

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



APPEAL NO. 11F-02667

PETITIONER,

Vs.

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

FILED  
Jun 13, 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 May 25, 2011.

**APPEARANCES**

For the Petitioner: The petitioner's daughter-in-law, [REDACTED], who testified.

For the Respondent: Suzi Jackson, supervisor with ACCESS, who represented the respondent and testified.

**STATEMENT OF THE ISSUE**

At issue is the respondent's decision of January 3, 2011 to terminate petitioner's Institutional Care Program and Medicaid (ICP) benefits effective January 31, 2011.

### **PRELIMINARY STATEMENT**

By notice dated January 3, 2011, the petitioner was informed that ICP benefits would terminate effective January 31, 2011. The petitioner requested a hearing on this action on April 15, 2011. All the parties appeared for the hearing by telephone. Prior to a review of the merits of this ICP termination action, it is necessary to determine if the appeal was timely requested.

### **FINDINGS OF FACT**

1. On January 3, 2011, the respondent sent petitioner notice that her ICP benefits would terminate effective January 31, 2011. The petitioner's representative, [REDACTED] received this notice. The notice contains language that a hearing must be requested within a 90 day period. The petitioner requested an appeal on this decision on April 15, 2011.
2. The respondent received an application in May 2011 to request ICP benefits for petitioner retroactive to February 2011. The respondent has not yet rendered decision on this May 2011 application. The May 2011 application for ICP benefits is not at issue in this appeal.

### **CONCLUSIONS OF LAW**

3. Prior to examining the specific merits of the appeal, it is necessary to determine if this appeal was timely requested. The Florida Administrative Code Rule 65-2.046 sets forth a 90-day time period to request a hearing, 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.

4. The petitioner received notice that contained language that an appeal must be requested within 90 days of the notice of case action dated January 3, 2011. Petitioner requested the appeal on April 15, 2011. Since this appeal was not requested within the required 90-day period, this appeal must be dismissed as untimely requested. This same decision was verbally directed to the parties on the date of the hearing.
5. Since this appeal is dismissed as being untimely requested, the undersigned hearing officer does not have jurisdiction to examine the underlying merits of the respondent's decision of January 3, 2011 to terminate ICP benefits.
6. The petitioner retains the right to request a separate hearing request on the result of the ICP application in May 2011, if she elects to do so.

**DECISION**

This appeal is denied or dismissed as untimely requested, as also verbally advised the parties on the date of hearing.

**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.

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