

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

**FILED**

Dec 10, 2015

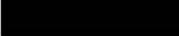
Office of Appeal Hearings  
Dept. of Children and Families



APPEAL NO. 15F-07798

PETITIONER,

Vs.

CASE NO. 

FLORIDA DEPARTMENT OF  
CHILDREN AND FAMILIES  
CIRCUIT: 17 Broward  
UNIT: 88139

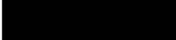
RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on October 8, 2015 at 10:13 a.m.

**APPEARANCES**

For the Petitioner:  authorized representative

For the Respondent: Yolanda Smith, eligibility specialist

**STATEMENT OF ISSUE**

Whether the petitioner is eligible for Institutional Care Program (ICP) Medicaid coverage for October 2014 and November 2014.

**PRELIMINARY STATEMENT**

The Florida Department of Children and Families (Department or DCF or respondent) determines eligibility for Family-Related and SSI-Related Medicaid programs.

By notice dated August 17, 2015, the Department informed the petitioner that his request for retroactive ICP Medicaid for the months of October 2014 and November 2014 was denied.

The petitioner timely filed a request for hearing on September 11, 2015.

There were no additional witnesses for the petitioner. Petitioner's Composite Exhibit 1 was admitted into evidence.

Suzanne Wong, program administrator with Department of Elder Affairs (DOEA), was present as a witness for the Department. Respondent's Composite Exhibits 1 and 2 were admitted into evidence.

The record was held open until close of business on October 9, 2015 for the submission of additional evidence. Evidence was received from the Department and admitted as Respondent's Exhibit 3.

### **FINDINGS OF FACT**

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

1. The petitioner (age [REDACTED]) was admitted to [REDACTED] a skilled nursing facility, on October 23, 2014, after a hospitalization at [REDACTED] Hospital. The petitioner suffers from multiple [REDACTED]
2. The nursing facility filed applications for ICP Medicaid with the Department on December 16, 2014; February 6, 2015; April 2, 2015; and August 12, 2015 to cover the cost of the petitioner's care.
3. Applicants for ICP Medicaid must require skilled nursing care. Via interagency agreement, DOEA's CARES unit determines if ICP Medicaid applicants

meet the nursing home level of care requirement (commonly known as level of care).  
DOEA/CARES must determine that an applicant meets the level of care before the  
Department can approve ICP Medicaid benefits.

4. The Department denied all but the last of the petitioner's ICP applications because it had not received a level of care determination from DOEA/CARES. The Department approved the August 2015 application, retroactively to December 2014, after receiving, in June 2015, confirmation from DOEA/CARES that the petitioner met the ICP level of care.

5. The petitioner also requested ICP Medicaid coverage for the months of October 2014 and November 2014. Medicaid rule includes three months of retroactive coverage prior to the month of application if the applicant meets all of the eligibility requirements. The Department determined that the petitioner was ineligible for retroactive ICP coverage for October 2014 and November 2014 because the ICP level of care was not effective until December 2014.

6. The petitioner disagreed with the Department's decision. The petitioner asserted that he met nursing home level of care October 2014 and seeks to have the Department's decision overturned.

7. DOEA/CARES uses the Pre-Admission Screen and Resident Review (PASRR) form to complete the level of care assessment. This is a Florida Medicaid form designed to collect and screen potential nursing home patients for appropriate placement.

8. The PASRR review process should be initiated before the patient is discharged from the hospital or, at the latest, as soon as the patient is admitted into the

nursing home. The review is initiated by the hospital or nursing home by completing the appropriate section of the PASRR form and submitting the form to DOEA/CARES.

9. The petitioner's medical records show [REDACTED] submitted a PASRR form to DOEA/CARES on October 15, 2014.

10. Department witness, Suzanne Wong, administrator with DOES/CARES, testified that DOEA/CARES never received the October 2014 PASRR form. DOEA/CARES received a PASRR review request on December 16, 2014, when the nursing home filed the first ICP Medicaid application.

11. DOEA/CARES visited the petitioner at the nursing home December 18, 2014 to conduct the PASRR screening interview. During the interview, DOEA/CARES determined that the petitioner's primary diagnosis was [REDACTED]. Patients with a serious [REDACTED] as the primary diagnosis require a separate screening assessment, commonly known as a PASRR II review. The review completed by DOEA/CARES for [REDACTED] is commonly known as PASRR I review. DOEA/CARES contracts with APS Healthcare (APS) to complete PASRR II reviews.

12. DOEA/CARES referred the petitioner's case to APS for the PASRR II review at the end of December 2014. APS completed the PASRR II review on January 8, 2015. APS concluded that the petitioner met the ICP level of care due to [REDACTED]. DOEA/CARES completed the PASRR I review on January 26, 2015. CARES concluded that the petitioner also met the ICP level of care due to [REDACTED].

13. DOEA/CARES communicates the level of care decision to the Department via the PASRR form. The level of care decision is required before the Department can approve an application for ICP Medicaid.

14. For reasons that the DOEA/CARES could not explain, it did not submit the petitioner's PASRR form to the Department until June 24, 2015, five months after the decision was made that the petitioner met ICP level of care. This delay caused the Department to deny three applications, filed by the petitioner in December 2014, February 2015, and April 2015, for ICP Medicaid due to lack of verification that he met the required level of care.

