered available income to the individual. Any language which limits the authority of a trustee to distribute funds from a trust if such distribution would disqualify an individual from

participation in government programs, including Medicaid, shall be disregarded.

(c) Funds transferred into a trust, other than a trust specified in 42 U.S.C. § 1396p(d)(4), by a person or entity specified in 42 U.S.C. § 1396p(d)(2) on or after October 1, 1993 shall be considered available resources or income to the individual in accordance with 42 U.S.C. § 1396p(d)(3) if there are any circumstances under which disbursement of funds from the trust could be made to the individual or to someone else for the benefit of the individual. If no disbursement can be made to the individual or to someone else on behalf of the individual, the establishment of the trust shall be considered a transfer of resources or income.

Fla. Admin. Code 65A-1.713 in part states:

SSI-Related Medicaid Income Eligibility Criteria.

(1) Income limits. An individual's income must be within limits established by federal or state law and the Medicaid State Plan. The income limits are as follows:...

(d) For ICP, gross income cannot exceed 300 percent of the SSI federal benefit rate after consideration of allowable deductions set forth in subsection 65A-1.713(2), F.A.C. Individuals with income over this limit may qualify for institutional care services by establishing an income trust which meets criteria set forth in paragraph 65A-1.702(15), F.A.C.

The Department's Policy Manual 165-22 Appendix A-9 sets forth the ICP income limit for an individual at $2,022 effective January 2009. Appendix A-10 sets forth the federal benefit rate at $674. Three hundred percent of the federal benefit rate at the time of the redetermination at issue was $2,022.

The Department's ACCESS Program Policy Manual, 165-22, Section 1840.0110 in part states:

Income Trusts (MSSI)

The following policy applies only to the Institutionalized Care Program (ICP), institutionalized MEDS-AD, institutionalized Hospice, Home and Community Based Services (HCBS) and PACE. It does not apply to Community Hospice.

To qualify, an individual's gross income cannot exceed 300 percent of the SSI federal benefit rate (refer to Appendix A-9 for the current income standard). If an individual has income above the ICP income limit, they may become eligible for institutional care or HCBS if they set up and fund a qualified income trust. A trust is considered a qualified income trust if:

1. it is established on or after 10/01/93 for the benefit of the individual;
2. it is irrevocable;
3. it is composed only of the individual's income (Social Security, pensions, or other income sources); and
4. the trust stipulates the state will receive the balance in the trust upon the death of the individual up to an amount equal to the total medical assistance paid on their behalf.

The eligibility specialist must forward all income trusts to their Region or Circuit Program Office for review and submission to the District Legal Counsel (DLC) for a decision on whether the trust meets the criteria to be a qualified income trust. Refer to Appendix A-22.1, "Guidance for Reviewing Income Trusts," for instructions on processing income trust cases.

The individual (or their legally authorized representative) must deposit sufficient income into the income trust account in the month in which the income is received to reduce their countable income (the income outside the trust) to within the program income standard. The individual must make the deposit each month that eligibility is requested. (emphasis added) This may require the individual to begin funding an executed income trust account prior to its official approval by the District Legal Counsel.

The above policy provides for the establishment of an income trust by an ICP Medicaid applicant in order to reduce monthly income below the state income limitations to allow eligibility. The findings show that an income trust was established from at least June 2007. The findings show the trustee stopped depositing petitioner's income into

the trust from at least December 2008 through August 2009. Therefore, the petitioner's total income was available to be counted in the eligibility determination process for those months. As the total gross income of $2,069.52 exceeded the Department's income limitation of $2,022, the petitioner was not eligible to receive ICP Medicaid for the months of December 2008 through August 2009. Therefore, the Department correctly terminated ICP Medicaid effective September 30, 2009. The findings show that the petitioner began funding the Irrevocable Medicaid Income trust on September 3, 2009 and that ICP benefits were restored beginning October 2009.

There has been no loss of benefits to the petitioner. Therefore, the issue in reference to termination of ICP Medicaid is moot.

