

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

FILED

APR 30 2015

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES

APPEAL NO. 14F-09672
14F-10584
14F-10865

PETITIONER,

Vs.

CASE NO. [REDACTED]

FLORIDA DEPARTMENT
OF CHILDREN AND FAMILIES
CIRCUIT: 15 Palm Beach
UNIT: 88594

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing telephonically in the above-referenced matter on January 12, 2015, at 1:34 p.m.

APPEARANCES

For the petitioner: [REDACTED]

For the respondent: Laura Arnold, ACCESS supervisor

STATEMENT OF ISSUE

The petitioner is appealing the respondent's action to deny Temporary Cash Assistance (TCA) benefits, Food Assistance Program (FAP) benefits, and Medicaid benefits for her October 9, 2014 application.

PRELIMINARY STATEMENT

At the hearing, the respondent presented one exhibit, which was accepted and entered into evidence as Respondent's Composite Exhibit 1. The petitioner did not

present any exhibits at the hearing. The record was held open until January 22, 2015, for both the petitioner and the respondent to provide additional evidence. The respondent provided two exhibits after the hearing which were entered into evidence and marked as Respondent's Composite Exhibits 2 and 3. No additional evidence was received from the petitioner.

The undersigned found it necessary to reconvene and set a hearing for March 9, 2015 at 1:30 p.m. At the hearing, both the Department and the hearing officer were present. The petitioner was not. On March 16, 2015, the undersigned sent a second order to reconvene on April 8, 2015 at 8:30 a.m. On March 19, 2015, the petitioner sent an email stating she needed an afternoon appointment. The undersigned found it necessary to accommodate her and rescheduled the hearing for April 7, 2015 at 2:30 p.m. Neither the Department nor the petitioner was present on April 7, 2015. Petitioner responded via email to the Order to Reconvene stating she would not "re-participate". The record was closed on April 7, 2015.

FINDINGS OF FACT

Based on the documentary and oral evidence presented at the hearing and on the entire record of this proceeding, the following Findings of Fact are made:

1. The petitioner was receiving Medically Needy benefits for herself, her boyfriend and her three children from a previous application (Respondent's Compose Exhibit 2).
2. On October 9, 2014, the petitioner applied for Temporary Cash Assistance benefits, Food Assistance Program benefits and Medicaid benefits through a web application. On her application, she listed herself as the only household member. She

did not list any income or assets. She listed monthly payments for medical expenses for eyeglasses and dental care.

3. On October 13, 2014, the respondent completed an interview with the petitioner. At the interview, she informed the respondent that she was staying with a friend and providing her own meals.

4. On October 13, 2014, a Notice of Case Action was mailed to the petitioner informing her that she needed to provide proof of loans, contributions, gifts or a statement from anyone paying her bills. The notice also informed her she needed to complete the TCA online work registration at <https://osstclient.deo.myflorida.com> and provide paystubs for the last four weeks. She was given until October 20, 2014 to provide the information.

5. On November 13, 2014, the respondent mailed a Notice of Case Action informing the petitioner that her FAP and Medicaid application dated October 9, 2014 was denied. The reason cited for the FAP denial was that she did not cooperate with quality control (QC) and the reason given for the Medicaid denial was she did not cooperate with child support enforcement (CSE). The same notice also informed her that Medically Needy benefits would end on November 30, 2014, she was included in that assistance group.

6. On November 14, 2014, the petitioner called the respondent's call center to inquire on the status of her case. She was informed that TCA, FAP and Medicaid benefits were denied because she was sanctioned for CSE and QC. She informed the respondent that she lives with her child and child's father. The petitioner had two other children that were listed on prior applications. Those children were no longer part of her household.

7. The respondent stated they were not aware the petitioner lived with her minor child and her child's father since she did not report them on her October 9, 2014 application. The Department processed the application with the petitioner as the only household member. It denied the TCA benefits because the technical requirement to receive TCA benefits was to have a child less than 18 years in the assistance group. The FAP benefits were denied because of the imposed QC sanction and Medicaid was denied because of the CSE sanctions. The petitioner did not meet the technical requirements to qualify for TCA benefits and Medicaid benefits. She was not pregnant, disabled or aged.

8. The Department alleges the petitioner was sanctioned by CSE since July 2013 for TCA, FAP and Medicaid benefits.

9. On December 10, 2014, the petitioner requested a hearing to challenge the respondent's action.

10. The respondent explained that in order for the petitioner to be eligible for TCA benefits, FAP benefits and Medicaid benefits, she must meet the technical requirements of having a minor child in her household. In addition, she must cooperate with CSE and QC or she will remain ineligible for benefits until she complies. The respondent alleges both QC and CSE sanctions are still in place.

11. The petitioner alleges she cooperated and cured the sanctions with both QC and CSE. The record was left open for the petitioner to provide proof she cooperated with QC and CSE, but she did not.

12. The petitioner confirmed her household consists of herself, her child and child's father. The child's father is employed.

