

Jan 26, 2016

Office of Appeal Hearings
Dept. of Children and FamiliesSTATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGSAPPEAL NO. 15F-09695
16F-00225

PETITIONER,

Vs.

CASE NO. FLORIDA DEPARTMENT
OF CHILDREN AND FAMILIES
CIRCUIT: 02 Gadsden
UNIT: 88630RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing telephonically in the above-referenced matter on December 18, 2015 at 2:03 p.m.

APPEARANCESFor the Petitioner: 

For the Respondent: Theresa Nadeau, Economic Self-Sufficiency Specialist II
Sheila Rushing, Operations Management Consultant I

STATEMENT OF ISSUE

Petitioner is appealing the Department's denial of his application for Food Assistance on October 20, 2015 and for SSI-Related Medicaid on November 18, 2015. The petitioner carries the burden of proof by the preponderance of evidence.

PRELIMINARY STATEMENT

The Department submitted evidence prior to the hearing, which was entered as Respondent Exhibit 1.

The record remained open for additional information on the Medicaid appeal through December 28, 2015. The Department issued the additional information to the petitioner regarding the SSI-Related Medicaid denial on December 18, 2015; it was sent to the undersigned on January 15, 2016. This information was entered as Respondent Exhibit 2.

FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following findings of fact are made:

1. The petitioner submitted an application for Food Assistance and SSI-Related Medicaid on October 15, 2015.
2. The petitioner indicated on his application he has been convicted of a drug trafficking felony.
3. The Department reviewed the petitioner's application and confirmed through Florida Department of Corrections records the petitioner was convicted of on [REDACTED] of [REDACTED].
4. The Department issued a Notice of Case Action on October 20, 2015 to inform the customer his Food Assistance application was denied because he was convicted of a [REDACTED].
5. The petitioner completed his sentence for the [REDACTED]. He does not believe it should continue to affect his eligibility for Food Assistance.

6. The petitioner's conviction has not been expunged from his records by the courts.

7. The petitioner stated he did not understand the severity of the charges when he accepted the plea agreement in 2004. He stated he has been out of jail for seven years and had no problems. He was told while he was in prison he could apply for Food Assistance.

8. The Department issued a Notice of Case Action on October 20, 2015 requiring an interview to be completed with the petitioner regarding his SSI-Related Medicaid determination. The petitioner was to call for the interview on October 23, 2015 between 11:00 a.m. and 12:00 p.m.

9. The petitioner did not call the Department for the interview.

10. The Department attempted to call the petitioner on October 23, 2015 regarding for his disability interview. The petitioner did not answer the call. A voicemail was left for the petitioner to call back.

11. The petitioner did not complete the DDD interview within 30 days of his date of application for SSI-Related Medicaid.

12. The Department issued a Notice of Case Action on November 18, 2015 denying the petitioner's application for Medicaid as "You failed to complete an interview necessary for us to determine your eligibility for this program."

13. The petitioner did not inquire about his SSI-Related Medicaid denial until the scheduled hearing for his Food Assistance appeal.

14. The Department cannot establish eligibility for SSI-Related Medicaid without a disability decision made by either the Division of Disability Determinations

(DDD) or Social Security Administration. The Department cannot submit the disability request to DDD on the petitioner's behalf without first completing an interview to document disability-related information for DDD's consideration. The Department can waive the interview only if information from Social Security has been received documenting the medical information needed.

15. The Department will mail a new application, including all needed forms, to the petitioner.

16. The Department explained policy for reuse of an application during a 60-day period. However, it does not apply to this case. The policy allows for reuse of the application if the application was denied due to failure to return information. Therefore, the application cannot be reused in this situation. However, the Department advised the October 2015 application would protect the petitioner's dates of retroactive eligibility back to July 2015.

CONCLUSIONS OF LAW

17. The Department of Children and Families, Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties, pursuant to § 409.285, Fla. Stat. This order is the final administrative decision of the Department of Children and Families under § 409.285, Fla. Stat.