ISSUE 2 Increase in patient responsibility effective April 2009 through September 2009.

Once an individual has been determined eligible for ICP benefits, it is necessary to determine what if any portion of their bill for services will be their responsibility. This is called patient responsibility. Patient responsibility is determined in accordance with Fla. Admin. Code 65A-1.711. The petitioner's actual income is used and various items may be deducted to determine what portion of his income must be paid monthly to the nursing facility. The income is different than the income standard for eligibility. The total income amount used in this appeal will include the amount that has been set aside for the income trust (ACCESS Florida Program Policy Manual 1840.0110 and 2640.0117).

The Fla. Admin. Code at 65A-1.716(5)(c) sets forth "Spousal Impoverishment Standards" as follows:

> (c) Spousal Impoverishment Standards.
> 1. State's Resource Allocation Standard. The amount of the couple's total countable resources which may be allocated to the community spouse is equal to the maximum allowed by 42 U.S.C. § 1396r-5.
> 2. State's Minimum Monthly Maintenance Income Allowance (MMMIA). The minimum monthly income allowance the department recognizes for a community spouse is equal to 150 percent of the federal poverty level for a family of two.
> 3. Excess Shelter Expense Standard. The community spouse's shelter expenses must exceed 30 percent of the MMMIA to be considered excess shelter expenses to be included in the maximum income allowance: MMIA × 30% = Excess Shelter Expense Standard. This standard changes July 1 of each year.
> 4. Food Stamp Standard Utility Allowance: $198.
> 5. Cap of Community Spouse Income Allowance. The MMMIA plus excess shelter allowance cannot exceed the maximum amount allowed under 42 U.S.C. § 1396r-5. This standard changes January 1 of each year.

The ACCESS Policy Manual, 165-22, at Appendix A-9 lists the dollar amounts for these standards effective July 2009 as:

Spousal Impoverishment	
Minimum Monthly Maintenance Income Allowance (MMMIA)**	$ 1,822
Excess Shelter Standard**	$ 547
Maximum Community Spouse Income Allowance (MMMIA plus excess shelter allowance cannot exceed this figure)	$ 2,739
Community Spouse Asset Allocation Standard	$ 109,560

The Appendix A-9 Eligibility Standards for SSI related Program effective January 2009 was

Spousal Impoverishment	
Minimum Monthly Maintenance Income Allowance (MMMIA)**	$ 1,750
Excess Shelter Standard**	$ 525
Maximum Community Spouse Income Allowance (MMMIA plus excess shelter allowance cannot exceed this figure)	$ 2,739
Community Spouse Asset Allocation Standard	$ 109,560

Based on these authorities, the respondent determined a community spouse allowance of $1,839 and a patient responsibility $195.52 effective April 2009. The respondent did not give the community spouse a deduction for the expenses related to the income producing property. However, there was no evidence to show that those expenses were provided to the Department.

Fla. Admin. Code 65A-1.714(1) in part states:

After an individual satisfies all non-financial and financial eligibility criteria for Hospice, institutional care services or ALWHCBS, the department determines the amount of the individual's patient responsibility. This process is called post-eligibility treatment of income.
(1) For Hospice and institutional care services, the following deductions are applied to the individual's income to determine patient responsibility:
(a) Individuals residing in medical institutions shall have $35 of their monthly income protected for their personal need allowance.
(b) Single veterans or surviving spouses with no dependents residing in medical institutions who receive a reduced VA Improved Pension of $90, or less, are entitled to keep their reduced VA pension payment and shall have $35 of their income protected for their personal need allowance.
(c) If the individual earns therapeutic wages an additional amount of income equal to one-half of the monthly therapeutic wages, up to $111, shall be protected for personal need. This protection is in addition to the

$35 personal need allowance.
(d) Individuals who elect hospice services have an amount of their monthly income equal to the federal poverty level protected as their personal need allowance unless they are a resident of a medical institution, in which case $35 of their income is protected for their personal need.
(e) The department applies the formula and policies in 42 U.S.C. §1396r-5 to compute the community spouse income allowance after the institutionalized individual is determined eligible for institutional care benefits. The standards used are in Rule 65A-1.716(5)(c), F.A.C. The current standard Food Stamp utility allowance is used to determine the community spouse's excess utility expenses.
(f) For community hospice cases, a spousal allowance equal to the SSI FBR minus the spouse's own monthly income shall be deducted from the individual's income.
(g) For ICP, income may be protected for the first and last months of eligibility if the individual's income for that month is obligated to directly pay for their cost of food or shelter outside of the facility...

