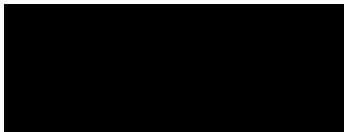


FILED

Jan 06, 2016

Office of Appeal Hearings
Dept. of Children and Families

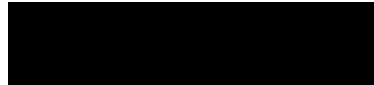
STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS



APPEAL NO. 15F-08660

PETITIONER,

Vs.



FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 18 Brevard
UNIT: 88999

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned telephonically convened an administrative hearing in the above-referenced matter at 10:40 a.m. on November 9, 2015.

APPEARANCES

For the Petitioner:  pro se

For the Respondent: Susan Long, ACCESS Supervisor

STATEMENT OF ISSUE

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

PRELIMINARY STATEMENT

By notice dated October 1, 2015, the respondent (or the Department) notified the petitioner her Medicaid application, dated August 31, 2015, was denied. Petitioner timely requested a hearing to challenge the denial.

Petitioner did not submit exhibits. Respondent submitted four exhibits, entered as Respondent Exhibits "1" through "4". The record was closed on November 9, 2015.

FINDINGS OF FACT

1. On August 31, 2015, petitioner submitted an HCBS application for herself.
2. Petitioner's income includes \$1,658.97 from [REDACTED] retirement pension and \$1,400.90 from Social Security (SS) retirement, totaling her monthly gross income at \$3,059.87.
3. The gross monthly income limit to be eligible for HCBS, for a household size of one, cannot exceed \$2,199.
4. Petitioner's monthly gross income (\$3,059.87) exceeds the \$2,199 HCBS income limit. However, petitioner could qualify if she establishes a Qualified Income Trust (QIT) fund and deposits at least \$860.87 (\$3,059.87 - \$2,199) monthly into the fund.
5. On September 14, 2015, the Department mailed petitioner a Notice requesting: 1) medical waiver packet with level of care, 2) direct deposit bank statement on bank letter head indicating SS income deposits, 3) qualified income trust and bank statements indicating proper funding and 4) a financial release form. The Notice requested the petitioner submit the documents by September 24, 2015.
6. Petitioner did not submit the requested documents to the Department.
7. On October 1, 2015, the Department mailed the petitioner a Notice of Case Action, notifying her the August 31, 2015 application was denied; due to not receiving the requested information to determine eligibility.
8. Petitioner did not dispute that she did not provide the requested documents to the Department. Petitioner said that she uses every penny of her monthly income to pay

bills and for her care. And she cannot afford to pay \$350/\$400 to an attorney to set up a QIT fund; nor can she afford to fund the QIT monthly.

9. Petitioner stated that she understands what is required to qualify for HCBS Medicaid Waiver and will “try” to establish a QIT fund and provide the required documents.

10. Respondent’s representative requested that petitioner submit another application when she has the requested documents.

CONCLUSIONS OF LAW

11. 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.

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

13. Fla. Admin. Code R. 65A-1.713 SSI-Related Medicaid Income Eligibility Criteria in part states:

(1) Income limits. An individual’s income must be within limits established by federal or state law and the Medicaid State Plan. The income limits are as follows...

(e) For HCBS, gross income cannot exceed 300 percent of the SSI federal benefit rate...

(2) (d) Income placed into a qualified income trust is not considered when determining if an individual meets the income standard for ICP, institutional Hospice program or HCBS.

(4) Income Budgeting Methodologies. To determine eligibility SSI budgeting methodologies are applied except where expressly prohibited by 42 U.S.C. § 1396...

(b) For institutional care, hospice, and HCBS waiver programs the department applies the following methodology in determining eligibility:

1. To determine if the individual meets the income eligibility standard the client’s total gross income, excluding income placed in qualified income

trusts, is counted in the month received. The total gross income must be less than the institutional care income standard for the individual to be eligible for that month...

14. The qualified income trust is a legal document that meets criteria in 42 U.S.C.

§1396 (p)(d), which in part states:

(B) A trust established in a State for the benefit of an individual if—
(i) the trust is composed only of pension, Social Security, and other income to the individual (and accumulated income in the trust)...

15. In accordance with the above authorities, for petitioner to be eligible for HCBS, her monthly income cannot exceed 300 percent of the SSI federal benefit rate. And income placed into a QIT is not considered in determining HCBS eligibility.

16. The Department's Program Policy Manual, CFOP 165-22, Appendix A-9, sets forth the HCBS income limit for an individual at \$2,199.

17. The evidence establishes that petitioner receives \$1,658.97 from Pfizer, Inc. retirement pension and \$1,400.90 from SS retirement, totaling her monthly gross income at \$3,059.87. Therefore, petitioner is not eligible for HCBS Medicaid Waiver.

18. Fla. Admin. Code R. 65A-1.205, Eligibility Determination Process in part explains:

(1) (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 30 days from the date of application, whichever is later... 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...** (emphasis added)

19. In accordance with the above authority, the Department mailed petitioner a notice requesting that the petitioner provided the appropriate documents to determine eligibility. The notice was sent on September 14, 2015 and requested that petitioner provide the documents by September 24, 2015. Petitioner did not provide the requested documents.

20. The above authority also explains the requested verification is due ten days from the date of the notice, or 30 days from the date of application. And if the verification is not received by the deadline date, the application will be denied; unless an extension is requested.

21. The evidence establishes that petitioner did not provide the requested documents by the deadline date of October 1, 2015 (30 days from the date of application) and did not request an extension.

22. In careful review of the cited authorities and evidence, the undersigned concludes the Department followed Rule in denying petitioner HCBS; due to not providing the required verification to determine eligibility.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is denied and the respondent's action is affirmed.

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 06 day of January, 2016,

in Tallahassee, Florida.



Priscilla Peterson
Hearing Officer
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Tallahassee, FL 32399-0700
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Copies Furnished To: [REDACTED] Petitioner
Office of Economic Self Sufficiency