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

[redacted]

PETITIONER,

Vs.

FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES
CIRCUIT: 15 PALM BEACH
UNIT: 88592

RESPONDENT.
_____/

APPEAL NO. 14F-09676

CASE NO. [redacted]

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing telephonically in the above-reference matter on December 15, 2014, at 3:18 p.m., and reconvened on January 15, 2015, at 11:56 a.m.

APPEARANCES

For the Petitioner: [redacted]

For the Respondent: Maria Alverez, ACCESS supervisor

STATEMENT OF ISSUE

The petitioner is appealing the Department's action to deny her Home and Community Based Services Medicaid coverage based on the contention that she did not meet a Level of Care (LOC).

PRELIMINARY STATEMENT

The respondent presented one composite exhibit, which was entered into evidence as Respondent's Composite Exhibit 1. The record was held open until

December 22, 2014, for the petitioner to provide her evidence. After review of the evidence, it was found necessary to reconvened and to take testimony from Department of Elder Affairs (DOEA) as respondent's witness.

The hearing reconvened on January 15, 2015. Present as witness for the respondent was Nancy Partin, Program Operations Administrator with the Cares Program, DOEA.

The petitioner presented one exhibit, which was entered into evidence as Petitioner's Exhibit 1. The record was held open until January 16, 2015 for the respondent to provide additional evidence from its witness on how eligibility was determined. The respondent provided its Running Record Comments (CLRC) and a Notice of Case Action for the denial of the petitioner's November 6, 2014 application. In addition, information from DOEA on the eligibility determination procedures were provided which were accepted, entered into evidence and marked as Respondent's Composite Exhibit 2 and 3. The record was closed on January 16, 2015.

FINDINGS OF FACT

1. The petitioner (age 66) resides in her home in Delray Beach, Florida. In July 2014, she submitted an application for Home and Community Based Services (HCBS) Medicaid Waiver Program. She is unable to (1) shower or groom herself and (2) purchase groceries. She suffers from agoraphobia disorder. She is unable to care for herself and is seeking help to assist her with daily activities.

2. The Department received a Notification of Level of Care (LOC) Form 603 from the Department of Elder Affairs (DOEA) CARES Unit, which received a request for a medical evaluation from the Area Agency on Aging. It was dated July 23, 2014. This

form advised that the petitioner (1) does not meet LOC criteria and (2) Withhold LOC. DOEA is required to conduct LOC evaluation to determine whether benefits should be approved for individuals applying for the HCBS Medicaid waiver program. The DOEA physician performed a comprehensive evaluation of the petitioner's health. The petitioner was found to suffer from depression, anxiety and agoraphobia. She also has high cholesterol, allergies, acid reflux and osteoporosis. The physician evaluation was that the petitioner does not meet a LOC. DOEA also had one of its nurse do a home study. The nurse visited the petitioner at her resident and observed her while she performed daily activities. The nurse found the petitioner could perform daily activates independently and reported the petitioner could perform daily activities and care for herself. She could drive herself to the store, make medical appointments and get to those appointments, and take her medications independently. She also concluded that the petitioner did not meet a LOC.

3. On October 6, 2014, the respondent sent the petitioner a Notice of Case Action, informing her that her application for HCBS Medicaid waiver program benefits was denied.

4. On November 6, 2014, the petitioner submitted a second application for HCBS Medicaid waiver program.

5. On November 7, 2014, the petitioner called the respondent's call center and informed the respondent that her condition had worsened since her July 2014 application.

6. The respondent processed the petitioner's November 6, 2014 application and denied it without an updated medical evaluation for a LOC. The denial of the previous LOC was used to process the new application.

7. On December 1, 2014, the respondent mail a Notice of Case Action informing the petitioner that her Medicaid application dated November 6, 2014 was denied. The reason cited for the denial was you did not meet the medical need for institutional services.

8. At the hearing on January 15, 2015, the petitioner stated she is not requesting Institutional Care Program or nursing home services but is requesting HCBS Medicaid waiver program because she needs help with her daily activities at home. She wants someone to come out to her home and assist her with showering and shopping. Her conditions have gotten worse and she continues to deteriorate, now with two torn shoulders and one frozen, she cannot shop for herself either anymore and she has lost significant amount of weight.