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 Fla. Stat. § 409.285.

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

15. Fla. Admin. Code R. 65-2.060 (1) states:

The burden of proof, except where otherwise required by statutes, is on the party asserting the affirmative of an issue. The burden is upon the Department when the Department takes action which would reduce or terminate the benefits or payments being received by the recipient. The burden is upon the petitioner if an application for benefits or payments is denied. The party having the burden shall establish his/her position, by a preponderance of evidence, to the satisfaction of the hearing officer.

16. The petitioner has the burden of proof therefore, she must establish by a preponderance of evidence that she cured the CSE and QC sanctions and that she is eligible for the benefits she applied to receive.

The FAP issue will be addressed first:

17. The code of Federal Regulations at 7 CFR 273.2 addresses Office operations and application processing as follows.

(a) Operation of food stamp offices and processing of applications—(1) Office operations. State agencies must establish procedures governing the operation of food stamp offices that the State agency determines best serve households in the State, including households with special needs, such as, but not limited to, households with elderly or disabled members, households in rural areas with low-income members, homeless individuals, households residing on reservations, households with adult members who are not proficient in English, and households with earned income (working households). The State agency must provide timely,

accurate, and fair service to applicants for, and participants in, the Food Stamp Program. The State agency cannot, as a condition of eligibility, impose additional application or application processing requirements. The State agency must have a procedure for informing persons who wish to apply for food stamps about the application process and their rights and responsibilities. The State agency must base food stamp eligibility solely on the criteria contained in the Act and this part.

18. The code of Federal Regulations at 7 CFR 273.2 (b) (2) states.

(2) *Cooperation with QC Reviewer.* In addition, the household shall be determined ineligible if it refuses to cooperate in any subsequent review of its eligibility as a part of a quality control review. If a household is terminated for refusal to cooperate with a quality control reviewer, in accordance with §§275.3(c)(5) and 275.12(g)(1)(ii) of this chapter, the household may reapply, but shall not be determined eligible until it cooperates with the quality control reviewer. If a household terminated for refusal to cooperate with a State quality control reviewer reapplies after 125 days from the end of the annual review period, the household shall not be determined ineligible for its refusal to cooperate with a State quality control reviewer during the completed review period, but must provide verification in accordance with paragraph (f)(1)(ix) of this section. If a household terminated for refusal to cooperate with a Federal quality control reviewer reapplies after nine months from the end of the annual review period, the household shall not be determined ineligible for its refusal to cooperate with a Federal quality control reviewer during the completed review period, but must provide verification in accordance with paragraph (f)(1)(ix) of this section. In the event that one or more household members no longer resides with a household terminated for refusal to cooperate, the penalty for refusal to cooperate will attach to household of the person(s) who refused to cooperate. If the State agency is unable to determine which household member(s) refused to cooperate, the State agency shall determine the household to which the penalty shall apply.

19. The ACCESS Florida Program Policy Manual (The Policy Manual), 165-22, at 1410.2300 cooperation with quality control (FS) states:

Households are required to cooperate with state and federal Quality Control (QC) reviewers. If any individual in the household refuses to cooperate, a sanction will be imposed against the non-cooperative individual affecting the eligibility of the entire household. Refusal to cooperate will result in the denial or termination of benefits for the entire household. (emphasis added)

The sanction will follow the non-cooperative individual. If the non-cooperative individual moves out of the household, the remaining household members can apply for benefits. If the non-cooperative individual applies for benefits for them self or moves in with another household, benefits will be denied or terminated for this household.

20. The Policy Manual section 1410.1710 addresses CSE Reports of Failure to Cooperate (FS) states:

When Child Support Enforcement (CSE) requests a sanction be imposed because a custodial parent or caretaker relative did not comply with Child Support Enforcement requirements, immediate action will be taken to remove the non-compliant custodial parent or caretaker relative from food stamps, allowing for a 10-day notice of adverse action. The non-cooperative custodial parent will be treated as "technically ineligible" for food stamp budgeting purposes...

21. The case record was held open for the petitioner to provide proof that she cooperated with CSE and QC but no evidence was provided. Based on the authorities cited above, the undersigned concludes the respondent's action to deny the petitioner eligibility for FAP benefits was within the rules of the Program. The petitioner failed to meet her burden.

TCA benefits and Medicaid benefits will now be addressed.

22. Fla. Stat. § 414.095 (6) CHILD SUPPORT ENFORCEMENT states:

As a condition of eligibility for public assistance, the family must cooperate with the state agency responsible for administering the child support enforcement program in establishing the paternity of the child, if the child is born out of wedlock, and in obtaining support for the child or for the parent or caretaker relative and the child. Cooperation is defined as:

- (a) Assisting in identifying and locating a parent who does not live in the same home as the child and providing complete and accurate information on that parent;
- (b) Assisting in establishing paternity; and
- (c) Assisting in establishing, modifying, or enforcing a support order with respect to a child of a family member.

