

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

FILED
JAN 05 2015

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 14F-08529
14F-08530

PETITIONER,

Vs.

CASE NO. [REDACTED]

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 04 Clay
UNIT: 88264

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on November 5, 2014 at 2:55 p.m.

APPEARANCES

For the Petitioner: The petitioner was present and represented herself.

For the Respondent: Diane Washington, Economic Self-Sufficiency Specialist II

STATEMENT OF ISSUE

The petitioner is appealing the Department's action on September 16, 2014 to deny her application for Food Assistance Program (FAP) benefits due to not providing proof of state of Florida residency.

Also at issue is the Department's action to deny her application for the Special Low-Income Medicare Beneficiary (SLMB) due to not providing proof of state of Florida residency.

PRELIMINARY STATEMENT

Appearing as a witness for the Department was Viola Dickinson, ESSSIII for DCF.

The record was held open until 5:00 p.m. on December 5, 2014 to allow the petitioner to submit evidence. Evidence was received and entered as the Petitioner Exhibit 1.

FINDINGS OF FACT

1. Petitioner is 52 years old and receives Social Security disability income and Medicare.
2. Prior to the action under appeal, the petitioner was receiving FAP and SLMB benefits; she was enrolled in the Medically Needy Program. Petitioner lived in Starke, Florida.
3. The Department received an electronic data match called "PARIS" indicating a possibility that petitioner resided in Pennsylvania with duplicate participation in some of the public assistance programs. When petitioner did not respond to a letter to verify her Florida residence, her case was closed effective June 2014. Although not relevant to this appeal, it is noted that petitioner's notices were returned as she no longer lived at the address the Department issued the notice to in Starke, Florida. This was the only address the Department had at this time.
4. The petitioner explained that she did not know her benefits had stopped until she received her Social Security check in August 2014. Because it was a reduced amount she called the Social Security Administration. She was informed that the

Department terminated her coverage under the SLMB program; therefore, her Medicare Part B premiums were no longer being paid by Florida Medicaid. Three months of premiums were withheld from the one check. The petitioner contacted the Department and was informed that she would have to reapply to get the SLMB program reinstated (SLMB and QI1 are Medicaid programs that pay the Medicare Part B premium).

5. On August 15, 2014, the petitioner reapplied for FAP and Medicaid, including a request for retroactive Medicaid for May, June and July 2014, using the self-service portal through a web application. Petitioner listed several medical bills on her application for the prior three months.

6. On August 18, 2014, the Department mailed a notice to petitioner's post office box listed on the reapplication (same address used for this order). Although petitioner has had this post office box since 2008 this is the first time she has provided it to the Department. The notice stated, "Please complete and sign the 'Financial Information Release' form", provide "*Proof of Florida residency", and provide "Proof of out-of-pocket medical expenses if you are receiving disability benefits or are over the age of 60". The notice further instructed, "Requested items with an asterisk (*) must be provided if you are applying for food assistance." The requested information was to be returned by August 28, 2014.

7. The Department believed it must again request the residency verification from petitioner as it was previously not provided subsequent to the PARIS data match. The Department explained applicants have 30 days to submit the required verifications before a denial action is taken.

8. When the Department did not receive the residency verification requested, it denied the application and issued a Notice of Case Action on September 16, 2014 to petitioner at her post office box. The denial was for the FAP, Medically Needy and SLMB programs. The denial notice stated the FAP was denied for not providing proof of Florida residency; the notice stated the Medically Needy was denied as the financial consent was not received for all individuals and Florida residency was not verified; the SLMB was denied for not providing proof of Florida residency. The denial notice cites to Fla. Admin. Code 65A-1.205. According to the Department's notes in evidence, there was no interview conducted.

9. The petitioner believes that the only notification she received is the denial notice dated September 16, 2014; she denies receipt of the notice dated August 18, 2014 asking her to provide proof of residency. Both notices were mailed to petitioner's post office box.

10. Ms. Dickinson of the Department explained that if petitioner had attempted to return any of the verification an employee would have contacted her to confirm if valid or invalid verification. However nothing was returned. Ms. Washington of the Department stated the financial release form was returned by petitioner and possibly she did receive the August 18, 2014 letter asking for the verification of residency. The Department's CLRC in evidence dated September 15, 2014 states petitioner failed to return the financial release. Attached to the pending letter in evidence is an unsigned Financial Information Release form (CF-ES 2613). In addition, the denial notice indicates the financial consent form was not returned as part of the denial reason for the Medically

Needy Program.¹ The undersigned cannot make a finding of whether partial verification was submitted to the Department.

11. Petitioner explained she is homeless since leaving Starke, Florida. She left this residence due to theft of her apartment and damage to her car. She sometimes sleeps in her car, weather permitting, or her storage unit. Other times she stays over at friends' houses. She obtained the post office box in 2008 as she "had no idea where" she would be or "what would be happening" to her. The petitioner believes the denial was in error as she has been a Florida resident since 2006. She believes someone may have stolen her identification if someone applied for FAP benefits in her name in the state of Pennsylvania. Petitioner had to surrender her Pennsylvania driver's license when she got her Florida driver's license in 2008. She also just renewed her Florida car tag. Petitioner offered to have a form notarized at the court house before a judge if Department would send her a form.

