

**FILED**

**NOV 23 2015**

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

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DEPT OF CHILDREN & FAMILIES



APPEAL NOS. 15F-7050  
15F-7097  
15F-7098

PETITIONER,

Vs.

CASE NO. 

FLORIDA DEPT OF CHILDREN AND FAMILIES  
CIRCUIT: 11 DADE  
UNIT: 88653

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened telephonic administrative hearing in the above-referenced matter on October 19<sup>th</sup>, 2015 at 10:00 a.m.

**APPEARANCES**

For the Petitioner:  pro se.

For the Respondent: Sylvia Stokes, Operations Management Consultant for the Economic Self-Sufficiency program.

**STATEMENT OF ISSUE**

The petitioner is appealing the amount of Food Assistance authorized by the respondent based on the removal of his minor son from his case (appeal number 15F-7097). The petitioner is also appealing the respondent's action to deny his application for Temporary Cash Assistance (TCA) (appeal number 15F-

7050). The petitioner carries the burden of proving his position in these appeals. The petitioner is furthermore appealing the respondent's action to remove his minor son from his Medicaid assistance group (appeal number 15F-7098). The respondent carries the burden of proving its position in this appeal. In all appeals, the standard of proof is a preponderance of the evidence.

### **PRELIMINARY STATEMENT**

The hearing was originally scheduled for September 9<sup>th</sup>, 2015. On that date, the parties convened; however, the petitioner had not received the respondent's evidence, which had been properly and timely issued, per the accompanying Certificate of Service. A continuance was granted, and the respondent agreed to reissue its documents.

At the October 19<sup>th</sup> hearing, the petitioner acknowledged having received the respondent's documents.

Respondent's Exhibits 1 through 5 were moved into evidence.

The petitioner did not submit any documents in time for the hearing.

The record was held open until the close of business November 2<sup>nd</sup>, 2015 to allow both parties to submit additional evidence. During this time, the petitioner submitted one document which was moved into evidence as Petitioner's Exhibit 1. Also during this time, the respondent submitted 27 pages of additional documents. Pages 13 through 22 were excluded, as these were duplicative of

documents included in the respondent's original submission. The remaining pages were marked as Respondent's Exhibits 6 through 15.

By way of a Notice of Case Action dated July 23<sup>rd</sup>, 2015, the respondent informed the petitioner that his application for FA dated July 9<sup>th</sup>, 2015 was approved in the amount of \$139 effective August 2015 and ongoing. The same notice informs the petitioner that his Medicaid benefits will end on August 31<sup>st</sup>, 2015. The reason stated on the notice is "We received your verbal request to remove an individual from this program."

No Notice of Case Action regarding denial of the petitioner's application for TCA was submitted into evidence.

On August 14<sup>th</sup>, 2015, the petitioner filed appeals to challenge the respondent's actions. The appeals are considered to be timely-filed.

#### **FINDINGS OF FACT**

1. Prior to the actions under appeal, the petitioner was certified to receive FA and Medicaid for himself and his minor son through July 2015.

2. On July 9<sup>th</sup>, 2015, the petitioner submitted an application to recertify for benefits. The recertification was to be effective August 2015. As part of the recertification process, the respondent is required to re-explore, and if deemed necessary, re-verify certain factors of eligibility which include, but are not limited to household size and composition.

3. On the above-mentioned application, the petitioner reported that his household consisted of himself and his minor son, [REDACTED] (See Respondent's Exhibit 1, page 2 of the exhibits.)

4. The petitioner pays \$600 for rent, plus utilities. Accordingly, the respondent considered \$600 for rent. The respondent also considered the Standard Utility Allowance (SUA) in the amount of \$337 through September 2015, and \$347 effective October 2015. The petitioner's shelter expenses are undisputed.

5. The respondent considered \$305 monthly in Child Support expenses paid by the petitioner for [REDACTED] (See Respondent's Exhibit 2.)

6. On the application, the petitioner reported zero income for his household. (See Respondent's Exhibit 1, page 5 of the exhibits.)

7. On July 10<sup>th</sup>, 2015, the respondent issued an Appointment for Interview and Pending Notice requesting of the petitioner "proof of worker's comp and child support payment made out to [petitioner's son]. The notice provided a deadline of July 20<sup>th</sup>, 2015 by which to comply with the request. The notice went on to say that failure to comply with the request would result in denial of the petitioner's application or cancellation of the petitioner's benefits.

8. The respondent considered as income for this household a total of \$1,130.12 monthly in Workman's Compensation (WC) benefits. However, while on the record, the respondent explained that during the petitioner's previous

certification process, he had submitted two WC paystubs dated January 14<sup>th</sup>, 2015 and January 28<sup>th</sup>, 2015, both in the amount of \$1,130.12. Therefore, this income should have been multiplied by the bi-weekly factor of 2.15 to derive a monthly figure of \$2,429.76.

