

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

**FILED**

MAR 31 2014

OFFICE OF APPEAL HEARINGS  
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 14F-00424

PETITIONER,

Vs.

CASE NO. [REDACTED]

FLORIDA DEPT OF CHILDREN AND FAMILIES  
CIRCUIT: 05 Hernando  
UNIT: 88000

RESPONDENT.

**FINAL ORDER**

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on March 21, 2014, at 9:20 a.m. by telephone.

**APPEARANCES**

For the Petitioner: [REDACTED]

For the Respondent: Rosalyn Washington, senior caseworker with the ACCESS Program.

**ISSUE**

At issue is the Respondent action of July 23, 2013 to terminate eligibility for Special Low Income Medicare Part B Program effective August 31, 2013. The second related issue is the Respondent's subsequent action of July 31, 2013 to deny the petitioner's application for enrollment in the Qualified Individual 1 (QI-1) Program based on excess income.

**PRELIMINARY STATEMENT**

This appeal was requested on January 16, 2014. The Petitioner seeks retroactive eligibility under one of the respondent programs that pays the Medicare premium. It is necessary to determine whether or not this appeal is concluded as timely requested prior to a review of the merits of the appeal.

All parties appeared by telephone for the scheduled hearing. The Respondent entered three exhibits labeled Respondent Exhibits 1 through 3. No exhibits were offered or entered for Petitioner.

**FINDINGS OF FACT**

1. The Petitioner received a notice dated July 31, 2013 to advise that QI-1 benefits had been denied based on excess income. This notice also advised that Medically Needy benefits were approved. The notice also advises of a 90 day period to request an appeal (Respondent Exhibit 1).

2. On July 23, 2013, the respondent sent notice to advise that SLMB benefits would terminate effective August 31, 2013 because proof of earned income had not been received. The petitioner does not recall receiving this notice but did not specifically dispute its receipt. The petitioner's receipt of this notice is established. This notice also advises of a 90-day period to request an appeal (Respondent Exhibit 2).

3. On July 30, 2013, a respondent caseworker contacted the Petitioner by telephone to advise that "buy in denied due to over inc." The petitioner then indicated that he understood (Respondent Exhibit 3).

4. On November 5, 2013, and November 6, 2013, the Petitioner, and/or his wife, spoke with the Respondent again about being over income for the "buy in" program. There is no evidence to establish that a hearing was requested on either of these dates.
5. On January 16, 2014, the Petitioner contacted the respondent again about the buy in program. The Petitioner then requested a hearing about the lack of payment of Medicare premiums. The Petitioner seeks retroactive reimbursement for the amounts deducted from his Social Security payments for these Medicare premiums.

#### **CONCLUSIONS OF LAW**

6. The Department of Children and Families, Office of Appeal Hearings, has jurisdiction over the subject matter of this proceeding and the parties, pursuant to § 409.285, Fla. Stat. This order is the final administrative decision of the Department of Children and Families under Fla. Stat. § 409.285.
7. Prior to examining the specific hearing merits, it is necessary to determine if this appeal was timely requested. The Fla. Admin. Code R. 65-2.046 sets 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.

(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.

8. The petitioner received notices dated July 23, 2013 and July 31, 2013 to advise that benefits under either the QI-1 or SLMB programs were denied or terminated. Both of these notices informed of a 90 day period to request an appeal. The petitioner had a discussion with the respondent on July 30, 2013 regarding the Petitioner's ineligibility under these programs. He then advised that he understood the respondent decision on these buy in programs (Respondent Exhibit 3).

9. On November 5, 2013, the respondent had another conversation with the petitioner about eligibility under a "buy in" program. The petitioner did not then request a hearing. This conversation was more than 90 days after the issuance of the notice. Rather, the petitioner requested hearing on January 16, 2014 in another follow-up conversation with the respondent.

10. The Fla. Admin. Code R. 65-2.046(1) sets forth a ninety day period from the date of written notification of the action under appeal to request a hearing. The notices that advise of ineligibility for a "buy-in" program were sent on July 23, 2013 and July 31, 2013. The Petitioner did not request appeal of these actions until January 16, 2014. Since the appeal on the actions at issue was requested beyond the required 90-day timeframe, this appeal must be dismissed as untimely requested. The undersigned is not permitted jurisdiction to review the merits of the appeal matters at issue since the appeal was untimely requested. Thus, the respondent's action at issue prevails.

**DECISION**


The appeal is dismissed as non-jurisdictional.

**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 First District Court of Appeal in Tallahassee, Florida, or with the District Court of Appeal in the district where the party resides. 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 31<sup>st</sup> day of March, 2014,

in Tallahassee, Florida.

  
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Jim Travis  
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  
Circuit 5 ACCESS: Charles Barresi