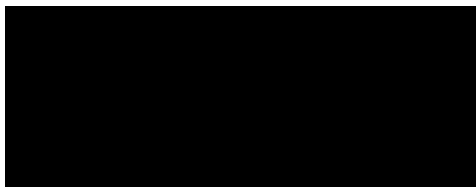


Jan 12, 2016

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

PETITIONER,

Vs.

FLORIDA DEPARTMENT
OF CHILDREN AND FAMILIES
CIRCUIT: 09 Orange
UNIT: 88999

APPEAL NO. 15F-08155

CASE NO. RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned telephonically convened an administrative hearing in the above-referenced matter on November 3, 2015 at 9:45 a.m. and reconvened on November 24, 2015.

APPEARANCESFor the petitioner: Designated representative  did not
appear on November 24, 2015.

For the respondent: Susan Long, ACCESS Supervisor.

STATEMENT OF ISSUE

The petitioner is appealing the respondent's action to deny her application for Home and Community Based Services (HCBS) Medicaid Waiver Program. The petitioner carries the burden of proof by the preponderance of evidence.

PRELIMINARY STATEMENT

By notice dated September 21, 2015, the respondent notified the petitioner that her August 19, 2015 application for HCBS Medicaid Waiver Program was denied due to not receiving all the information necessary to determine eligibility. Petitioner timely requested a hearing to challenge the denial.

During the hearing on November 3, 2015, the respondent agreed to allow the petitioner's representative an opportunity to provide the missing verification needed to determine eligibility. The parties agreed to reconvene on November 24, 2015 at 9:45 a.m. During the hearing on November 3, 2015, the undersigned reviewed the documents submitted by the Department and determined additional evidence was needed to decide on the issues being raised. On record, the respondent was instructed to forward the following documents to both the undersigned and the petitioner prior to the November 24, 2015 hearing, so the documentation could be entered into evidence:

1. Notice of Case Action describing the action under appeal.
2. The Department's Running Comment Record (CLRC) notes from August 19, 2015 through September 24, 2015.
3. Document Viewing System (DVS) regarding verifications related to application dated August 19, 2015 (i.e., bank account statements).
4. The Department's Data Exchange Inquiry Asset Verification print outs.
5. Designated Representative form.

On November 24, 2015, the undersigned and respondent dialed in at the designated time to reconvene the hearing. The petitioner's representative did not dial in.

Additional evidence was received from the respondent prior to the November 24, 2015 hearing. However, the respondent did not submit the following documents: CLRC and DVS. The merits of the case were developed on November 3, 2015.

The petitioner did not submit any exhibits. Respondent submitted one exhibit, entered as Respondent Exhibit 1. The record closed on November 24, 2015.

FINDINGS OF FACT

1. Petitioner (94) submitted an application on August 19, 2015 for HCBS Waiver benefits. Petitioner reported on her application her mailing address as [REDACTED] [REDACTED] in Orlando.
2. On September 2, 2015, the respondent mailed the petitioner a pending notice requesting proof of her bank account statements for [REDACTED] ending account number [REDACTED] and [REDACTED] ending account number [REDACTED]. The requested information was due no later than September 14, 2015.
3. During the pending period, the representative provided [REDACTED] checking account bank statements. The respondent explained the bank statements provided indicated a "Secondary Bank account". The respondent electronically mailed the representative a request for clarification. The representative provided a copy of a second [REDACTED] bank account ending in [REDACTED] with a confirmation of closure on September 1, 2015.
4. On September 21, 2015, the respondent mailed the petitioner a Notice of Case Action informing her that the application was denied due to not providing all the information requested to determine eligibility.
5. The respondent explained the petitioner did not provide bank statements from Wells Fargo bank account number ending [REDACTED]. The respondent presented documents from the Department's "Data Exchange Inquiry Asset Verification" as follow:

[REDACTED]

6. The data showed a balance in the [REDACTED] account of \$0.00 since June 2014.

The representative argued that the Wells Fargo account was a joint account the petitioner had with her son, [REDACTED]. The representative explained the account is closed.

7. The petitioner's representative requested an opportunity to provide the bank statement for the [REDACTED] bank account ending in [REDACTED]. The parties agree to reconvene on November 24, 2015. On November 24, 2015, the petitioner's representative did not dial in and no additional documents were provided.

CONCLUSIONS OF LAW

8. 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.

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

10. Fla. Admin. Code R. 65A-1.205 Eligibility Determination Process in part states:

(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... 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.