12. The Petitioner Exhibit 1 received post-hearing includes the "Jacksonville Sheriff's Office General Offense/Incident Report" dated November 6, 2014 (day after the hearing). The report states: "...She expressed concern that her identity had been stolen and an Individual in Pennsylvania was using her name. I conducted a search utilizing Accurint/Lexis Nexus and determined that the complainant has lived in Florida since 2008, when she moved from Pennsylvania..." The exhibit also includes a photocopy of the petitioner's Florida driver's license and three letters, two of which were from friends; the other from the owner of a storage unit to verify Florida residency.

CONCLUSIONS OF LAW

13. 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.

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

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

16. Federal FAP Regulations appearing in 7 C.F.R. § 272.4 addresses program administration and duplicate participation and states in part:

(e) State monitoring of duplicate participation. (1) Each State agency shall establish a system to assure that no individual participates more than once in a month, in more than one jurisdiction, or in more than one household within the State in the Food Stamp Program. To identify such individuals, the system shall use names and social security numbers at a minimum, and other identifiers such as birth dates or addresses as appropriate.

(i) If the State agency detects a large number of duplicates, it shall implement other measures, such as more frequent checks or increased emphasis on prevention.

(ii) If the State agency provides cash assistance in lieu of coupons for SSI recipients or for households participating in cash-out demonstration projects, the State agency shall check to assure that no individual receives both coupons and other benefits provided in lieu of coupons. Checks to detect individuals receiving both food coupons and cash-out benefits, or any other form of duplicate benefits, shall be made at the time of certification, recertification, and whenever a new member is added to an existing household. However, if the State agency can show that these time frames are incompatible with its system, the State agency shall check for duplicate benefits when necessary, but no less often than annually.

(2) Processing standards for duplicate participation checks at certification and recertification shall not delay the issuance of benefits.

(i) If the State agency chooses to check at the time of certification and recertification, the check for duplicates shall not delay processing of the application and provision of benefits beyond the normal processing standards in §273.2(g).

(ii) If a duplicate is found in making such a check, the duplication needs to be resolved in accordance with §273.2(f)(4)(iv) before the application can be processed and benefits provided. Delays in processing caused by this resolution shall be handled in accordance with §273.2(h).

17. Federal FAP Regulations at 7 C.F.R §273.2 states in relevant part:

(f) Verification. Verification is the use of documentation or a contact with a third party to confirm the accuracy of statements or information. The State agency must give households at least 10 days to provide required verification...

(4) Sources of verification— ...

(iv) Discrepancies. Where unverified information from a source other than the household contradicts statements made by the household, the household shall be afforded a reasonable opportunity to resolve the discrepancy prior to a determination of eligibility or benefits. The State agency may, if it chooses, verify the information directly and contact the household only if such direct verification efforts are unsuccessful. If the unverified information is received through the IEVS, as specified in §272.8, the State agency may obtain verification from a third party as specified in paragraph (f)(9)(v) of this section.

18. The Department's policy Transmittal No.: P-09-07-0010, dated July 27, 2009, effective upon receipt, gives the background information on PARIS Interstate matches and states: " The **PUBLIC ASSISTANCE REPORTING INFORMATION SYSTEM (PARIS)** is a voluntary Federal-State partnership which provides the participating State Public-Assistance Agencies' with quarterly reports that include detailed information and data to assist them in maintaining program integrity and detecting/deterring improper payments." The instructions on the manual procedures were also provided. The Department's policy Transmittal No.: I-12-12-0029, dated

December 11, 2012, effective December 31, 2012 is a memorandum to notify staff that the PARIS Interstate match file has been converted from a manual to an electronic process. The transmittal states:

When the quarterly PARIS Interstate file is received, the system will compare issuance information to see if an overlap in benefit issuance occurred; then separate the file into active (open) and inactive (closed) files.

Active Files

The Notice system (Estream) will generate a 'Contact Request Notice' for active cases. The notice will list: the primary information person (PIP), case number, all individuals who potentially received duplicate benefits and the issuance state's abbreviated code. The customer will be given 10 days to return information verifying residency.

A PARIS Interstate Active report will display in Exceptions Management.

Inactive Files

The Notice system will not generate a 'Contact Request Notice' for closed cases. A PARIS Interstate Inactive report will display in Exceptions Management. It will separately list each individual who potentially received duplicate benefits and the issuance state's abbreviated code...

19. The Department published two transmittals in July 2009 (P – 09-07-0010 and P – 09-07-0011) with instructions to staff of the procedure involved when a PARIS match is found. The instructions inform to call the state in question to determine if the individual was in fact receiving duplicate benefits. The instructions explain the reports will have the matching state as well as the phone number for the contact person in that state.