15. The petitioner filed a fourth application in August 2015. The Department approved ICP Medicaid in August 2015, retroactive to December 1, 2014. Retroactive coverage was denied for October 2014 and November 2014 because DOEA/CARES concluded that the PASRR process was initiated by the nursing home in December 2014. The nursing home argued that the PASRR process was initiated by the hospital in October 2014, as evidenced by the PASRR form included in the petitioner's medical records. The PASRR review process does not include a retroactive component that allows DOEA/CARES to approve level of care for a month prior to the month the PASRR review was requested.

16. Taking into consideration the fact that DOEA/CARES delayed many months before completing the petitioner's December 2014 PASRR form, and the fact that the petitioner's medical records contain a October 2014 PASRR request, the undersigned finds that the PASRR review process was initiated in October 2014 by the hospital.

#### **CONCLUSIONS OF LAW**

17. 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.

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

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

20. The Fla. Admin. Code R. 65A-1.203(9) defines representative:  
"Authorized/Designated Representative: An individual who has knowledge of the assistance group's circumstances and is authorized to act responsibly on their behalf."

21. [REDACTED] is the petitioner's authorized represented and acted on his behalf in this case.

22. Fla. Stat. §409.912 addresses the role of DOEA/CARES in the ICP Medicaid Program:

(14)(a)The agency shall operate the Comprehensive Assessment and Review for Long-Term Care Services (CARES) nursing facility preadmission screening program **to ensure that Medicaid payment for nursing facility care is made only for individuals whose conditions require such care and to ensure that long-term care services are provided in the setting most appropriate to the needs of the person** and in the most economical manner possible. The CARES program shall also ensure that individuals participating in Medicaid home and community-based waiver programs meet criteria for those programs, consistent with approved federal waivers.

(b) The agency shall operate the CARES program through an interagency agreement with the Department of Elderly Affairs. The agency, in consultation with the Department of Elderly Affairs, may contract for any function or activity of the CARES program, including any function or activity required by 42 C.F.R. s. 483.20, relating to preadmission screening and resident review.

23. The PASRR screening is set forth in Fla. Admin. Code R. 59G-1.040, which states, in part:

(1) Purpose.

(a) The Pre-Admission Screening and Resident Review (PASRR) is a federal requirement mandated by the Social Security Act, Title 42, Subpart C, Sections 483.100 through 483.138, Code of Federal Regulations. **It is intended to ensure that Medicaid-certified nursing facility applicants and residents with a diagnosis of or suspicion of serious mental illness or intellectual disabilities, or related conditions, are identified and admitted or allowed to remain in the nursing facility only if there is a verified need for such services.** (emphasis added)

(b) PASRR is required for all applicants to Medicaid-certified nursing facilities, regardless of payor.

(2) Definitions.

(a) Adult(s) – Individuals who are age 21 and older.

...

(c) CARES – The Florida Department of Elder Affairs' Comprehensive Assessment and Review for Long-Term Care Services program.

...

(i) Level I PASRR Screener... The CARES program or the entity to which CARES delegates this responsibility shall perform the Level I PASRR screening for all adults. AHCA and CARES will collectively be referred to as the Level I PASRR Screener....

(k) Nursing Facility (NF) – A Medicaid-certified nursing facility.

24. The intent of the cited authorities is to ensure that individuals placed into nursing facilities receive the appropriate level of care, based upon each patient's individual needs. To this end, prior to establishing ICP Medicaid eligibility and payment for nursing facility services, DOEA/CARES staff must complete PASRR preadmission screening and ensure that the prescreening properly confirms a patient's need for nursing home care.

25. The record clearly demonstrates that the petitioner's nursing home placement was appropriate and he is eligible for ICP Medicaid. The remaining issue is the onset date of his eligibility. The petitioner argued the onset date should be October 1, 2014, the month the hospital initiated the PASRR review. The respondent argued that the onset date should be December 1, 2014, the month the nursing home initiated the PASRR review.

26. The Department's Integrated Public Assistance Policy Manual Passage 0640.0509, retroactive Medicaid (MSSI), Application Processing, explains:

This policy does not apply to QMB.

Medicaid is available for any one or more of the three calendar months preceding the application month, provided:

1. at least one member of the SFU [Standard Filing Unit] has received Medicaid reimbursable services during the retroactive period, and
2. the individual meets all factors of eligibility during the month(s) he requests retroactive Medicaid.

27. Department policy states that retroactive Medicaid is available for up to three months preceding the application if all eligibility requirements are met.

28. The petitioner filed his first ICP Medicaid application in December 2014 and seeks retroactive coverage for October 2014 and November 2014. After carefully considering the arguments of both parties, the undersigned found the petitioner's argument to be the most persuasive and concludes that a PASRR review request was initiated in October 2014 while the petitioner was still in the hospital. The petitioner meets the ICP level of care requirement for October 2014 and November 2014.

29. Fla. Admin. Code 65-2.066, Final Orders, explains: "(6) In the Final Order the Hearings Officer shall authorize corrective action retroactively to the date the incorrect

action was taken." Therefore, the Department is ordered to approve ICP Medicaid benefits for the months of October 2014 and November 2014.

**DECISION**

The appeal is granted. The Department is ordered to take corrective action within 10 days from the date of this order.

**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 10 day of December, 2015,

in Tallahassee, Florida.



Leslie Green  
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Copies Furnished To: [REDACTED] Petitioner  
Office of Economic Self Sufficiency