...

(5) The Department can substantiate, verify or document information provided by the applicant/recipient as part of each determination of eligibility. For any program, when there is a question about the validity of the information provided, the Department will ask for additional documentation or verification as required. The term verification is used generically to represent this process. (emphasis added)

(a) Substantiation establishes accuracy of information by obtaining consistent, supporting information from the individual.

(b) Verification confirms the accuracy of information through a source(s) other than the individual. The Department can secure verification electronically, telephonically, in writing, or by personal contact.

(c) Documentation establishes the accuracy of information by obtaining and including in the case record an official document, official paper or a photocopy of such document or paper or electronic source that supports the statement(s) made by the individual.

(6) The Department conducts data exchanges with other agencies and systems to obtain information on each applicant and recipient. It uses data exchanges to validate or identify social security numbers, verify the receipt of benefits from other sources, verify reported information, and obtain previously unreported information. (emphasis added)

(a) The Department conducts data exchanges with the Social Security Administration, Internal Revenue Service, Department of Economic Opportunity, federal and state personnel and retirement systems, other states' public assistance files and educational institutions.

11. Fla. Admin. Code R. 65A-1.712 SSI-Related Medicaid Resource Eligibility Criteria.

states:

(1) Resource Limits...

(f) For the Home and Community Based Waiver Services (HCBS) Program, an individual cannot have countable resources that exceed \$2,000. If the individual's income falls within the MEDS-AD Demonstration Waiver limit, the individual can have resources up to \$5,000.

(2) Exclusions...

(d) The individual, and their spouse, may designate up to \$2,500 each of their resources for burial funds for any month, including the three months prior to the month of application. The designated funds may be excluded regardless of whether the exclusion is needed to allow eligibility. The \$2,500 is not reduced by the value of excluded life insurance policies or irrevocable burial contracts. The funds may be commingled in the retroactive period...

(g) An individual who is a beneficiary under a qualified state Long-Term Care Insurance Partnership Policy is given a resource disregard equal to the amount of the insurance benefit payments made to or on behalf of the individual for long term care services when determining if the individual's countable resources are within the program limits to qualify for Medicaid Institutional Care Program (ICP), HCBS...

12. Federal Regulations at 42 C.F.R. § 435.949 Verification of information through an electronic service in part states:

(a) The Secretary will establish an electronic service through which States may verify certain information with, or obtain such information from, Federal agencies and other data sources, including SSA, the Department of Treasury, and the Department of Homeland Security.

(b) To the extent that information related to eligibility for Medicaid is available through the electronic service established by the Secretary, States must obtain the information through such service, subject to the requirements in subpart C of part 433 of this chapter, except as provided for in §435.945(k) of this subpart.

13. The authorities above explain the eligibility determination process, application processing time standards and verification requirements. On September 2, 2015, the respondent mailed a pending notice to the address reported on the application to

request petitioner's bank account statements. This verification was needed to determine if the petitioner met the asset limit for the HCBS Waiver Program. The petitioner provided all information requested except the Wells Fargo bank account number ending [REDACTED]. As of the November 24, 2015 hearing, the petitioner has not provided proof of the [REDACTED] bank checking account. However, the Data Exchange Inquiry Asset Verification showed a balance of \$0.00 for said account since June 2014.

14. According to the authority above, information obtained through electronic data shall be considered a reasonable form of verification. If the information provided effects eligibility, the Department is to take proper action to notify the applicant. In this case, the electronic data showed an asset balance of \$0.00 since June 2014 for the [REDACTED] [REDACTED] bank account. This amount does not exceed the asset limit of \$5,000.00.

15. In careful review of the cited authorities and evidence, the undersigned concludes the respondent erred by denying the petitioner's HCBS Medicaid Waiver application based on assets not verified.

16. Therefore, this matter is remanded back to the Department to inform the petitioner of the eligibility requirements and allow petitioner to submit the necessary documentation to have her eligibility for the HCBS Medicaid Waiver Program determined. The Department is to preserve the petitioner's original application date of August 19, 2015 and determine her HCBS Medicaid Waiver eligibility from that date. This remand does not guarantee benefits.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is granted and remanded back to the respondent in accordance with the above Conclusions of Law. Once an eligibility determination is completed, petitioner is to be notified of the outcome with a new notice that includes appeal rights.

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 12 day of January, 2016,
in Tallahassee, Florida.



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