

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



APPEAL NO. 11F-00706

PETITIONER,

Vs.

CASE NO. 1347847022

FLORIDA DEPT OF CHILDREN AND FAMILIES
CIRCUIT: 06 Pasco
UNIT: 88521

FILED
May 19, 2011
OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN AND FAMILIES

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on April 6, 2011, at 3:35 p.m.

APPEARANCES

For the Petitioner: [REDACTED] the petitioner's daughter

For the Respondent: James Robson, Institutional Care Program (ICP) senior worker

ISSUE

The petitioner's representative (petitioner is now deceased) is appealing the respondent's action to deny ICP and Medicaid Program benefits due to respondent not receiving verification of petitioner's income and/or assets.

PRELIMINARY STATEMENT

By notice dated October 22, 2010, the respondent informed the petitioner that her application for ICP and Medicaid Program benefits was being denied because respondent did not receive all the information necessary to determine eligibility. On February 1, 2011, the Office of Appeal Hearings received petitioner's request for a hearing.

The respondent made a motion for the appeal to be dismissed as the original request for hearing was made by [REDACTED] for whom the respondent has not received any authorization to represent petitioner nor was he self-designated in the application. Respondent argues that the request for hearing was outside the 90 days from the date the application was denied, which was October 22, 2010. Respondent's motion will be addressed in the Conclusions of Law.

The hearing was scheduled for March 18, 2011. On March 3, 2011, the petitioner's daughter withdrew the appeal. On March 14, 2011, the daughter requested that the appeal be reinstated. The appeal was reinstated and the hearing rescheduled for April 6, 2011.

The petitioner's representative and the respondent's representative appeared telephonically on April 6, 2011.

FINDINGS OF FACT

1. On September 7, 2010, [REDACTED], the petitioner's representative, filed an application for ICP and Medicaid Program benefits on behalf of the petitioner. At the time of the application, the petitioner was not residing in a nursing home. Petitioner reported income of Social Security of \$1,560.50 per month.

2. On September 17, 2010, the respondent was notified that the petitioner entered a nursing home on September 16, 2010.

3. On September 21, 2010, the respondent sent the petitioner a notice requesting verification of income from her pension, verification of assets in bank accounts and a copy of her insurance policy including cash value of the policy. The verification was due no later than October 1, 2010. As of October 2, 2010, the respondent did not receive verification of petitioner's current bank statement or pension. The respondent held the case open. As of October 21, 2010, the respondent had not received all requested verification. The respondent was unable to determine eligibility without proof of income and assets. The respondent closed the case on October 21, 2010. The respondent sent the petitioner a Notice of Case Action on October 22, 2010 indicating the reason her request for ICP and Medicaid Program benefits was denied was that respondent "did not receive all information needed to determine eligibility.

4. After the case was closed, the respondent received verification of the petitioner's life insurance policy. The cash value of the life insurance policy was \$8,012.00 and the surrender value was \$8,221.39.

5. The respondent reevaluated the case. There was no proof that the life insurance policy was cashed-in or surrendered. Without proof from the petitioner of the disposition of the asset, the respondent considered the entire cash value of the life insurance policy. The cash value of \$8,221.39 exceeded the asset limit of \$2,000 for ICP and Medicaid Program benefits. The petitioner did not submit bank statements or verification of other possible sources of income. The respondent was unable to determine the petitioner's eligibility without further proof of income.

6. The petitioner died on [REDACTED].
7. On February 1, 2011, petitioner's daughter reapplied for retroactive ICP and Medicaid Program benefits for September 2010, October 2010, November 2010, December 2010 and January 2011.
8. The respondent requested verification of income and assets. As of March 15, 2011, the respondent did not receive the requested verification. The respondent was unable to determine eligibility. The respondent denied the application on March 15, 2011.
9. The respondent discussed the case with the petitioner's daughter after the applications were denied. Based on statements from the petitioner's daughter, the respondent became aware that in addition to the petitioner's Social Security, the petitioner had been receiving two pensions. The petitioner received a gross amount of \$351.98 per month from a [REDACTED] pension. The other pension equaled a gross amount of \$119.04 from [REDACTED].
10. The petitioner's gross monthly income totals \$2,031.52. The respondent determined that the total amount of \$2,031.52 was over the \$2,022 gross income limit for ICP and Medicaid Program benefits.