This subsection does not apply if the state agency that administers the child support enforcement program determines that the parent or caretaker relative has good cause for failing to cooperate.

23. The Policy Manual at 1420.2300, cooperation with quality control (TCA) states:

There is no federal requirement to complete Quality Control (QC) reviews for TCA cases. However, the state has opted to continue this process in order to maintain program integrity.

When the eligibility specialist is notified that an individual receiving TCA refuses to cooperate with the QC review, the eligibility specialist will contact the recipient to conduct an eligibility review. If the individual cooperates, the interview may be conducted jointly with the QC analyst. **If the individual does not cooperate, the TCA benefit will be canceled, as the eligibility specialist is unable to determine eligibility.**

Note: It is important that the reason on the notice to the individual reflects the correct cancellation reason. There is no basis for canceling TCA solely for refusal to cooperate with the QC review.

If the individual whose benefit is terminated for this reason subsequently reapplies, eligibility will be determined without involvement of QC.

24. Fla. Stat. § 414.32 (1) addresses cooperation with child support enforcement agency and states:

(a) A parent or caretaker relative who receives temporary cash assistance or food assistance on behalf of a child under 18 years of age who has an absent parent is ineligible for food assistance unless the parent or caretaker relative cooperates with the state agency that administers the child support enforcement program in establishing the paternity of the child, if the child is born out of wedlock, and in obtaining support for the child or for the parent or caretaker relative and the child.

(2)REDUCTION OR DENIAL OF TEMPORARY CASH ASSISTANCE.—
The food assistance allotment shall be reduced or terminated as otherwise provided in this chapter if cash assistance under the Temporary Cash Assistance Program is reduced or denied because an individual in the family fails to perform an action required under the program.

25. Fla. Stat. § 409.2572 states in relevant part:

Cooperation.—(1) An applicant for, or recipient of, public assistance for a dependent child shall cooperate in good faith with the department or a program attorney in: ...

(2) Noncooperation, or failure to cooperate in good faith, is defined to include, but is not limited to, the following conduct: ...

(3) The Title IV-D staff of the department shall be responsible for determining and reporting to the staff of the Department of Children and Family Services acts of noncooperation by applicants or recipients of public assistance. Any person who applies for or is receiving public assistance for, or who has the care, custody, or control of, a dependent child and who without good cause fails or refuses to cooperate with the department, a program attorney, or a prosecuting attorney in the course of administering this chapter shall be sanctioned by the Department of Children and Family Services pursuant to chapter 414 and is ineligible to receive public assistance until such time as the department determines cooperation has been satisfactory.

26. Federal Regulations at 42 C.F.R. § 435.610 addresses Assignment of rights to benefits and states in part:

(a) As a condition of eligibility, the agency must require legally able applicants and recipients to...

(2) Cooperate with the agency in establishing paternity and in obtaining medical support and payments, unless the individual establishes good cause for not cooperating, and except for individuals described in section 1902 (1)(1)(A) of the Act (poverty level pregnant women), who are exempt from cooperating in establishing paternity and obtaining medical support and payments from, or derived from, the father of the child born out of wedlock; and...

27. The Policy Manual at 1430.1700 addresses child support cooperation (MFAM) states:

Under state and federal law, the state must take action to locate non-custodial parents, establish paternity, and secure all child support, medical support, or other benefits for children receiving Medicaid.

Applicants for and recipients of Medicaid (including caretaker relatives) must cooperate with Child Support Enforcement (CSE) as a condition of eligibility; unless it is determined that good cause for non-cooperation with CSE exists.

Exceptions: Child support cooperation is not a factor of eligible for pregnant woman Medicaid, Emergency Medicaid for Aliens (EMA), transitional Medicaid and Children Only Medicaid cases.

28. The above authority states the applicant must cooperate with the agency in establishing support except in when good cause exists. The petitioner has not claimed good cause, she is not pregnant and she has not presented evidence to show she cooperated with CSE or QC (or by removing the previously imposed sanctions).

29. The Department alleges both QC and CSE sanctions are still in place. The petitioner alleges she has cured both QC and CSE sanctions. The petitioner has the burden of proof. She was given the chance to submit evidence to support her allegations and did not submit any additional exhibits to support her position and the undersigned tried to reconvene on two occasions; March 9, 2015 at 1:30 p.m. and on April 7, 2015 at 2:30 p.m., but to no avail. The petitioner did not meet all required conditions of eligibility for FAP benefits, Medicaid benefits or for TCA benefits. She has not provided evidence she cured the CSE and QC sanctions therefore, she has not met her burden to proof.

30. After careful review, the undersigned concludes the Department's actions to deny FAP benefits, TCA benefits and Medicaid benefits are correct and within the rules of the Programs.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeals are denied and the Department's actions are affirmed.

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 30th day of April, 2015,

in Tallahassee, Florida.

Christiana Gopaul-Narine

Christiana Gopaul-Narine *CP*
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