

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

[REDACTED]

APPEAL NO. 11F-05388

PETITIONER,

Vs.

CASE NO. 1000102106

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 02 Leon
UNIT: 88510

RESPONDENT.

_____ /

FILED
Sep 14, 2011
OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN AND FAMILIES

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on August 23, 2011 at 10:30 a.m.

APPEARANCES

On behalf Petitioner: [REDACTED], wife of the deceased petitioner

On behalf of Respondent: [REDACTED], Senior Human Services Program Specialist

STATEMENT OF ISSUE

Whether petitioner's spouse is entitled to spousal support under Florida's Medicaid Institutional Care Program (ICP).

FINDINGS OF FACT

1. On a letter dated June 10, 2011, [REDACTED] requested an appeal to receive spousal support based on her deceased husband's ICP Medicaid benefits. The

ICP Medicaid benefits were based on an application dated January 6, 2011 in which petitioner indicated petitioner's wife was deceased.

2. Petitioner submitted applications for ICP Medicaid on October 5, 2010, November 17, 2010, December 10, 2010 and January 6, 2011. The October, November and December 2010 applications were all denied. However the January 6, 2011 application was approved. None of the applications submitted requested spousal diversion and the January 6, 2011 application listed petitioner's spouse as deceased.

3. There is no evidence that [REDACTED] has applied to the Department for spousal support, and therefore she has received no disposition letter relating to her appeal. [REDACTED] is basing her appeal on the approval of petitioner's January 6, 2011 ICP Medicaid application.

CONCLUSIONS OF LAW

4. 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 § 409.285, Fla. Stat.

5. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code § 65-2.056.

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

7. Fla. Admin Code § 65-2.044, Right to Request a Hearing, states:

Any applicant/recipient dissatisfied with the Department's action or failure to act has a right to request a Hearing. He/she may do so when it is believed that:

- (1) Opportunity to make application has been denied.
- (2) The application has been rejected.
- (3) The application has not been acted upon within a reasonable length of time.
- (4) The benefits have been modified or discontinued.
- (5) Reconsideration of the assistance/service benefits is refused or delayed.
- (6) Opportunity has not been given to make a choice of service.
- (7) Any other DCF action (or inaction) is incorrect.

8. Fla. Admin. Code § 65-2.056, Basis of Hearings, states:

The Hearing shall include consideration of:

- (1) Any Agency action, or failure to act with reasonable promptness, on a claim of Financial Assistance, Social Services, Medical Assistance, or Food Stamp Program Benefits, which includes delay in reaching a decision on eligibility or in making a payment, refusal to consider a request for or undue delay in making an adjustment in payment, and discontinuance, termination or reduction of such assistance.
- (2) Agency's decision regarding eligibility for Financial Assistance, Social Services, Medical Assistance or Food Stamp Program Benefits in both initial and subsequent determination, the amount of Financial or Medical Assistance or a change in payments.
- (3) The Hearing Officer must determine whether the department's decision on eligibility or procedural compliance was correct at the time the decision was made. The hearings are de novo hearings, in that, either party may present new or additional evidence not previously considered by the department in making its decision.

9. Based on the above authority, [REDACTED] bases her appeal on Department action of July 11, 2011, approving petitioner's ICP Medicaid January 6, 2011 application. However, the Department did not take any action regarding [REDACTED], because the January 6, 2011 application did not list her as an interested party.

10. Therefore the appeal is not ripe for review; it would be premature for the undersigned to rule on this request. In order for [REDACTED] to receive appeal rights in the above issue, [REDACTED] would have to apply for spousal support diversion and have the Department take action that is consistent with the above authority. The Department would need to issue its decision in a written notice, to include appeal rights.

DECISION

Based upon the foregoing Findings of Fact and Conclusion of Law, the appeal is dismissed as not yet ripe for appeal.

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.

Nathan Koch
Hearing Officer
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FINAL ORDER (Cont.)

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Copies Furnished To: [REDACTED], Petitioner

2 DPOES: [REDACTED]