

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



APPEAL NO. 14F-8326

PETITIONER,

Vs.

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 11 Dade
UNIT: 88672

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on December 10th, 2014, at 8:40 a.m., in Miami, Florida.

APPEARANCES

For the Petitioner:  pro se.

For the Respondent: John Roche, Operations Management Consultant for the Economic Self-Sufficiency program.

STATEMENT OF ISSUE

The petitioner is appealing the respondent's action to terminate her son's Medicaid benefits. The petitioner is also appealing the respondent's action to deny her application for Medicaid benefits.

PRELIMINARY STATEMENT

The hearing was originally scheduled to be conducted telephonically on November 14th, 2014. A continuance was granted to accommodate the petitioner's request to convene in person.

The petitioner submitted into evidence a packet of documents consisting of notices issued to her from the Health Insurance Marketplace. These were marked as Petitioner's Composite Exhibit 1.

The respondent submitted into evidence one document which was marked as Respondent's Exhibit 1.

By way of Notice of Case Action dated September 16th, 2014, the respondent informed the petitioner that Medicaid benefits for her and her son would end on September 30th, 2014. On September 25th, 2014, the petitioner filed a timely appeal to challenge the respondent's action.

FINDINGS OF FACT

1. Prior to the action under appeal, the petitioner's son received ongoing Medicaid benefits through September 2014. Although the above-mentioned Notice of Case Action also indicates that the petitioner's Medicaid benefits would end on September 30th, 2014, the petitioner asserted (and the respondent verified) that she actually had not received Medicaid benefits since at least September 2013.

2. The petitioner applied to recertify for benefits, and the recertification was to be effective October 2014. A copy of the application was not submitted into evidence, and the exact date of application was not established.

3. The petitioner's household consists of herself (born in [REDACTED] and her son (born in [REDACTED]. The petitioner's son is a full-time student at the University of Central Florida in Orlando. Neither the petitioner nor her son is disabled.

4. The respondent's position is that the petitioner's son lost his eligibility for Medicaid effective May 2014, whereupon he had turned 21 years of age. For reasons that were not clear at the hearing, the petitioner's son continued to receive Medicaid through September 2014.

5. The respondent's position is that the petitioner is not eligible for Medicaid as she has no minor children in her custody, and she does not meet the criterion of age or disability.

CONCLUSIONS OF LAW

6. 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 under § 409.285, Fla. Stat.

7. Fla. Admin. Code R. 65-2.060 addresses the burden of proof and states as follows:

(1) 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.

Regarding the termination of the petitioner's son's Medicaid benefits, the burden of proof is assigned to the respondent. Regarding the denial of the petitioner's application

for Medicaid, the burden of proof is assigned to the petitioner.

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

The hearing officer will first address the Medicaid termination of the petitioner's son.

9. The Family-Related Medicaid Coverage groups listed in Fla. Admin. Code R. 65A-1.703 addresses potential Medicaid eligibility from the presence of a child living in the home, or a pregnant woman. Paragraph (1) of this rule provides potential eligibility for Medicaid for "children under the age of 21" as follows:

65A-1.703 Family-Related Medicaid Coverage Groups.

(1) The department provides mandatory Medicaid coverage for individuals, families and children described in Section 409.903, F.S., Section 1931 of the Social Security Act and other relevant provisions of Title XIX of the Social Security Act. The optional family-related Title XIX and Title XXI coverage groups served by the department are stated in each subsection of this rule.

(a) Children under the age of 21 living with a specified relative who meet the eligibility criteria of Title XIX of the Social Security Act. Included in this coverage group are children who are under age 21 in intact families, provided that the children are living with both parents, unless a parent is temporarily absent from the home.

10. The above rule does provide potential Family-Related Medicaid coverage group for a "child" under age 21, but not over age 21. The Department's Integrated Public Assistance Program Policy manual passage 1430.0500 echoes this age requirement as follows:

Children in the assistance group must meet requirements for the factor of age in order for the assistance group to be eligible. A child must be under

age 21 to be eligible for assistance. Exception: For MEDS eligibility and PMA children living with a nonrelative, a child must be under age 19.

11. Based on the above-cited authorities, the hearing officer concludes that the petitioner's non-disabled son was no longer eligible for Medicaid effective May 2014, which was the first full month in which he was 21 years of age. Therefore, the respondent's action to terminate his Medicaid effective September 30th, 2014 (notably four months beyond his eligibility period) was correct.

The hearing officer will now address the denial of the petitioner's application for Medicaid.

12. The Florida Administrative Code, Section 65A-1.710 et seq., sets forth the rules of eligibility for Elderly and Disabled Individuals Who Have Income of Less Than the Federal Poverty Level. For an individual who does not have custody of minor children, is not pregnant, and is less than 65 years of age, to receive benefits he or she must meet the disability criteria of Title XVI of the Social Security Act appearing in 20 C.F.R. §416.905. The regulations state, in part:

The law defines disability as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. To meet this definition, you must have a severe impairment which makes you unable to do your previous work or any other substantial gainful activity which exists in the national economy...

13. The above-cited regulations state that an individual who is under the age of 65 years, does not have custody of a minor child, and is not pregnant (as is the petitioner's case) must meet the criteria of disability described therein. As the petitioner

makes no claim of disability, the hearing officer concludes that the petitioner is not eligible for Medicaid, and the respondent's action to deny her application was correct.

DECISION

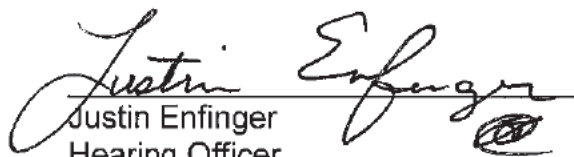
Based upon the foregoing Findings of Fact and Conclusions of Law, this appeal is hereby DENIED.

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

DONE and ORDERED this 20th day of January, 2014,

in Tallahassee, Florida.



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Copies Furnished To: [REDACTED] Petitioner
Teresa Zepeda, Circuit 11 ESS