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

[redacted]

APPEAL NO. 14F-09860

PETITIONER,

Vs.

CASE NO.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 18 Seminole
UNIT: AHCA

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on January 7, 2015, at 1:02 p.m.

APPEARANCES

For the Petitioner: [redacted] Petitioner's Father

For the Respondent: Lisa Sanchez, Senior Human Services Program Specialist, Agency for Health Care Administration

STATEMENT OF ISSUE

Whether Respondent correctly denied Petitioner's request to reimburse out-of-pocket expenses paid during August and September 2014.

PRELIMINARY STATEMENT

Petitioner was not present at the hearing. At the time of the hearing, Respondent submitted one (1) composite exhibit. The hearing officer took administrative notice of Sections 409.961, 409.965, 409.971, and 409.978, Florida Statutes (2014).

Petitioner's second issue, a request to be exempt from Managed Care, was withdrawn on record. Petitioner accepts services from his managed care plans under the state plan and the long term care plan. .

FINDINGS OF FACT

1. Petitioner's Medicaid was terminated effective July 31, 2014 because Petitioner failed to submit an application for recertification of benefits. .

2. Petitioner did not request a fair hearing with the Office of Appeal Hearings to contest the termination. Petitioner reapplied for Medicaid and was granted retroactive coverage in October 2014, covering August and September 2014 from the approval date.

3. During the interim period between the termination and the new application approval, Petitioner was not approved for Medicaid. As a result, he had to pay out-of-pocket for his medications. He put this expense on a credit card, which is currently incurring interest.

4. Petitioner requested reimbursement for the out-of-pocket payments made to the pharmacy in August and September 2014. The Agency denied the request by notice dated December 16, 2014. The Agency indicated it denied the request because there is no proof that Petitioner lost his Medicaid due to an Agency or Department error.

CONCLUSIONS OF LAW

5. The Department of Children and Families, Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties, pursuant to Section 409.285, Florida Statutes (2014).

6. This is a Final Order, pursuant to Sections 120.569, 120.57, and 409.285, Florida Statutes.

7. This hearing was held as a *de novo* proceeding, in accordance with Florida Administrative Code Rule 65-2.056.

8. The burden of proof was assigned to the Petitioner in accordance with Florida Administrative Code Rule 65-2060(1). The standard of proof needed to be met for an administrative hearing is by a preponderance of the evidence, as provided by Florida Administrative Code Rule 65-2.060(1).

9. Section 409.902, Florida Statutes (2014), states in part:

> (1) The Agency for Health Care Administration is designated as the single state agency authorized to make payments for medical assistance and related services under Title XIX of the Social Security Act. These **payments shall be made**, subject to any limitations or directions provided for in the General Appropriations Act, **only for services included in the program, shall be made only on behalf of eligible individuals, and shall be made only to qualified providers in accordance with federal requirements for Title XIX of the Social Security Act and the provisions of state law** [emphasis added]. This program of medical assistance is designated the "Medicaid program."...

10. Florida Administrative Code Rule 59G-5.110 governs when the Agency can directly reimburse a recipient for out-of-pocket medical expenses. The Rule states as follows:

> [...]Direct payment may be made to a recipient who paid for medically necessary, Medicaid-covered services received from the beginning date of eligibility (including the three-month retroactive period) **and paid for during the period of time between an erroneous denial or termination of Medicaid eligibility and a successful appeal or an agency determination in the recipient's favor** [emphasis added]. The services must have been covered by Medicaid at the time they were provided. Medicaid will send payment directly to the recipient upon submission of valid receipts to the Agency for Health Care Administration. All payments shall be made at the Medicaid established payment rate in effect at the

time the services were rendered. Any services or goods the recipient paid before receiving an erroneous determination or services for which reimbursement from a third party is available are not eligible for reimbursement to the recipient.

11. In Kurnik v. Department of Health & Rehabilitative Services, 661 So.2d 914 (Fla. 1st DCA 1995), the court ruled that direct reimbursement to the Medicaid recipient for post-application out-of-pocket expenses is proper when the recipient's Medicaid eligibility application was unreasonably delayed by the Agency for Health Care Administration (AHCA) and eligibility was later found.

12. There is no evidence that there was an erroneous determination of eligibility that was appealed in this case. Petitioner failed to recertify for benefits and lost his benefits for a short time until he reapplied. Petitioner's address was incorrect and thus he was not reminded to recertify, but this is not a Department error.

13. The undersigned concludes the above authorities only provide for direct reimbursement for out-of-pocket expenses based on an incorrect denial or state agency delay of a Medicaid eligibility application. Neither of these is applicable in this case.

DECISION

Based on the Above Finding of Facts and Conclusions of law, the appeal is denied and Respondent's actions are affirmed.

NOTICE OF RIGHT TO APPEAL

This decision is final and binding on the part of the agency. 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, Agency for Health Care Administration, 2727 Mahan Drive, Tallahassee, FL 32308-5403. 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

agency has no funds to assist in this review, and any financial obligations incurred will be the petitioner's responsibility.

DONE and ORDERED this 4th day of February, 2015,

in Tallahassee, Florida.

Danielle Murray
Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
Office: 850-488-1429
Fax: 850-487-0662
Email: Appeal.Hearings@myflfamilies.com

Copies Furnished To: [redacted] Petitioner
Judy Jacobs, Area 7, AHCA Field Office