

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

[REDACTED]

APPEAL NO. 11F-06032

PETITIONER,

Vs.

CASE NO. 1326413619

FLORIDA DEPT OF
CHILDREN AND FAMILIES
CIRCUIT: 10 Polk
UNIT: ICP

RESPONDENT.

FILED
Oct 28, 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 at 3:00 p.m. on September 8, 2011.

APPEARANCES

For the Petitioner: [REDACTED] power of attorney

For the Respondent: [REDACTED], ACCESS supervisor

STATEMENT OF ISSUE

At issue is the effective date of payment to the nursing facility for April 2011 and May 2011 based upon the April 8, 2011 application for Institutional Care Program (ICP).

PRELIMINARY STATEMENT

By notice dated April 29, 2011, the petitioner was informed the Department approved her ICP application then later was informed the approval was in error and that payment for April 2011 and May 2011 were denied.

FINDINGS OF FACT

1. Prior to the action under appeal, the petitioner was enrolled in the Nursing Home Diversion Medicaid Long Term Care Waiver Program, managed by [REDACTED], a Health Maintenance Organization. The waiver paid for her stay at [REDACTED], an assistant living facility starting December 2009.
2. On April 4, 2011, the petitioner was notified that a Level of Care review determined she "Can be admitted to the nursing facility" (Petitioner Exhibit 3).
3. On April 7, 2011, the petitioner was moved from [REDACTED] [REDACTED].
4. On April 8, 2011, the petitioner applied for Medicaid ICP. She was receiving regular Medicaid at the time of this application.
5. On April 28, 2011 [REDACTED] notified [REDACTED] that the petitioner was enrolled in the [REDACTED] and their members are not eligible for ICP without prior approval from [REDACTED] (Petitioner Exhibit 4).
6. On April 29, 2011 the Department approved the petitioner's ICP application, overlooking that she was enrolled in the Nursing Home Diversion Medicaid Long Term Care Waiver Program (Respondent Exhibit 2) and the requirement of a written disenrollment from the waiver program by the petitioner prior to ICP approval.

CONCLUSIONS OF LAW

7. 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.

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

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

10. Fla. Admin. Code § 58N-1.009 Care and Service Standards in part states:

(1) Medicaid Waiver Services: The provider must provide all Medicaid waiver services in accordance with its contract with the department...

(5) Disenrollments:

(a) In order to disenroll a participant from the diversion program, the diversion provider must follow the requirements outlined in its contract with the department...

(c) The diversion provider must submit a copy of voluntary disenrollments to the local CARES office. In addition, the provider must submit all disenrollment transactions to the Medicaid fiscal agent via electronic submission or other method as set forth in its contract with the department.

(d) The CARES office must not accept disenrollment forms from anyone other than the participant's current diversion provider.

(e) The current diversion provider must continue to provide services to the participant until the documented effective date of disenrollment.

11. Disenrollment from the diversion program must be completed to discontinue diversion provider services. The Department incorrectly enrolled the petitioner in the ICP without the required disenrollment from the Nursing Home Diversion Medicaid Long Term Care Waiver Program.

12. While the petitioner was enrolled in the Nursing Home Diversion Medicaid Long Term Care Waiver Program all responsibility for Medicaid payment of services would be with American Eldercare. Therefore, they would be potentially eligible for payment to the nursing facility.

13. The hearing officer has no remedy for the Department's error and cannot grant the appeal due to the cited rule. The hearing officer will address April 2011 and May 2011 nursing facility payment on the Agency for Health Care Administration order.

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.

Priscilla Peterson
Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
Office: 850-488-1429
Fax: 850-487-0662
Email: Appeal_Hearings@dcf.state.fl.us

Copies Furnished To: [REDACTED], Petitioner

14 DPOES: [REDACTED]