

Feb 17, 2016

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

Office of Appeal Hearings
Dept. of Children and Families



APPEAL NO. 15F-09687

PETITIONER,

Vs.



FLORIDA DEPARTMENT
OF CHILDREN AND FAMILIES
CIRCUIT: 05 Marion
UNIT: 09DDD


RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned telephonically convened an administrative hearing in the above-referenced matter at 2:10 p.m. on December 22, 2015.

APPEARANCES

For the Petitioner:  petitioner's mother

For the Respondent: Sharon Ashley, ACCESS Supervisor

STATEMENT OF ISSUE

At issue is whether the respondent's action to deny the petitioner Medicaid is proper. Petitioner carries the burden of proof by the preponderance of evidence.

PRELIMINARY STATEMENT

By notice dated December 8, 2015, the respondent (or the Department) notified the petitioner she was denied Medicaid benefits. Petitioner timely requested a hearing to challenge the denial.

Petitioner was present and provided testimony. Petitioner submitted one exhibit, entered as Petitioner Exhibit "1". Respondent submitted five exhibits, entered as Respondent Exhibits "1" through "5". The record was held open until December 23, 2015, for the respondent to submit additional exhibits. The exhibits were not received. The record was closed on December 23, 2015. To date, the respondent's exhibits have not been received.

FINDINGS OF FACT

1. On November 6, 2015, petitioner (age 34) submitted a SSI-Related Medicaid application for herself. The application indicates petitioner is disabled.
2. Petitioner applied for disability through the Social Security Administration (SSA) on May 8, 2014. The SSA denied petitioner disability on August 21, 2014. Petitioner, through an attorney, appealed the SSA denial in October 28, 2014. The appeal is pending.
3. Respondent's representative alleges that on November 6, 2015, the Department called petitioner in an attempt to complete an interview. The record was held open for the respondent's representative to submit the Department's Running Record Comments (CLRC) to support her allegation. The CLRC was not received.
4. Respondent's representative alleges that on November 17, 2015, the Department mailed petitioner a Notice of Case Action (NOCA) requesting she contact the Department to complete a disability interview. The record was held open for the respondent's representative to submit said NOCA. The NOCA was not received.

5. Petitioner's mother claims that a NOCA for a disability interview from the Department was not received. Nor have they received a telephone call from the Department for a disability interview.
6. The respondent's representative alleges that the Department has not received the November 17, 2015, NOCA as return mail from the post office. The record was held open for the respondent's representative to submit the Department's Document Imaging printout that identifies correspondent from the Department to the petitioner and from the petitioner to the Department. The Department's Document Imaging printout was not received.
7. On December 8, 2015, the Department notified petitioner she was denied Medicaid benefits; "Reason: You failed to complete an interview necessary for us to determine your eligibility for this program."
8. Respondent's representative confirmed that the Department denied petitioner Medicaid solely on not completing a disability interview.

CONCLUSIONS OF LAW

9. 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.
10. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code R. 65-2.056.
11. Fla. Admin. Code R 65A-1.205 explains the eligibility determination process and states in part:

(1) (a) The Department must determine an applicant's eligibility initially at application and if the applicant is determined eligible, at periodic intervals thereafter. **It is the applicant's responsibility to keep appointments with the eligibility specialist** (emphasis added) and furnish information, documentation and verification needed to establish eligibility. **If the Department schedules a telephonic appointment, it is the Department's responsibility to be available to answer the applicant's phone call at the appointed time.** (emphasis added) If the information, documentation or verification is difficult for the applicant to obtain, the eligibility specialist must provide assistance in obtaining it when requested or when it appears necessary...

12. In accordance with the above authority, it is the applicant's responsibility to keep appointments, if the Department schedules a telephonic appointment.

13. Federal Regulation at 42 C.F.R. § 431.211 Advance notice, in part states:

The State or local agency must send a notice at least 10 days before the date of action...

14. Federal Regulation at 42 C.F.R. § 438.404 Notice of action, in part states:

(a) Language and format requirements. The notice must be in writing and must meet the language and format requirements of §438.10(c) and (d) to ensure ease of understanding.

(b) Content of notice. The notice must explain the following...

(2) The reasons for the action...

15. The above authorities explain that the Department must send applicants a notice informing them of the action required. In this case, the respondent's representative argued that the Department mailed petitioner a NOCA on November 17, 2015, requesting petitioner call to complete a Medicaid disability interview. The Department did not submit said NOCA.

16. Petitioner argued that she did not receive the November 17, 2015, NOCA.

17. The evidence submitted does not establish that the Department mailed petitioner a NOCA stating that petitioner required a Medicaid disability interview. The evidence also

establishes that the Department denied petitioner Medicaid because she “failed to complete an interview necessary” to determine eligibility.

18. In careful review of the cited authorities and evidence, the undersigned concludes that the Department failed to notify the petitioner that an interview was required to determine Medicaid eligibility. Therefore, the case is remanded to the respondent for corrective action. IT IS HEREBY ORDERED that the respondent process petitioner’s November 6, 2015, application and mail the petitioner a NOCA identifying requirements to determine Medicaid eligibility. This order does NOT guarantee that the petitioner will be eligible for Medicaid.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is granted and remanded to the respondent in accordance with the above Conclusions of Law.

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 17 day of February, 2016,

in Tallahassee, Florida.

Priscilla Peterson

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