269STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

[redacted]

APPEAL NO. 14F-10580
APPEAL NO. 15F-01958
APPEAL NO. 15F-00269

PETITIONER,

Vs.

CASE NO. [redacted]

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 13 Hillsborough
UNIT: 88692

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on January 22, 2015 at 2:33 p.m., in Tampa, Florida.

APPEARANCES

For the Petitioner: [redacted]

For the Respondent: Patti Wethington, Benefit Recovery claims manager, and Anjali Pant, Economic Self-sufficiency senior human services program specialist

ISSUE

The petitioner is appealing the following:

A. A Food Assistance Program benefits overpayment of $1,080.

B. The establishment and recovery of overpayments in the Cash Assistance Program.

C. The denial of Medicaid Program benefits.

PRELIMINARY STATEMENT

The petitioner requested and was granted a consolidation of her Benefit Recovery appeals, 14F-10580 and 15F-01958, and her Medicaid Program benefits appeal, 15F-00269. As the petitioner requested consolidation, the hearing was held at the same date and time for all three appeals.

The petitioner submitted two motions: The first motion, to dismiss the Benefit Recovery claims as she asserted that the respondent did not provide her any information as to how or why she owes the money, and the second motion, to disregard all evidence submitted by the respondent for the Medicaid Program benefits appeal as it was not received prior to January 8, 2015.

Benefit Recovery submitted a Motion to Dismiss, as the request for the Benefit Recovery hearing for the Cash Assistance Program overpayments was beyond the time standard for the petitioner to appeal the notices. The parties were informed that all motions would be address in the Final Order.

The petitioner presented one exhibit which was accepted into evidence and marked as Petitioner Exhibit "1". Benefit Recovery presented 12 exhibits which were accepted into evidence and marked as Respondent's (BR) Exhibits "1" through "12" respectively. Economic Self-sufficiency presented seven exhibits which were accepted into evidence and marked as Respondent's (ES) Exhibits "1" through "7", respectively. The record was left open until February 2, 2015 for the petitioner to review the respondent's evidence, provide any response to the respondent's evidence, and submit any additional evidence. On January 27, 2015, the petitioner presented three exhibits

which was accepted into evidence and marked as Petitioner's Exhibits "2", and "composite 3", respectively. (Petitioner's Exhibit 3 was entered as a composite as the petitioner proffered all copy of all the documents she received from the respondent) On February 2, 2015, the petitioner presented three exhibits which was accepted into evidence and marked as Petitioner's Exhibits "4" through "7", respectively. On February 2, 2015, the record closed.

FINDINGS OF FACT

A. A Food Assistance Program benefits overpayment of $1,080.

1. For Appeal Numbers 14F-07505, 14F-07508, and 14F-08327, filed October 31, 2014, the respondent was ordered to approve Cash Assistance Program benefits of $198 for the month of July 2014, and $258 for the month of October 2014. The Final Order also stated that any benefits due will be offset by prior unpaid overissuance.

2. On November 7, 2014, the petitioner received a Notice of Case Action informing her that the reinstated Food Assistance Program benefits for month of July 2014 were being withheld to repay a Food Assistance Program benefits overpayment of $1,060, and the overpayment balance would then be $952.

3. The petitioner requested an appeal asserting that she did not have any remaining Food Assistance benefit overpayment, as it was paid in full.

4. The notice was sent coded 941, Restoration Benefits Due to Hearing Decision. The restoration was for Cash Assistance Program benefits and the letter incorrectly stated the restoration was for Food Assistance Program benefits. The petitioner had a client error Food Assistance Program overpayment that was paid in full

on March 1, 2001. The petitioner does not have any unpaid overpayment balance for the Food Assistance Program.

B. The establishment and recovery of the client error overpayments in the Cash Assistance Program benefits.

5. On September 15, 1997, a Notice of Case Action was sent to the petitioner informing the petitioner of a $198 overpayment in Cash Assistance Program benefits for the month of March 1997, as the respondent did not take timely action on a reported change.

6. On March 5, 1999, at 3:00 p.m., an Administrative Disqualification Hearing was held for Appeal Numbers 98D-03031 and 98D-03032. The decision was filed on April 2, 1999 that an Intentional Program Violation occurred.