9. The DOEA did not make a new medical evaluation for a LOC for the petitioner's November 6, 2014, application as it was not requested.

CONCLUSIONS OF LAW

10. 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.

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

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

13. The ACCESS Florida Program Policy Manual (The Policy Manual), 165-22 section 1440.1300 addresses APPROPRIATE PLACEMENT (MSSI) in part:

> To qualify for the Institutional Care Program (ICP) or Home and Community Based Services (HCBS), or the Program for All-Inclusive Care for the Elderly (PACE), the individual must meet special institutional eligibility criteria, including "appropriate placement."
> Appropriate placement means that an individual must be placed in a facility or program certified to provide the type and level of care the Department has determined the individual requires.
> Two basic requirements must be met for placement to be considered appropriate. These are:
> 1. the person must be determined by the Department to be medically in need of the type of care provided by the specific program, and
> 2. the person must be actually receiving the services (or for HCBS, must be enrolled in the waiver) which the Department has determined that the individual needs.
> To be appropriately placed for ICP, a person must have been determined in need of an ICP level of care (by CARES) and actually be placed in a Medicaid facility which provides the specified level of care. No level of care is required for a QMB eligible individual (Medicaid eligible individual with income less than the federal poverty level) in a nursing home during the Medicare coverage period.
> For Home and Community Based Services (HCBS), to be appropriately placed, a person must be in need of waiver services and be enrolled in the waiver as documented by form CF-ES 2515 with an appropriate case manager.

14. The Policy Manual, section1440.1302 addresses Need for Placement (MSSI):

> The agency or office responsible for determining the need for care depends on the applicant's age and what kind of facility or program is needed. After the eligibility specialist requests a determination, he must receive DOEA CARES Form 603 (Notification of Level of Care) from the responsible office to document the specific need in the case record.

> Note: The eligibility specialist does not request level of care decisions for HCBS waivers but must receive documentation of decisions from case managers or CARES.
> The determination will be obtained from one of the following offices: CARES (Comprehensive Assessment and Review for Long Term Care Services), Department of Elder Affairs:
> 1. For ICP: determines Level of Care for applicant/recipients over age 21 in nursing facilities, swing beds or hospital based nursing facility beds.
> 2. For HCBS: determines if applicant/recipient meets waiver requirements for a specific HCBS waiver, including Channeling, Aged and Disabled Adult, Project AIDS Care, SMMC LTC, Traumatic Brain and Spinal Cord Injury, or Cystic Fibrosis.
> 3. For PACE: determines if the applicant/recipient meets the level of care...

15. Based on the relevant information documented in the petitioner's medical record and interview, DOEA determined that she did not meet a LOC for her July 2014 application.

16. The petitioner argued the nurse who evaluated her did not do an extensive evaluation. She also argued that her condition has worsened and continues to worsen since she applied in July 2014. She cannot care for herself and as a result, she has lost weight.

17. After reviewing the above-cited regulations and the testimonies of both parties, the respondent's action to deny the petitioner's eligibility for her July 2014 application is correct. However, the respondent prematurely denied the petitioner's November 6, 2014 application without another evaluation for LOC.

18. The hearing officer concludes that there is no evidence to show that the Department submitted the "Referral for Home and Community Based Waiver Services" (CF-ES 2519 form) to CARES unit for consideration of enrollment into the Medicaid Waiver program for the petitioner's November 6, 2014 application. The

Department's denial was premature. The Department is to submit this form and wait for a response from CARES prior to disposing of the petitioner's application.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the petitioner's issue regarding her July 2014 application for the HCBS Medicaid Waiver for a LOC determination is denied.

The HCBS Medicaid Waiver denial for a LOC determination for the application date November 6, 2014 is reversed and this appeal is remanded to the respondent for further development; the completion of the referral to CARES for a new LOC determination in accordance with the Department's policies. Once a determination has been made, a written notice is to be issued to the petitioner and that notice is to include appeal rights.

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 February, 2015,

in Tallahassee, Florida.

Christiana Gopaul-Narine

Christiana Gopaul-Narine
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
Melanie Swager, Southeast Region