

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



APPEAL NO. 10F-09148

PETITIONER,

Vs.

CASE NO. 1341839583

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 09 Orange
UNIT: 88999

RESPONDENT.

_____ /

FILED
Mar 15, 2011
OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN AND FAMILIES

FINAL ORDER

Pursuant to notice, the undersigned telephonically convened an administrative hearing in the above-referenced matter on February 9, 2011 at 9:22 a.m.

APPEARANCES

For the Petitioner: [REDACTED] billing agent.

For the Respondent: Reginald Schofield, supervisor with ACCESS.

STATEMENT OF ISSUE

At issue was whether denial of eligibility was correct.

PRELIMINARY STATEMENT

Before addressing merits as to the denial of Institutional Care Program (ICP) Medicaid benefits, it is necessary to determine whether a timely appeal was filed.

FINDINGS OF FACT

1. The petitioner applied for eligibility in the Institutional Care Program (ICP) of Medicaid in June 2010. The respondent denied the application on August 11, 2010.

2. A request for hearing was received by the Department of Children and Families on December 20, 2010.

3. The respondent alleged the ineligibility notice was correctly issued as a Notice of Case Action on September August 11, 2010, but it was not timely appealed.

(Respondent's Exhibit 1) That Notice of Case Action said "(i)f you want a hearing, you must ask for the hearing within 90 days from the mailing date at the top of this notice..."

4. The petitioner confirmed receipt of a notice of ineligibility but it did not look like the customary "Notice of Case Action" and was not appealed because it was not perceived as a denial notice.

5. Another application was filed in December 2010. The December 2010 application was denied due to income exceeding standards.

6. Three applications were filed between June and December 2010 and none showed income. The petitioner had income. It is possible that the income situation will change and a different eligibility determination could occur in future.

7. When the respondent determined ineligibility on one critical point of eligibility, the respondent did not further explore other eligibility factors.

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 Fla. Stat § 409.285. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code

§ 65-2.056. This order is the final administrative decision of the Department of Children and Families under § 409.285, Fla. Stat. In accordance with Fla. Admin. Code 65-2.060 (1), the petitioner bears the burden of proof.

9. Before addressing case merits, it is necessary to establish that a timely hearing was filed. Fla. Admin. Code sets forth regulatory requirements as follows:

65-2.046 Time Limits in Which to Request a Hearing.

(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.

(2) The time limitation does not apply when the Department fails to send a required notification, fails to take action of a specific request or denies a request without informing the appellant. If the notice is not mailed on the day it is dated, the time period commences on the date it is mailed.

This rule must be followed and it requires that an appeal be filed within 90 days of the action under challenge.

10. The action under challenge occurred on August 11, 2009. The hearing was requested on December 20, 2010. This is not considered a timely appeal because more than 90 days had lapsed. Further merits of the problem were not developed as the matter was non-jurisdictional.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is denied or dismissed.

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 _____ day of _____, 2011,

in Tallahassee, Florida.

J W Alper
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