7. On September 1, 1999, a Notice of Case Action was sent to the petitioner informing the petitioner of a $964 overpayment Cash Assistance Program benefits for the period of November 1995 through February 29, 1996, as the petitioner failed to report earned income received by a household member.

8. The petitioner has made repayment of the Cash Assistance Program overpayment:

Date	Amount	Payment type
June 20, 2011	$13	recoupment
Sept. 20, 2011	$13	recoupment
Oct. 21, 2011	$13	recoupment
Nov. 21, 2011	$13	recoupment
Dec. 21, 2011	$13	recoupment
April 29, 2014	$ 8	recoupment
July 22, 2014	$13	recoupment
Aug. 22, 2014	$13	recoupment
June 22, 2012	$16	recoupment
Nov. 6, 2014	$108	offset of restoration
Total paid:	$210	

9. The Notices of Case Action for the overpayments were mailed in the normal course of business, to the petitioner address of record at the time, and there was no returned mail. The petitioner has requested several appeals regarding eligibility for Food Assistance Program benefits, Cash Assistance Program benefits, and Medicaid Program benefits. There was no requested for an appeal for the Cash Assistance Program overpayments until January 5, 2015. The petitioner was aware of the overpayments as she was repaying the overpayment by recoupment.

10. The total of both Cash Assistance Program overpayments was $1,162. The payments of $210 were applied to the client error overpayment. The current balance of the client error overpayment is $754, and the agency error overpayment is $198. The total Cash Assistance overpayment balance is $952.

C. The denial of Medicaid Program benefits.

11. On November 13, 2014, the petitioner submitted an application for Medicaid Program benefits for herself. Her date of birth is [redacted] and she is 46 years old. She reported that she was disabled.

12. The respondent reviewed the application. It was determined that as the petitioner did not have any minor dependent children living with her, she was not eligible for Family-Related Medicaid Program benefits.

13. The petitioner's eligibility for SSI-Related Medicaid for blind, elderly or disabled individuals was explored. The petitioner is not elderly or blind. The respondent received information regarding the by computer match with the Social Security Administration (SSA). On June 25, 2014, the petitioner applied for disability with SSA. On September 5, 2014, SSA denied the petitioner's application for disability,

code N37, failure or refusal to submit to a consultative examination. On December 22, 2014, the petitioner appealed the SSA denial. The respondent adopted the SSA decision that the petitioner was not disabled. It determined that as the petitioner did not meet the disability requirement of elderly, blind or disabled, the petitioner was not eligible for SSI-related Medicaid Program benefits. On November 19, 2014, the respondent sent the petitioner a Notice of Case Action informing her that her application for Medicaid Program benefits was denied.

14. The petitioner asserted as follows. She has problems with her back, knees and high blood pressure, and she was taking 10 different medications. The SSA is aware of all of her impairments. Her impairments are worsening. She is alleging new impairments; however, she is unwilling to give any medical information. She applied for Medicaid Program benefits, as she received a letter from the respondent after she was denied by SSA that she may be eligible for Medicaid Program benefits. She does not understand why she was denied Medicaid Program benefits as she has medical needs.

15. The respondent asserted that the Department sends an individual a notice to apply for Medicaid Program benefits when they are denied disability by SSA, as an application for SSI with SSA is an application for Medicaid Program benefits. The letter does state that the individual may be eligible for Medicaid Program benefits; however, the notice does not convey eligibility.

CONCLUSIONS OF LAW

16. 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.

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

18. In accordance with Fla. Admin. Code R. 65-2.060(1), the burden of proof was assigned to the respondent for the overpayments, and to the petitioner for the Medicaid application.

A. As to the issue of a Food Assistance Program benefits overpayment of $1,080.

19. Recovery of payments made due to mistake or fraud is set forth in the Florida Statutes at § 414.41:

> (1) Whenever it becomes apparent that any person or provider has received any public assistance under this chapter to which she or he is not entitled, through either simple mistake or fraud on the part of the department or on the part of the recipient or participant, the department shall take all necessary steps to recover the overpayment..."