20. The Department did not submit the PARIS data match into evidence; it is unclear if this was an active file or an inactive file. There was no evidence the Department contacted the state of Pennsylvania to resolve the discrepancy. The findings show that the Department asked petitioner to provide Florida residency

verification on a written notice issued to petitioner's post office box which petitioner denies receiving.

21. The denial notice issued by the Department on August 18, 2014 cites to Fla. Admin. Code 65A-1.205 for the legal basis for the denial of all three programs. Although the specific citation is not given, the undersigned believes this is the paragraph referred to:

(a) The Department must determine an applicant's eligibility initially at application and if the applicant is determined eligible, at periodic intervals thereafter. It is the applicant's responsibility to keep appointments with the eligibility specialist and furnish information, documentation and verification needed to establish eligibility. If the Department schedules a telephonic appointment, it is the Department's responsibility to be available to answer the applicant's phone call at the appointed time. If the information, documentation or verification is difficult for the applicant to obtain, the eligibility specialist must provide assistance in obtaining it when requested or when it appears necessary.

22. This language is most likely taken from the Federal FAP Regulations appearing in 7 C.F.R § 273.2 "Office operations and application processing" which states:

(a)(2) *Application processing.* The application process includes filing and completing an application form, being interviewed, and having certain information verified. The State agency must act promptly on all applications and provide food stamp benefits retroactive to the month of application to those households that have completed the application process and have been determined eligible...

(5) *Notice of Required Verification.* The State agency shall provide each household at the time of application for certification and recertification with a notice that informs the household of the verification requirements the household must meet as part of the application process. The notice shall also inform the household of the State agency's responsibility to assist the household in obtaining required verification provided the household is cooperating with the State agency as specified in (d)(1) of this section. The notice shall be written in clear and simple language and shall meet

the bilingual requirements designated in § 272.4(b) of this chapter. At a minimum, the notice shall contain examples of the types of documents the household should provide and explain the period of time the documents should cover.

(5) *Responsibility of obtaining verification.* (i) The household has primary responsibility for providing documentary evidence to support statements on the application and to resolve any questionable information. The State agency must assist the household in obtaining this verification provided the household is cooperating with the State agency as specified under paragraph (d)(1) of this section.

(C) In cases where verification is incomplete, the State agency must have provided the household with a statement of required verification and offered to assist the household in obtaining required verification and allowed the household sufficient time to provide the missing verification. Sufficient time shall be at least 10 days from the date of the State agency's initial request for the particular verification that was missing.

23. According to the above federal regulation, the State agency may, if it chooses, verify the information directly and contact the household only if such direct verification efforts are unsuccessful. According to the Department's 2009 transmittal with instructions to its staff, the state with the possible duplicate issuance is to be contacted by the eligibility specialist to resolve the discrepancy. Also in accordance with the federal regulation, the State agency must have provided the household with a statement of required verification and offered to assist the household in obtaining required verification. The Department's administrative rule cited to in the notice mimics the FAP regulation except for the language of "If the information, documentation or verification is difficult for the applicant to obtain, the eligibility specialist must provide assistance in obtaining it when requested or when it appears necessary." The undersigned notes that the Department's transmittals and its administrative rule applies to both FAP and Medicaid programs. The Department did not provide the policy it believed directed its action.

24. In this case, the undersigned concludes the Department should have called the state of Pennsylvania and quickly resolved this discrepancy in accordance with its policy and procedures. The only issue timely appealed and under review is the application denial of September 16, 2014. Under a de novo review, the undersigned concludes petitioner has proven Florida residency; should the Department believe there is a duplicate issuance situation in Pennsylvania, it is to expeditiously contact the appropriate office for follow up. The Department is to take corrective action and approve petitioner's SLMB and/or QI1 coverage back to June 2014 (retroactive request as only QMB does not have retroactive coverage); approve petitioner's Medically Needy enrollment back to June 2014 (retroactive request) and approve petitioner's FAP from the August 15, 2014 date of application.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeals are granted. The Department is to take corrective action in accordance with the above conclusions. In the event benefits are currently approved, the benefits granted in this order are not to cause duplication.

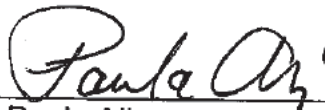
ANY FOOD STAMP BENEFITS DUE APPELLANT PURSUANT TO THIS ORDER MUST BE AVAILABLE WITHIN (10) TEN DAYS OF THIS DECISION OR WITHIN (60) SIXTY DAYS OF THE REQUEST FOR THE HEARING. ANY BENEFITS DUE WILL BE OFFSET BY PRIOR UNPAID OVERISSUANCES.

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 petitioner is responsible for any financial obligations incurred as the Department has no funds to assist in this review.

DONE and ORDERED this 5th day of January, 2014,

in Tallahassee, Florida.



Paula Ali
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Copies Furnished To: [REDACTED] Petitioner
ACCESS Circuit 4 - Lynn Dann

¹ The undersigned concludes the financial release and financial consent form are one in the same.