

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

FILED

DEC 14 2009

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

PETITIONER, APPEAL NO. 09F-07708
Vs. CASE NO. 1169693300

FLORIDA DEPT OF CHILDREN AND FAMILIES
CIRCUIT: 06 Pinellas
UNIT: 88605

RESPONDENT.
_____ /

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on December 4, 2009, at 2:41 p.m., in Largo, Florida. The petitioner was present. The respondent was represented by _____, and _____ Benefit Recovery claims managers. Present as a witness for the respondent was _____, senior worker in the Institutional Care Program (ICP).

ISSUE

The petitioner is appealing the notice of December 7, 2009 for the respondent's actions to establish and collect an agency error overissuance of \$377.48 in Medicaid Program benefits for July 2008, September 2008, February 2009 and March 2009.

FINDINGS OF FACT

1. The petitioner authorized [redacted] an employee of the nursing home to apply for ICP Medicaid on his behalf. [redacted] completed the application on June 12, 2008. On July 15, 2009, the respondent approved the petitioner for ICP Medicaid effective May 2008. In January 2009, the petitioner was sent an interim contact letter. The petitioner responded "no change". The respondent continued the petitioner's ICP Medicaid.

2. The petitioner contacted the respondent in August 2009. He notified the respondent that he was not in the nursing home. The respondent reviewed the case and determined that the petitioner had left the nursing home on June 14, 2008. The case was referred to Benefit Recovery.

3. Benefit Recovery reviewed the case. There was no documentation that the petitioner or the petitioner's representative reported that the petitioner left the nursing home. Benefit Recovery discovered that the respondent received a Level of Care regarding the petitioner on July 7, 2008. The Level of Care notified the respondent that the petitioner was discharged from the nursing home on June 14, 2008. Even though the petitioner, the petitioner representative and the nursing home failed to report the change, Benefit Recover determined that an agency error occurred as the respondent did not take action to close the ICP Medicaid benefits upon receipt of the Level of Care. Benefit Recovery reviewed payments made by Medicaid on behalf of the petitioner from July 2008 through July 2009. Benefit Recovery explored all other Medicaid categories. The petitioner, due to household income, was eligible for Medically Needy with a

share of cost. On October 29, 2009, Benefit Recovery requested that the petitioner submit any other bills not paid by Medicaid. The petitioner did not submit any other medical bills. Benefit Recovery determined based on the petitioner's income and bills paid by the State, the petitioner did not meet a share of cost in July 2008, September 2008, February 2009 and March 2009. In July 2008, Medicaid paid billing in the amount of \$20.39 on behalf of the petitioner. In September 2008, Medicaid paid billing in the amount of \$187.76 on behalf of the petitioner. In February 2009, Medicaid paid billing in the amount of \$187.76 on behalf of the petitioner. In March 2009, Medicaid paid billing in the amount of \$88.61 on behalf of the petitioner. The total amount Medicaid paid on behalf of the petitioner was \$377.48.

4. The petitioner attested that he did not know he had to report he moved from the nursing home. He thought the nursing home was taking care of everything. He argued that he should not be responsible for the nursing home and the respondent's mistakes. He is concerned that the bills are not from either his doctor, _____ the hospital or for supplies.

5. The Agency for Health Care Administration was contacted after the hearing concluded. The respondent submitted information that the July 2008 amount of \$20.39 Medicaid paid was to _____, the September 2008 amount of \$187.76 Medicaid paid was to _____ the February 2009 amount of \$187.76 Medicaid paid billing was paid to _____ and the March 2009 amount of \$88.61 Medicaid paid was to _____ and _____

CONCLUSIONS OF LAW

The Florida Administrative Code at 65A-1.711 sets forth the SSI-Related Medicaid non-financial eligibility criteria:

To qualify for Medicaid an individual must meet the general and categorical requirements in 42 C.F.R. Part 435, subparts E and F (2007) (incorporated by reference)...

(2) for ICP benefits, an individual must be:

(a) Living in a licensed nursing facility...

The petitioner left the nursing home on June 14, 2008. The petitioner did not meet the criteria for eligibility for ICP Medicaid. The respondent failed to timely close the petitioner's ICP Medicaid at the end of June 2008. The respondent incorrectly left the ICP Medicaid open from July 2008 through August 2009. Based on his income, the petitioner the only other Medicaid category the petitioner was eligible for any was Medically Needy. The respondent paid \$377.48 in ICP Medicaid benefits for the petitioner for the months of July 2008, September 2008, February 2009 and March 2009. The bills the petitioner incurred in July 2008, September 2008, February 2009 and March 2009 paid by Medicaid did not exceed the petitioner's share of cost. The petitioner did not submit any other medical bills. As the petitioner was not eligible for any category of Medicaid Program benefits in July 2008, September 2008, February 2009 and March 2009, the petitioner was overpaid \$377.48 for the months of July 2008, September 2008, February 2009 and March 2009.

Recovery of payments made due to mistake or fraud is set forth in the Florida Statutes at § 414.41:

(1) Whenever it becomes apparent that any person or provider has received any public assistance under this chapter to which she or he is not entitled, through either simple mistake or fraud on the part of the department or on the part of the recipient or participant, the department shall take all necessary steps to recover the overpayment...

The Florida Administrative Code at 65A-1.900 Overpayment and Benefit Recovery defines the administrative policies applicable to the establishment and recovery of overpayment in the public assistance programs and is set forth in relevant part:

(2) Persons Responsible for Repayment of Overpayment.
(a)...overpayments shall be recovered from the participant as that term is defined in Section 414.0252, F.S.;

The nursing home applied on behalf of the petitioner. The petitioner, the petitioner's representative and the nursing home failed to report that the petitioner left the nursing home. The respondent failed to take time action on a reported change. As the respondent failed to take action on a reported change, the error is an agency error.

Medicaid paid benefits on behalf of the petitioner. The rules indicate that the individual responsible for repayment of the overpayment is the participant. In this case, the participant is the petitioner. Therefore, the petitioner is responsible for repayment. The Florida Statutes set forth that the Department shall recover any overpayments, including agency error overpayments. Based upon the above cited authorities, the hearing officer finds that the respondent's actions to establish and collect an agency error overissuance of \$377.48 in Medicaid

Program benefits for July 2008, September 2008, February 2009 and March 2009, were within the rules of the Program.

DECISION


This appeal is denied. The respondent is authorized to proceed with its overpayment and Benefit Recovery procedures, as established.

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 14th day of December, 2009,

in Tallahassee, Florida.


Linda Jo Nicholson
Hearing Officer
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Tallahassee, FL 32399-0700
850-488-1429

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