20. Fla. Admin. Code R. at 65A-1.900 Overpayment and Benefit Recovery defines the administrative policies applicable to the establishment and recovery of overpayment in the public assistance programs and is set forth in relevant part:

> (1)(a) Overpayment: Overpayment is the amount of public assistance received for which an individual was not entitled.
> (b) Intentional Program Violation: Intentional Program Violation (IPV) or fraud is defined pursuant to Section 414.39(1), (2) and (4), F.S., 7 C.F.R. §273.16(c) and 45 C.F.R. §235.110(a)(2)...
> (2) Individuals Responsible for Repayment of Overpayment.
> (b) Food assistance overpayments will be recovered from an individual as specified in 7 C.F.R. §273.18(a)(4) (2010), incorporated by reference.

21. The federal regulations at 7 C.F.R.§273.18(a) set forth the establishment of a claim and the amount owed in the Food Assistance Program: "(a) General. (1) A recipient claim is an amount owed because of: (i) Benefits that are overpaid...."

22. The evidence as submitted demonstrates that the petitioner does not have a current unpaid overpayment of $1,080 for the Food Assistance Program. The respondent sent the notice in error. As there is no overpayment of $1,080 for the Food Assistance Program, the issue is moot. The petitioner's motion to dismiss regarding any current unpaid Food Assistance Program overpayment is granted.

B. As to the issue of the establishment and recovery of overpayments in the Cash Assistance Program.

23. The petitioner asserted as follows. She was not aware of the Cash Assistance overpayments. The respondent has not provided her with any information on these overpayments. As far as she knows, any overpayment she had already been paid in full.

24. The Fla. Admin. Code sets forth for time standards as follows.

Fla. Admin. Code R. 65-2.046 Time Limits in Which to Request a Hearing.

(1) The appellant or authorized representative must exercise the right to appeal within 90 calendar days in all programs. Additionally, in the Food Stamp Program, a household may request a fair hearing at any time within a certification period to dispute its current level of benefits. The time period begins with the date following:
(a) The date on the written notification of the decision on an application.

65-2.068 AFDC Overpayment Hearings.
(3) The Hearings Officers of the Office of Appeal Hearings will conduct these hearings. The hearings will meet the requirements of 45 C.F.R. 205.10 and Section 120.569, F.S. The hearing will be conducted in accordance with Rule 65-2.042, F.A.C., et seq. with the exception of the time limit to request the hearing set forth in Rule 65-2.045, F.A.C., which

> allows a ninety day time limit to request a hearing. The time limit to request a hearing subsequent to receipt of a Notice of Overpayment/Intent to Recover, HRS-ES Form 3401, Nov 82, is thirty days. Any hearing requested after the thirty day period shall be rejected for failing to meet the requirement unless good cause for such failure can be shown.

25. On September 15, 1997, a Notice of Case Action was sent to the petitioner informing the petitioner of a $198 overpayment in Cash Assistance Program benefits for the month of March 1997. On September 1, 1999, a Notice of Case Action was sent to the petitioner informing the petitioner of a $964 overpayment Cash Assistance Program benefits for the period of November 1995 through February 29, 1996. The Notices of Case Action for the overpayments were mailed in the normal course of business, to the petitioner address of record at the time, and there was no returned mail. The petitioner has requested several appeals regarding eligibility for Food Assistance Program benefits, Cash Assistance Program benefits, and Medicaid Program benefits. There was no evidence submitted that the petitioner requested an appeal for the Cash Assistance Program overpayments from the date of the notices until January 5, 2015. As a request for hearing was not within the allotted time standards, the undersigned hearing officer lacks jurisdiction to review those overpayments. The respondent's Motion to Dismiss is granted.

26. The petitioner has two Cash Assistance Program overpayment $198 agency error and $964 in client error, for a total of $1,162. The petitioner has made $210 in payments. It is concluded that the current balance for both of the Cash Assistance Program overpayments is $952.

C. As to the issue of the denial of Medicaid Program benefits.

27. Fla. Admin. Code R. 65-2.066 sets forth: "(2) The Final Order shall be based exclusively on evidence and other materials introduced at the hearing or material submitted after the hearing..."

28. The rules allow for the evidence to be introduced at the hearing or after the hearing. The record was left open for the petitioner for the petitioner to review the respondent's evidence, provide any response to the respondent's evidence, and submit any additional evidence. It is concluded that the petitioner had ample time to review the respondent's evidence and present any evidence into record. The petitioner's motion to exclude any of the respondent's evidence for the Medicaid Program appeal is denied.