CONCLUSIONS OF LAW

11. 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 order is the final administrative decision of the Department of Children and Families under Fla. Stat. § 409.285.
12. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code

§ 65-2.056.

13. In accordance with Fla. Admin. Code § 65-2.060(1), the burden of proof is assigned to the petitioner.

A. As to the issue of the respondent's motion to dismiss.

14. Florida Administrative Code at § 65-2.046 establishes the time limits in which to request a hearing and states:

(1) The appellant or authorized representative must exercise the right to appeal within 90 calendar days in all programs...The time period begins with the date following: ...

(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.

14. The Florida Administrative Code at § 65-2.045 sets forth for an authorized representative to request a hearing:

(3) A Request for Hearing may be made by the applicant/recipient or someone in his/her behalf. However, if the appeal is filed by someone other than the applicant/recipient, attorney, legal guardian, spouse or next of kin, or the grantee relative in AFDC, the person making the appeal must have written authorization of the applicant/recipient. Such written authorization may accompany the Hearing Request, or be presented by the time of the Hearing.

15. The petitioner requested the appeal on January 31, 2011. The petitioner's daughter filed a second application on February 1, 2011. The respondent denied that application on March 15, 2011; therefore, the petitioner would have a right to a hearing based on that second denial. The petitioner's daughter as a family member may represent the petitioner. The respondent's motion for dismissal for lack of authorized representative and respondent's argument that the request was over the 90 days is

denied. The hearing officer is proceeding with the analysis of the denial based on assets and income since although petitioner did not provide the requested verification to respondent, should she do so in the future the new application would also be denied. The reasons for that denial are discussed below.

B. As to the issue of the petitioner's income being over the income limits.

15. The Florida Administrative Code at § 65A-1.716(2)(b) sets forth the income limit for ICP Program benefits: "The income standard which applies to an individual under the HCBS waiver programs, ICP and Hospice is 300 percent of the SSI FBR for an individual...".

16. The SSI FBR is \$674. The income limit for ICP and Medicaid Program benefits is \$2,022. See the Department's Access Program Policy Manual provision at Appendix A-9. As of the date of the hearing, the petitioner has not submitted verification of all income. The daughter's statement that the petitioner's gross monthly income was \$2,031.52 was accepted as the petitioner's gross monthly income. The petitioner's gross monthly income of \$2,031.52 is over the gross income limit for ICP and Medicaid Program benefits.

C. As to the issue of the petitioner's assets being over the asset limits.

17. The Florida Administrative Code at § 65A-1.716(5) sets forth the asset limit for ICP Program benefits: "SSI-Related Program Standards. (a) SSI (42 U.S.C. §§ 1382 – 1383c) Resource Limits: 1. \$2000 per individual."

18. As of the date of the hearing, the petitioner has not submitted verification of the life insurance policy (a.) as to when it was cashed-in for (the cash value of \$8,012) or surrendered (the surrendered value of \$8,221.35), or (b.) the disposition of the cash

assets from that life insurance policy. Without verification, the cash value of the life insurance policy is considered available to the petitioner for the months of September 2010, October 2010, November 2010, December 2010 and January 2011. The asset limit is \$2,000. The petitioner's cash value asset of \$8,012 exceeds that asset limit for ICP and Medicaid Program benefits.

19. As the petitioner's income was over the gross income limit and the assets were over the asset limit, the petitioner was not eligible for ICP and Medicaid Program benefits. The hearing officer concludes that the respondent's action to deny the petitioner's applications for ICP and Medicaid Program benefits were within the rules of the Program.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is DENIED.

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.

FINAL ORDER (Cont.)

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