

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

FILED

FEB 22 2010

OFFICE OF APPEAL HEARINGS  
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-08695

PETITIONER,

Vs.

FLORIDA DEPARTMENT OF  
CHILDREN AND FAMILIES  
CIRCUIT: 09 Osceola  
UNIT: ICP

RESPONDENT.  
\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, an administrative hearing convened telephonically with the undersigned hearing officer at 1:24 p.m., on February 9, 2010. The petitioner was represented by \_\_\_\_\_, business officer manager and self-designated representative, \_\_\_\_\_ Also appearing by telephone on the petitioner's behalf were \_\_\_\_\_ nursing home administrator, and \_\_\_\_\_ caseworker. Reginald Schofield, supervisor, represented the Department.

**ISSUE**

At issue is the action taken by the Department in August 2009 to deny the petitioner Institutional Care Program and Medicaid benefits for the months of February, March, and April 2009. As this was an application for benefits, the petitioner would have the burden of proof in this matter.

**FINDINGS OF FACT**

1. An application for Institutional Care Program and Medicaid benefits was submitted in August 2009 on the petitioner's behalf. He had been receiving Medicaid benefits, but due to a lapse in his coverage after his certification period expired, a new application was needed.
2. The petitioner passed away on April 29, 2009. On August 4, 2009, a Notice of Case Action was sent to the nursing facility to show that Medicaid benefits were approved for January 2009, but denied in February because the petitioner's income exceeded the Program limit (Joint Exhibit 1). Benefits were also denied for March and April 2009.
3. On December 21, 2009, the petitioner's representative sent a letter requesting a hearing. It was received in the Office of Appeal Hearings on December 28, 2009.
4. The petitioner's representative acknowledged receipt of the Notice of Case Action dated August 4, 2009. No further testimony was taken on the matter.

**CONCLUSIONS OF LAW**

Florida Administrative Code 65-2.046 Time Limits in Which to Request a Hearing states:

- (1) The appellant or authorized representative must exercise the right to appeal within 90 calendar days in all programs. Additionally, in the Food Stamp Program, a household may request a fair hearing at any time within a certification period to dispute its current level of benefits. The time period begins with the date following:
  - (a) The date on the written notification of the decision on an application.
  - (b) The date on the written notification of reduction or termination of program benefits.
  - (c) The date of the Department's written notification of denial or a request or other action which aggrieves the petitioner when that denial or action is

other than an application decision or a decision to reduce or terminate program benefits.

According to the above-cited authority, any appeal related to the action set forth in the notice the petitioner or representative received must be made within 90 days from the written notification. The petitioner's representative acknowledges receipt of the notice in a timely manner. The hearing requested on December 28, 2009 was beyond 90 days from the notice date of August 4, 2009. Because the request for an appeal occurred beyond 90 days from the date of the notice, the hearing officer has no jurisdiction in this matter, and therefore, the issue under appeal cannot be reviewed.

#### **DECISION**

The appeal is denied as non-jurisdictional.

#### **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.

FINAL ORDER (Cont.)

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DONE and ORDERED this 22<sup>nd</sup> day of February, 2010,  
in Tallahassee, Florida.



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

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