29. The Family-Related Medicaid Program benefit rules are set forth in the Fla. Admin. Code R. 65A-1.705, Family-Related Medicaid General Eligibility Criteria.

30. The rules set forth that to be eligible for that Medicaid Program a dependent child must be living in the home. The petitioner does meet the criteria for Family-Related Medicaid Program benefits.

31. Fla. Admin. Code R. 65A-1.711, SSI-Related Medicaid Non-Financial Eligibility Criteria, sets forth:

> To qualify for Medicaid an individual must meet the general and categorical requirements in 42 C.F.R. Part 435, subparts E and F (2007) (incorporated by reference), with the exception that individuals who are neither aged nor disabled may qualify for breast and cervical cancer treatment, and the following program specific requirements as appropriate...
> (1) For MEDS-AD Demonstration Waiver, the individual must be age 65 or older, or disabled as defined in 20 C.F.R. § 416.905 (2007) (incorporated by reference).

32. For an individual 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...

33. The Code of Federal Regulations 20 C.F.R. § 416.918, If you do not appear at a consultative examination, sets forth:

> (a) General. If you are applying for benefits and do not have a good reason for failing or refusing to take part in a consultative examination or test which we arrange for you to get information we need to determine your disability or blindness, we may find that you are not disabled or blind. If you are already receiving benefits and do not have a good reason for failing or refusing to take part in a consultative examination or test which we arranged for you, we may determine that your disability or blindness has stopped because of your failure or refusal...

34. The Code of Federal Regulations at 42 C.F.R. § 435.000 sets forth the definition and determination of disability and states in relevant part:

> § 435.540 Definition of disability.
> (a) Definition. The agency must use the same definition of disability as used under SSI...
>
> § 435.541 Determinations of disability.
> (a) Determinations made by SSA. The following rules and those under paragraph (b) of this section apply where an individual has applied for Medicaid on the basis of disability.
> (1) If the agency has an agreement with the Social Security Administration (SSA) under section 1634 of the Act, the agency may not make a determination of disability when the only application is filed with SSA.
> (2) The agency may not make an independent determination of disability if SSA has made a disability determination within the time limits set forth in §435.911 on the same issues presented in the Medicaid application. A

> determination of eligibility for SSI payments based on disability that is made by SSA automatically confers Medicaid eligibility, as provided for under §435.909.

35. The ACCESS Policy Program Manual at passage 1440.1204 "Blindness/Disability Determinations (MSSI, SFP)" states:

> ...If SSA has denied disability within the past year and the decision is under appeal with SSA, do not consider the case as pending. Use the decision SSA has already rendered. The SSA denial stands while the case is pending appeal.
> When the individual files an application within 12 months after the last unfavorable disability determination by SSA and provides evidence of a new condition not previously considered by SSA, the state must conduct an independent disability determination. Request a copy of the SSA denial letter. The SSA denial letter contains an explanation of all the conditions considered and the reason for denial.

36. An SSA code N37 denial is a failure or refusal to submit to a consultative examination. Petitioner failed to go to the examination requested by SSA. As such, there would be insufficient information for the SSA to make a disability determination, other than not disabled. A Social Security disability determination is binding, on an agency, until the determination is changed by Social Security. Based on the regulations, the respondent cannot make a decision independent of Social Security. The petitioner does not meet the criteria of aged, blind or disabled for eligibility for SSI-Related Medicaid Program benefits. The undersigned concludes that the respondent's action to deny the petitioner's application for Medicaid Program benefits was within the rules and regulations of the Program.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeals are found as follows.

A. As to the issue of a Food Assistance Program benefits overpayment of $1,080, the appeal is dismissed as moot.

B. As to the issue of the establishment and recovery of the client error overpayments in the Cash Assistance Program benefits, the appeal is dismissed as non-jurisdictional.

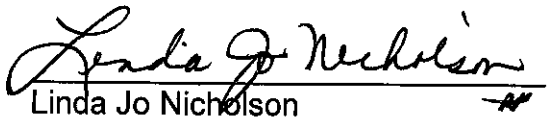
C. As to the denial of Medicaid Program benefits, the respondent's denial of the petitioner's application for Medicaid Program benefits is affirmed.

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 _____ day of _____, 2015,

in Tallahassee, Florida.



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