The above regulations and rules require the Department to include the petitioner's gross income in calculating his ICP patient responsibility.

The Department's ACCESS Program Policy Manual 165-22, Appendix A-3.1 lists the food stamp standard utility allowance at $198 during the months of April through September 2009.

The State Medicaid Manual, Part 03, ***Eligibility,*** Section 3700, states in part:

Subsequent to determining Medicaid eligibility for persons living in medical and remedial care institutions...determine how much such persons contribute to the cost of their institutional care and/or waiver services. This latter calculation is referred to as the post-eligibility process. This chapter sets forth requirements for the post-eligibility process for institutional persons...3700.1 Background – Section 1902(a)(17) of the Act is the general authority for the post-eligibility process. However, other provisions have been added to refine and clarify the rules governing this process...3701 GENERAL STATEMENT OF POST-ELIGIBILITY PROCESS. Reduce Medicaid payments to medical and remedial care institutions...by the amount remaining after specified

deductions are made from the income of ***institutional persons***...Income remaining after these deductions are applied is the amount persons are liable to pay for institutional and/or waiver services...3701.3 Determination of Amounts of Medical Expenses.—In determining the amounts of the individual's liability for the costs of institutional care, certain required and optional amounts for medical or remedial expenses are deducted from the ***individual's*** income...Determine the amounts of the medical or remedial expenses to be deducted from total income...3703.4 Maintenance Needs Of A Spouse At Home – For an individual with only a spouse at home, deduct from the individual's total income an amount for the maintenance needs of the spouse. Base this amount on a reasonable assessment of the needs of the spouse, which includes consideration of the spouse's income and resources. The amount deducted for the needs of the spouse must be reduced dollar for dollar for each dollar of the noninstitutionalized spouse's own income...3703.8 Expenses for Health Care: Deduct from the ***individual's*** total income amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party, including: Medicare and other health insurance premiums, deductibles, or coinsurance charges; and Necessary medical or remedial care recognized under State law but not covered under the State plan, subject to reasonable limits the agency may establish on amounts of these expenses. 3710.1 Definitions...Exceptional Circumstances Resulting in Extreme Financial Duress. Pending publication of regulations, a reasonable definition is: Circumstances other than those taken into account in establishing maintenance standards for spouses. An example is incurment by community spouses for expense for medical, remedial and other support services which contribute to the ability of such spouses to maintain themselves in the community and in amounts that they could not be expected to pay for amounts already recognized for maintenance and/or amounts held in resources...3713 MONTHLY INCOME ALLOWANCES FOR COUMMNITY SPOUSES AND OTHER FAMILY MEMBERS...A. Spousal Monthly Income Allowance. Unless a spousal support order requires support in a greater amount, or a hearings officer has determined that a greater amount is needed because of exceptional circumstances resulting in extreme financial duress, deduct from community spouse's gross monthly income which is otherwise available the following amounts up to the maximum allowed...3712 MANDATORY DEDUCTIONS FROM INCOME Deduct from the total income of an institutionalized spouse the following amounts:...subject to reasonable limits you impose consistent with §3701.3, incurred medical and remedial care expenses recognized under State law, not covered under the plan, and not subject to payment by a third party...3713 MONTHLY INCOME

ALLOWANCES FOR COMMUNITY SPOUSES AND OTHER FAMILY MEMBERS A. Spousal Monthly Income Allowance. Unless a spousal support order requires support in a greater amount, or a hearings officer has determined that a greater amount is needed because of exceptional circumstances resulting in extreme financial duress, deduct from community spouses gross monthly income which is otherwise available the following amounts up to the maximum amount allowed:

