

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

FILED

Dec 03, 2015

Office of Appeal Hearings
Dept. of Children and Families



APPEAL NO. 15F-7745
15F-7746

PETITIONER,
Vs.

CASE NO. 

FLORIDA DEPT OF CHILDREN AND FAMILIES
CIRCUIT: 11 DADE
UNIT: 88652

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter October 30th, 2015 at 1:15 p.m.

APPEARANCES

For the Petitioner: , pro se.

For the Respondent: Laura Gomez, Economic Self-Sufficiency Specialist

STATEMENT OF ISSUE

The petitioner is appealing the respondent's action to impose a Child Support Enforcement sanction on her Food Assistance and Medicaid benefits (appeals 15F-7745 and 15F-7746 respectively). The respondent carries the burden of proving its position by a preponderance of the evidence.

PRELIMINARY STATEMENT

The hearing was originally scheduled for October 5th, 2015. On that date, the respondent requested a continuance. The petitioner had no objection. The hearing was rescheduled and convened as described above.

Appearing as a witness for the respondent was Jose Lopez, Administrator for the Child Support Program, Miami-Dade State Attorney's Office.

The petitioner did not submit any documents for consideration.

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

By way of a Notice of Case Action dated June 26th, 2015, the respondent informed the petitioner that her FA benefits would be reduced from \$318 to \$95 effective August 2015 through November 2015. The same notice informs the petitioner that her Medicaid benefits would end on July 31st, 2015. The reason for both actions, as stated on the notice, is "You or a member(s) of your household is not eligible due to failure to cooperate with child support enforcement." On September 10th, 2015, the petitioner filed a timely appeal to challenge the respondent's action.

FINDINGS OF FACT

1. Prior to the action under appeal, the petitioner had been receiving FA for herself and her minor child, and Medicaid for herself. (The petitioner's child receives SSI-related Medicaid through the Social Security Administration.)

2. On May 27th, 2015, CSE received a request for services for the petitioner from the respondent. Pursuant to such, on May 29th, 2015, CSE issued to the petitioner a

CONCLUSIONS OF LAW

7. 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.

8. This hearing was held as a de novo proceeding pursuant to Fla. Admin. Code R. 65-2.056.

9. Florida Statute addresses public assistance and the requirement for Child Support Enforcement compliance, in general, as follows:

409.2551 Legislative intent.—... It is declared to be the public policy of this state that this act be construed and administered to the end that children shall be maintained from the resources of their parents, thereby relieving, at least in part, the burden presently borne by the general citizenry through public assistance programs.

414.0252 Definitions—(10) "Public assistance" means benefits paid on the basis of the temporary cash assistance, food stamp, Medicaid, or optional state supplementation program.

10. Florida Statute establishes the general requirement to pursue parental support as related to authorizing public assistance, including assistance or Medicaid. Pursuit of parental support is required. Florida Statute addresses the need to comply with the CSE requirements as follows:

409.2572 Cooperation—(1) An applicant for, or recipient of, public assistance for a dependent child shall cooperate in good faith with the department or a program attorney in: ... (c) Assisting in obtaining support payments from the obligor.

(2) Noncooperation, or failure to cooperate in good faith, is defined to include, but is not limited to, the following conduct:... (d) All actions of the

obligee which interfere with the state's efforts to proceed to establish paternity, the obligation of support, or to enforce or collect support. ...

(3) The Title IV-D staff of the department shall be responsible for determining and reporting to the staff of the Department of Children and Family Services acts of noncooperation by applicants or recipients of public assistance. Any person who applies for or is receiving public assistance for, or who has the care, custody, or control of, a dependent child and who without good cause fails or refuses to cooperate with the department, a program attorney, or a prosecuting attorney in the course of administering this chapter shall be sanctioned by the Department of Children and Family Services pursuant to chapter 414 and is ineligible to receive public assistance until such time as the department determines cooperation has been satisfactory.

(5) As used in this section only, the term "applicant for or recipient of public assistance for a dependent child" refers to such applicants and recipients of public assistance as defined in s. 409.2554(8).

11. According to the above regulations, cooperation with Child Support Enforcement is a condition of eligibility for public assistance. The requirements indicate that if an individual is not cooperating with CSE, the respondent may deny benefits for that individual. Ineligibility for the individual would continue until the individual is deemed by CSE to be cooperating.

12. The Fla. Admin. Code R. 65-2.060 addresses 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.** *[Emphasis added.]* 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.

13. Authorities cited above set forth the rules for assigning the burden of proof in

an administrative hearing. In the instant appeal, the respondent held the burden of proof (by a preponderance of the evidence) as it terminated the petitioner's benefits. The respondent asserts its action of termination of the petitioner's FA and Medicaid benefits is due to non-compliance with CSE.

14. However, the findings show that although CSE may have issued a notice on May 29th, 2015, the notice was issued to an address at which the petitioner no longer resided. The findings show, in fact, that the petitioner did not receive the notice.

15. The findings show that the petitioner moved from the address in question in April 2015, and reported her new address upon recertification in May 2015. The findings show that the petitioner's newly-reported address was transmitted to CSE in May 2015, but only for residential purposes not postal purposes. Upon review of these facts, the hearing officer concludes that the petitioner cannot be faulted for this. Therefore, the hearing officer concludes that the respondent's action to impose a sanction for non-compliance with CSE is incorrect. Accordingly, the respondent will, within ten days of this order, remove the sanction requested by CSE and reinstate the petitioner's FA and Medicaid benefits retroactively, not to precede August 1st, 2015, which is the date the sanction became effective.

DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, both appeals are granted. The respondent's action is reversed.

ANY FOOD ASSISTANCE 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 03 day of December , 2015,

in Tallahassee, Florida.



Justin Enfinger
Hearing Officer
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