

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

FILED

JAN 15 2015

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES



APPEAL NO. 14F-08896

PETITIONER,

Vs.

CASE NO. 

FLORIDA DEPT OF CHILDREN AND FAMILIES
CIRCUIT: 06 Pinellas
UNIT: 88521

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned hearing officer convened an administrative hearing in the above-referenced matter telephonically on November 17, 2014, at 4:20 p.m.

APPEARANCES

For the Petitioner:


Petitioner's Representative

For the Respondent:

Anjali Pant
Senior Human Services Program Specialist
Office of Economic Self-Sufficiency
Department of Children and Families

STATEMENT OF ISSUE

The petitioner is requesting that the Department of Children and Families amend the Notice of Case Action it issued terminating petitioner's Medicaid coverage effective September 30, 2014 to reflect an effective date of termination as of April 23, 2014.

PRELIMINARY STATEMENT

██████████ the petitioner's son, appeared on behalf of the petitioner, ██████████
██████████ ("petitioner"). Mr. ██████████ may sometimes hereinafter be referred to as the
petitioner's "representative".

Anjali Pant, Senior Human Services Program Specialist with the Office of
Economic Self-Sufficiency at the Department of Children and Families, appeared on
behalf of the Department of Children and Families. The Department of Children and
Families may sometimes hereinafter be referred to as "DCF" or the "Department".

The petitioner introduced Exhibits "1" through "7", inclusive, at the hearing, all of
which were accepted into evidence and marked accordingly. The respondent introduced
Exhibits "1" through "15", inclusive, at the hearing, all of which were also accepted into
evidence and marked accordingly.

FINDINGS OF FACT

1. The petitioner is an adult female.
2. The petitioner previously resided at ██████████ in Clearwater,
Florida. ██████████ is a nursing home facility.
3. While residing at ██████████, the petitioner was approved to
receive, and was receiving, Florida Medicaid benefits.
4. The petitioner moved from ██████████ to a new nursing home
in Grapevine, Texas on April 23, 2014.
5. The petitioner's representative testified that ██████████ sent a
letter to the Department of Children and Families dated April 24, 2014 advising that the
petitioner was discharged on April 22, 2014. The Department did not receive the letter.

6. On June 18, 2014, the Department of Children and Families sent a Notice of Eligibility Review Interim Contact Letter to the petitioner. The letter states, in relevant part:

To continue your current benefits, you must complete a review to find out if you are still eligible. One option is for you or your representative to complete and return the enclosed form to the above address by June 30, 2014.

If you do not complete and return this form or complete your review on line we will be unable to determine if you are still eligible, and your benefits *may* stop. [Emphasis added]

7. The petitioner did not complete the review requested in the June 18, 2014 Interim Contact Letter. The petitioner's representative argued at the hearing that the petitioner's Medicaid should have been terminated based on the petitioner's failure to submit this information.

8. On June 25, 2014, the petitioner's representative sent a letter to the Department of Children and Families advising the petitioner was no longer a resident of [REDACTED] effective April 23, 2014 and explaining the petitioner had moved to Texas.

9. The Department of Children and Families received the June 25, 2014 letter from the petitioner's representative on June 30, 2014. This letter was the first communication received by the Department advising it of the petitioner's departure from the State.

10. The Notice of Case Action addressing the termination of the petitioner's Medicaid benefits is dated September 11, 2014. It states that the petitioner's Medicaid will end on September 30, 2014.

11. The last date for which Florida Medicaid paid any benefits was April 22, 2014. No additional funds were paid by Florida Medicaid for the petitioner's long-term care after this date.

12. The process of terminating a recipient's Medicaid benefits is considered by the Department to be an adverse action.

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 § 409.285, Fla. Stat. This Order is the final administrative decision of the Department of Children and Families pursuant to Fla. Stat. § 409.285.

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

15. The petitioner in the present case is proposing a change. Therefore, in accordance with Fla. Admin. Code R. 65-2.060(1), the burden of proof is assigned to the petitioner.

16. The standard of proof in an administrative hearing is a preponderance of the evidence. The preponderance of the evidence standard requires proof by "the greater weight of the evidence," (Black's Law Dictionary at 1201, 7th Ed.).