- A standard maintenance amount.
- Excess shelter allowances for couples' principal residences when the following expenses exceed 30% of the standard maintenance amount. Except as noted below, excess shelter is calculated on actual expenses for—
  - rent
  - mortgage (including interest and principal);
  - taxes and insurance;
  - any maintenance charge for a condominium or cooperative; and
  - an amount for utilities, provided they are not part of the maintenance charge computed above. Utility expenses are calculated by using the standard deduction under the Food Stamp program that is appropriate to a couple's particular circumstance...When there is a deficit remaining after a community spouse's gross income is compared to the total standard computed above, the remaining deficit is the amount of the community spousal income allowance. When there is no deficit, there is no monthly spousal income allowance...

The Department's budgeting methodology, as outlined in the Findings of Facts, correctly reflects the budgeting methodology set forth in the above authorities in calculating a possible spousal income diversion allowance and determining patient responsibility.

Federal regulations at 45 C.F.R. 205.10 (a)(4) state:

(4) In cases of intended action to discontinue, terminate, suspend or reduce assistance or to change the manner or form of payment to a protective, vendor, or two-party payment under §234.60:

(i) The State or local agency shall give timely and adequate notice, except as provided for in paragraphs (a)(4) (ii), (iii), or (iv) of this section. Under this requirement:

(A) *Timely* means that the notice is mailed at least 10 days before the date of action, that is, the date upon which the action would become effective;

(B) *Adequate* means a written notice that includes a statement of what action the agency intends to take, the reasons for the intended agency action, the specific regulations supporting such action, explanation of the individual's right to request an evidentiary hearing (if provided) and a State agency hearing, the circumstances under which assistance is continued if a hearing is requested, and if the agency action is upheld, that such assistance must be repaid under title IV-A, and must also be repaid under titles I, X, XIV or XVI (AABD) if the State plan provides for recovery of such payments.

The Department's ACCESS Florida Program Policy Manual, 165-22, Section 3440.0100, Written Notice Requirement states:

The individual must be informed in writing of all DCF decisions affecting eligibility, appointment times, or any request for information....
Except in situations indicated in passages 3440.0102 through 3440.0106, written notice must be given or mailed at least 10 days prior to the effective month of the action if action is being taken to terminate or reduce benefits (adverse action)...

3440.0203 Notification of Case Action, states:

The payee must be informed in writing of all decisions affecting the assistance group's eligibility. This includes approval or denial of an application for benefits, notification of any change in benefits or type of benefits, and/or termination of benefits...

The representative argued that neither she nor the nursing facility received a written notice informing her of the increase in patient responsibility. The Findings show that the notice advising the petitioner, the nursing home and the representative was suppressed. There was no evidence to show that a notice was generated or mailed to the petitioner advising her of an increase in the patient responsibility. According to the

above authorities, notices affecting benefits must be sent to the petitioner and payees at least 10 days prior to the effective month of the action if the action is considered an adverse action. A proposed increase in patient responsibility is considered an adverse action. Therefore, the undersigned authority concludes that the Department failed to follow its policy in providing a written notification of case action.

The Department's action to increase patient responsibility effective April 2009 is reversed. The Department is to provide a written notification adjusting the patient responsibility for April through September 2009 to zero. Subsequent actions to increase the patient responsibility must include an advance written notice according to the Department's policy.

DECISION

1. The issue regarding termination of ICP is moot as the petitioner has since been determined eligible and there is no loss of benefit to the petitioner.
2. The issue regarding an increase in patient responsibility is granted. The respondent is to adjust the patient responsibility to zero for the months at issue according to the Conclusions of Law. **A WRITTEN NOTICE RESTORING PATIENT RESPONSIBILITY TO ZERO DUE APPELLANT PURSUANT TO THIS ORDER MUST BE AVAILABLE WITHIN (10) TEN DAYS OF THIS DECISION.**

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 17th day of December, 2009,

in Tallahassee, Florida.

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

Copies Furnished