9. The petitioner asserted that he stopped receiving WC in February 2015, but acknowledged that he had not reported this information to the respondent. The petitioner has a roommate (a non-related person) who has been assisting him in covering his expenses.

10. During the post-hearing open-record period, the petitioner submitted a Notice of Action/Change from the Division of Worker's Compensation which informs the petitioner that "all indemnity [will be] suspended" effective March 16<sup>th</sup>, 2015. It was not clear why the petitioner did not report this information at the time of occurrence. It was also not clear why the petitioner did not reply with this information to the respondent's notice of July 10<sup>th</sup>, 2015 cited above.

11. Regarding the removal of [REDACTED] from the petitioner's case, the respondent's position is that [REDACTED] is currently included in his mother's case as an active household member and therefore, cannot receive benefits as a member of the petitioner's case.

12. The petitioner contends that the respondent should not have taken action to remove [REDACTED] from his case as he and his ex-wife ([REDACTED]) share custody of him. The respondent countered that policy does not make any

allowances for "shared custody". The respondent must determine custody on a "51/49" basis, and absent any other evidence, the respondent looks to which parent claimed the child as a dependent on the last income tax report in order to determine the household in which the child should be considered. The petitioner acknowledged that his ex-wife claimed [REDACTED] as a dependent during 2014. This information, coupled with the fact that the petitioner is credited for making Child Support payments for [REDACTED] led the respondent to conclude that [REDACTED] must be removed from the petitioner's case and included in that of [REDACTED]

#### 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 § 120.80, Fla. Stat. This order is the final administrative decision of the Department of Children and Families under § 409.285, Fla. Stat.

14. This hearing was held as a *de novo* proceeding pursuant to Fla. Admin. Code R. 65-2.056 which states, in relative part as follows:

(3) The Hearing Officer must determine whether the department's decision on eligibility or procedural compliance was correct at the time the decision was made. The hearings are *de novo* hearings, in that, either party may present new or additional evidence not previously considered by the department in making its decision.

*The hearing officer will first address the respondent's inclusion of Worker's Compensation benefits in determining the petitioner's FA eligibility.*

15. The evidence shows that the petitioner submitted an application to recertify for his FA benefits on July 9<sup>th</sup>, 2015, wherein he reported that his household did not have any income. The evidence shows that the respondent

issued a notice on July 10<sup>th</sup>, 2015, requesting that the petitioner submit verification of his WC benefits. The evidence shows that the respondent continued to budget WC benefits upon authorizing the petitioner's FA for August. However, the evidence also shows that the petitioner ceased receiving WC on March 16<sup>th</sup>, 2015. Therefore, the case is hereby remanded to the respondent for corrective action. The respondent will, within ten days from the date of this order, recalculate the petitioner's FA benefits without inclusion of his WC benefits.

*The hearing officer will first address the respondent's exclusion of the petitioner's son in determining the petitioner's eligibility for Food Assistance.*

16. The Code of Federal Regulation 7 C.F.R. § 273.6 refers to the use of Social Security numbers and states in relevant part:

(f) Use of SSNs. The State agency is authorized to use SSNs in the administration of the Food Stamp Program. To the extent determined necessary by the Secretary and the Secretary of Health and Human Services, State agencies shall have access to information regarding individual Food Stamp Program applicants and participants who receive benefits under title XVI of the Social Security Act to determine such a household's eligibility to receive assistance and the amount of assistance, or to verify information related to the benefit of these households. State agencies shall use the State Data Exchange (SDX) to the maximum extent possible. **The State agency should also use the SSNs to prevent duplicate participation**, to facilitate mass changes in Federal benefits as described in Sec. 273.12(e)(3) and to determine the accuracy and/or reliability of information given by households. In particular, SSNs shall be used by the State agency to request and exchange information on individuals through the IEVS as specified in Sec. 272.8. (*Emphasis added.*)

17. The Code of Federal Regulation §273.2, office operations and application processing, states as follows:

(x) *Household composition.* State agencies shall verify factors affecting the composition of a household, if questionable.

18. The findings show that the petitioner received FA benefits for his minor son without question through July 2015. The findings show that the respondent took action to include the petitioner's son in his mother's FA assistance group effective August. However, no evidence was submitted at the hearing to prove that such action was justified. The regulation cited above states that the State agency (the respondent) shall verify factors affecting the composition of a household, if questionable. There was no evidence submitted that the petitioner was afforded the opportunity to resolve the discrepancy regarding his son's residence during the recertification process.

19. Therefore, the case is hereby remanded to the respondent for corrective action. The respondent will, within ten days of this order, issue notice to the petitioner allowing him a minimum of ten days to provide evidence that his son currently resides with him. The petitioner will need to cooperate in this process. The respondent may also use its own means of verification (such as third-party contacts, etc), as allowed by policy. Should the respondent determine that the petitioner's child is residing with him, the respondent will take action to remove him from his mother's case and re-add him to that of his father's (ensuring that benefits are not simultaneously authorized in both cases).