17. In order for an action to be reviewed by a hearing officer, there must have been a termination, suspension, or reduction in services provided. 7 C.F.R. § 431.201 states:

Action means a termination, suspension, or reduction of Medicaid eligibility or covered services...

Adverse determination means a determination made in accordance with sections 1919(b)(3)(F) or 1919(e)(7)(B) of the Act that the individual does not require the level of services provided by a nursing facility or that the individual does or does not require specialized services.

Date of action means the intended date on which a termination, suspension, reduction, transfer or discharge becomes effective. It also means the date of the determination made by a State with regard to the preadmission screening and annual resident review requirements of section 1919(e)(7) of the Act.

...
Notice means a written statement that meets the requirements of § 431.210.

18. This is further defined in Fla. Admin, Code R. 65-2.044 which states:

65-2.044 Right to Request a Hearing.

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...

19. The ACCESS Policy Manual, at 0840.0500, states as follows:

0840.0500 CHANGES (MSSI, SFP)

A change (expected or unexpected) may affect eligibility or level of benefits.

...

Unexpected: If the change does not require verification, complete action on the case within 10 calendar days of the date the Department becomes aware of the change. If the change requires verification to process, take action to place the case in pending status within two business days.

Examples of unexpected changes include, but are not limited to:

1. changes in income, assets;
2. relocation of an SFU;
3. a change in composition of the SFU;
4. a change in living situation (If a living situation involves changing from community Medicaid to an Institutional-Related

- Program such as ICP, Hospice or HCBS, conduct a complete eligibility review.);
5. corrective action for a case that failed to process;
 6. replacing a lost or stolen warrant;
 7. application or removal of sanctions; or
 8. changes in Medicaid coverage groups.

If delay in reporting the change or acting on the change causes overpayment, complete a referral to BR.

Effective Date of Change: Changes that result in a beneficial or adverse change are effective according to the following time frames:

1. **Beneficial:** the first day of the month the change is reported or becomes known to the Department.
2. **Adverse:** the first day of the next month the change can be made allowing for 10 days adverse action notice.

20. The above regulation explains that the Department has 10 days in which to process a change after it receives notification of the change. If the change is adverse to the interests of the beneficiary, the change is effective “the first day of the next month the change can be made allowing for 10 days adverse action notice.” In the present case, the Department first received notice of the petitioner’s departure from the State and her request to terminate Medicaid coverage on June 30, 2014. The Department had 10 days to process the change. Pursuant to this regulation, the petitioner’s Medicaid coverage should have been terminated effective August 1, 2014, not September 30, 2014 as the Notice of Case Action indicates.

21. Based on the date the Department received notice of the petitioner’s departure, her termination date cannot be amended any further than the date indicated above. However, the information supplied by the Department at the hearing indicates that Florida Medicaid did not pay for any expenses for the petitioner after April 22, 2014. It is suggested the petitioner share this information with her current Medicaid office in

Texas. Although the Office of Appeal Hearings has no jurisdiction over the Medicaid process of another state, this may allow Texas to open the petitioner's case sooner than it originally did.

22. The argument of the petitioner's representative at the hearing that the petitioner's Medicaid should have terminated automatically after the petitioner did not respond to the Interim Contact Letter is unpersuasive. The letter states that your benefits "may" stop if the recipient does not complete and return the form or complete the review on line, it does not definitely state that the benefits will stop.

23. In rendering this decision, the undersigned hearing officer considered all of the testimony and documentary evidence presented during the hearing process and reviewed all rules and regulations governing eligibility for the Florida Medicaid program.

DECISION

The Petitioner's appeal is hereby GRANTED in part and DENIED in part. The hearing officer determines that the petitioner's Medicaid benefits should have been terminated by the Department effective August 1, 2014; however, the Department could not have terminated the benefits effective any sooner because it did not receive notice of the petitioner's departure from the State until June 30, 2014.

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 15th day of January, 2015,

in Tallahassee, Florida.

Peter J. Tsamis

Peter J. Tsamis

Hearing Officer

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