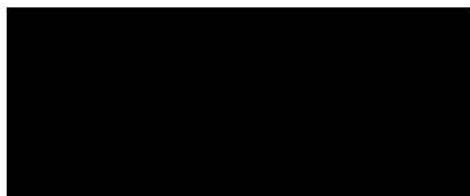


Dec 22, 2015

Office of Appeal Hearings
Dept. of Children and FamiliesSTATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

APPEAL NO. 15F-08296

PETITIONER,

Vs.

CASE NO. FLORIDA DEPARTMENT
OF CHILDREN AND FAMILIES
CIRCUIT: 01 Escambia
UNIT: 88630RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing telephonically in the above-referenced matter on November 19, 2015 at 8:33am.

APPEARANCES

For the Petitioner:



For the Respondent:

Katherine Stevens, ACCESS Supervisor

STATEMENT OF ISSUE

Petitioner is appealing the Department's action of September 15, 2015 that did not approve the petitioner for Medicaid for October 2014. The petitioner carries the burden of proof by the preponderance of evidence.

PRELIMINARY STATEMENT

██████████ petitioner, and ██████████ petitioner's wife, were present for the hearing on November 19, 2015. Gregory Watson, hearing officer was present as an observer.

The hearing was reconvened on December 11, 2015. ██████████ the Department Representative appeared for the reconvened hearing. The petitioner and his wife gave testimony during the first hearing and did not appear at the reconvened hearing. ██████████ was present to represent petitioner and the reconvened hearing proceeded.

The Department submitted evidence on November 10, 2015 that was entered as Respondent Exhibit 1. The Department submitted additional evidence on November 20, 2015, which was entered as Respondent Exhibit 2.

██████████ submitted evidence on November 20, 2015 that was entered as Petitioner Exhibit 1.

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. MedAssist filed an application for SSI-Related Medicaid for the petitioner on October 7, 2014.
2. ██████████ submitted a Financial Information Release (CF-ES 2613) signed by the petitioner only, as well as an Authorization to Disclose Information (CF-ES 2514), and Appointment of a Designated Representative (CF-AA 2505) on October 7, 2014.

3. The Department completed a passive review of the case with this application. The Department did not complete an interview with the petitioner for this application.

4. The Department issued a Notice of Case Action to both the petitioner and [REDACTED] on October 9, 2014 (Respondent Exhibit 2, page 5) requesting “both you and [REDACTED] [sic] need to sign and return the financial release by 10/20/2014” The Department explained the notice was sent to both the petitioner and [REDACTED] The Department only provided a copy of the notice as mailed to [REDACTED]

5. The petitioner reported he did not receive a copy of the notice cited above. The petitioner has difficulty receiving mail at this home. The mail delivery in his rural community is unreliable. He does receive some of his mail, but mail is often misdirected to neighbors and he does not receive it. Misdirected mail may be returned to the post office for correct delivery or may be thrown away depending on who receives it. The petitioner did not dispute the Department issuing a notice requesting both he and his wife sign and return the form, only that he did not receive the notice.

6. [REDACTED] reported the notice in question was not received. [REDACTED] explained they generally do not see a “Notice of Case Action” regarding denials on any case. [REDACTED] confirmed the address listed on the notice is the correct mailing address. [REDACTED] reported no problems with receiving mail at the address other than delays in receiving mail. MedAssist was keeping paper files in October 2014 but has switched to electronic files. There is not a log or other record of the documents received on each case. [REDACTED] provided a copy of all the documents they have

received on the petitioner's file. The representative from [REDACTED] did not think the mail was misfiled in their office, but could not speak for the actions of others.

7. The Department explained that mail is scanned into the Department's electronic records upon receipt including returned mail. The Department's electronic record of the petitioner's case file does not show any mail as returned from either the petitioner or [REDACTED] between October 2014 and December 2014. The Department advised that when mail is returned, the procedure is to resend a notice if a new or updated address is provided. The Department will presume a letter to be received by the addressee if there is no mail returned on the Departmental logs.

8. Due to the discrepancy of whether or not the Notice of Case Action was received by the petitioner, the undersigned must make a finding. The Department mailed these notices separately from its headquarters' office following proper business practice. The notices to the petitioner were not returned to the Department. The reported mail delivery problems in the petitioner's community support his claim of non-receipt. The petitioner's prompt action upon receipt of the notice in the July evidence demonstrates his responsiveness to information requests. The undersigned finds the petitioner's argument persuasive and that he did not receive the notice requesting additional information.

9. Due to the discrepancy of whether or not the Notice of Case Action was received by [REDACTED] the undersigned must make a finding. The Department mailed these notices separately from its headquarters' office following proper business practice. The notices for [REDACTED] were not returned to the Department. [REDACTED] keeps no log of documents in a customer's file or the date received. [REDACTED] did not

report any issue with mail not being delivered to their office at all, only that mail was not always delivered timely. The undersigned relies on the presumption that correspondence properly mailed and not returned with no clear rebuttal evidence received (*Brown v. Giffen Industries, Inc.*, Fla. 1973, 281 So.2d 897, 1973 Fla.SCt 997) to make the finding that [REDACTED] did receive the Notice of Case Action at issue.

10. The Department issued a Notice of Case Action on November 7, 2014 to the petitioner's wife. The notice denied the petitioner's application dated October 7, 2014 for not returning the financial consent for all required individuals.

11. [REDACTED] did not contact the Department following submission of the application to ensure all documentation was properly filed and there was nothing additional required.

12. The Department does not make additional attempts to resolve cases with the hospital representatives. If the petitioner or the provider does not respond to the pending notice, no follow up is completed.

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 § 409.285, Fla. Stat.

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

15. Fla. Admin. Code § 65A-1.205 "Eligibility Determination Process" states in relevant part:

(c) If the eligibility specialist determines during the interview or at any time during the application process that the applicant must provide additional information or verification, or that a member of the assistance group must comply with Child Support Enforcement or register for employment services, the eligibility specialist must give the applicant written notice to provide the requested information or to comply, allowing ten calendar days from request or the interview, whichever is later. For all programs, verifications are due ten calendar days from the date of written request or the interview, or 60 days from the date of application, whichever is later. In cases where the applicant must provide medical information, the return due date is 30 calendar days following the written request or the interview, or 60 days from the date of application, whichever is later. If the due date falls on a holiday or weekend, the deadline is the next working day. If the applicant does not provide required verifications or information by the deadline date the application will be denied, unless the applicant requests an extension or there are extenuating circumstances justifying an additional extension.

16. The petitioner's representative [REDACTED] was properly notified by the Department of the need for the petitioner's wife to sign the Financial Information Release. The undersigned concludes the Department, following the above controlling authority, denied the petitioner's application for Medicaid properly when the requested information was not received.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is 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

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petitioner is responsible for any financial obligations incurred as the Department has no funds to assist in this review.

DONE and ORDERED this 22 day of December, 2015,

in Tallahassee, Florida.



Melissa Roedel
Hearing Officer
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Copies Furnished To: [REDACTED] Petitioner
Office of Economic Self Sufficiency