*The hearing officer will now address the respondent's action to deny the petitioner's application, as well as the respondent's action to terminate his Medicaid benefits.*

20. The Florida Administrative Code R. 65A-1.705 (7)(c) Family-Related

Medicaid General Eligibility Criteria states, in pertinent relative part:

If assistance is requested for the parent of a deprived child, the parent and any deprived children who have no income must be included in the SFU [*standard filing unit*]. Any deprived siblings who have income, or any other related fully deprived children, are optional members of the SFU. If the parent is married and the spouse lives in the home, income must be deemed from the spouse to the parent. For the parent to be eligible, there must be at least one child under age 18, with or without income, in the SFU, or who would be in the SFU if not receiving SSI.

21. According to the above authority, to be eligible for Family-Related Medicaid, an individual must have a child under age 18 in the household. Although the undisputed fact is that the petitioner's minor son is receiving Medicaid in his (petitioner's son's) mother's case, the evidence that the petitioner's son resides with his mother was disputed and inconclusive. As established above, the respondent did not afford the petitioner an opportunity to verify that the petitioner's son resided with him at the time of application.

22. Therefore, the case is hereby remanded to the respondent. The respondent will, within ten days of this order, issue notice to the petitioner allowing him a minimum of ten days to provide evidence that his son currently resides with him. The petitioner will need to cooperate in this process. The respondent may also use its own means of verification (such as third-party contacts, etc), as allowed by policy. Should the respondent determine that the petitioner's child is residing with him, the respondent will take action to remove him from his mother's case and re-add him to that of his father's (ensuring that benefits are not simultaneously authorized in both cases).

*The hearing officer will now address the respondent's action to deny TCA*

*benefits.*

23. Fla. Stat. Ch. 414.095 establishes:

Determining eligibility for temporary cash assistance...

(2) ADDITIONAL ELIGIBILITY REQUIREMENTS.—

(a) To be eligible for ...cash assistance... : ...

4. A minor child must reside with a parent or parents, with a caretaker relative who is within the specified degree of relationship as specified in 45 C.F.R. part 233...

(14) PROHIBITIONS AND RESTRICTIONS.—(a) A family without a minor child living in the home is not eligible to receive temporary cash assistance...

24. Fla. Stat. Ch. 414.0252 defines a minor child as follows:

(8) "Minor child" means a child under 18 years of age, or under 19 years of age if the child is a full-time student in a secondary school or at the equivalent level of career training, and does not include anyone who is married or divorced.

25. According to the above authority, to be eligible for TCA, an individual must have a child under age 18 in the household. Although the undisputed fact is that the petitioner's minor son is receiving Medicaid in his (petitioner's son's) mother's case, the evidence that the petitioner's son resides with his mother was disputed and inconclusive. As established above, the respondent did not afford the petitioner an opportunity to verify that the petitioner's son resided with him at the time of application.

26. Therefore, the case is hereby remanded to the respondent. The respondent will, within ten days of this order, issue notice to the petitioner allowing him a minimum of ten days to provide evidence that his son currently resides with him. The petitioner will need to cooperate in this process. The respondent may also use its own means of verification (such as third-party

contacts, etc), as allowed by policy. Should the respondent determine that the petitioner's child is residing with him, the respondent will take action to remove him from his mother's case and re-add him to that of his father's (ensuring that benefits are not simultaneously authorized in both cases).

27. In sum, the hearing officer hereby remands the case to the respondent for corrective action as described above. This instruction is not a guarantee of eligibility. Should the respondent determine that the petitioner's son is, in fact, residing with the petitioner, the respondent will take action to remove the petitioner's son and authorize benefits as appropriate in the petitioner's case; the respondent will then notify the petitioner of action taken in this regard, and the notice will contain appeal rights should the petitioner disagree with the outcome.

### **DECISION**

Based on the foregoing Findings of Fact and Conclusions of Law, all three appeals are partially granted in that the respondent will take corrective action as described above.

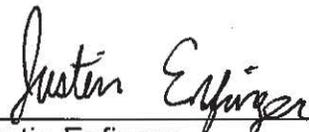
**ANY FOOD STAMP BENEFITS DUE APPELLANT PURSUANT TO THIS ORDER MUST BE AVAILABLE WITHIN (10) TEN DAYS OF THIS DECISION OR WITHIN (60) SIXTY DAYS OF THE REQUEST FOR THE HEARING. ANY BENEFITS DUE WILL BE OFFSET BY PRIOR UNPAID OVERISSUANCES.**

**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 indigence 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 23 day of November, 2015;

in Tallahassee, Florida.

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