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

FOOD ASSISTANCE

19. Federal Food Assistance Regulations at 7 C.F.R. § 273.11 "Action on households with special circumstances" states in relevant part:

(m) *Individuals convicted of drug-related felonies.* An individual convicted (under Federal or State law) of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use, or distribution of a controlled substance (as defined in section 102(6) of the Controlled Substance Act, 21 U.S.C. 802(6)) shall not be considered an eligible household member unless the State legislature of the State where the individual is domiciled has enacted legislation exempting individuals domiciled in the State from the above exclusion. If the State legislature has enacted legislation limiting the period of disqualification, the period of ineligibility shall be equal to the length of the period provided under such legislation. Ineligibility under this provision is only limited to convictions based on behavior which occurred after August 22, 1996. The income and resources of individuals subject to disqualification under this paragraph (m) shall be treated in accordance with the procedures at paragraph (c)(1) of this section.

20. The findings show the petitioner was convicted of a [REDACTED].

The undersigned acknowledges the petitioner's belief that he has served his sentence and the conviction should not be held against him in this program. In accordance with the Federal Food Assistance Regulation cited above, even a conviction of possession of a controlled substance classified as a felony would disqualify the petitioner from participation in the Food Assistance Program unless the exemption is met. The regulation sets forth that an individual convicted of distribution of a controlled substance classified as a felony shall not be considered an eligible household member unless the state legislature of the state where the individual resides enacts legislation exempting individuals from the exclusion in the federal regulation. The undersigned found no Florida Statute allowing the petitioner to be exempt from this regulation. The Department does have a written policy as shown in its policy manual citation below which only disqualifies those convicted of a felony for drug trafficking. This policy applies to all Florida residents applying for Food Assistance.

21. The Department's Policy Manual, CFOP 165-22, passage 1410.2200

"Individual Convicted of Felony Drug Trafficking (FS)" states:

Food stamp benefits shall be denied to an individual who has been convicted of a felony for drug trafficking including agreeing, conspiring, combining, or confederating with another person to commit the act committed after 8/22/1996. This disqualification is a lifetime disqualification. Only the individual who was convicted will be penalized. If the illegal behavior that lead to the conviction occurred on or before 8/22/96, the disqualification does not apply regardless of the date of the conviction. If a court expunges the felony drug trafficking conviction, the individual is not subject to the disqualification. The individual must provide proof of the expungement.

22. The findings show the petitioner's felony drug trafficking conviction occurred after [REDACTED]. The petitioner's conviction has not been overturned by the courts. The undersigned considered the petitioner's arguments; however, no exemption could be found to allow eligibility in this instant case. In accordance with the above controlling authorities, the undersigned concludes that unless the petitioner's conviction is expunged and he provides proof of such, the disqualification from participation in the Food Assistance program is correct.

SSI-RELATED MEDICAID

23. Fla. Admin. Code R. 65A-1.205 "Eligibility Determination Process" states in relevant 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 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. 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.

...

(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. The eligibility specialist makes the decision of whether to grant the request for extension. When the applicant provides all required information or verification, the eligibility specialist determines eligibility for the public assistance programs. If the eligibility criteria are met, benefits are authorized.

...

(3) The Department conducts phone or face-to-face interviews with applicants/recipients or their authorized/designated representatives when required for the application or complete eligibility review process.... The applicant/recipient or their authorized/designated representative must keep the interview appointment or reschedule the missed appointment....

(4) If an applicant or recipient does not keep an appointment without arranging another time with the eligibility specialist; or does not sign and date the applications described in subsection (1); or does not submit required documentation or verification the Department will deny benefits as it cannot establish eligibility. (emphasis added)

24. The findings show the Department issued a Notice requiring an interview with the petitioner. The findings also show the petitioner received the notice and did not call for the interview, receive the call from the Department or make contact with the Department to reschedule the interview. In accordance with the above controlling authority, the undersigned concludes the applicant must keep an interview appointment

or reschedule the missed appointment. The undersigned further concludes, the petitioner did not keep an interview or reschedule an interview in this instant case.

25. The Policy Manual, passage 0640.0400 "Application Time Standards (MSSI, SFP) state in relevant part:

The time standard begins upon receipt of a signed application. Process applications as soon as possible after the assistance group (AG) completes all eligibility requirements. If the household completes all requirements and provides all information, process the application by the 30th day after the application date. Process applications and determine eligibility or ineligibility within 90 calendar days after the date of the application for individuals who claim a disability.

Disability/Blindness Decision:

1. **Conduct an interview and complete a disability/blindness packet within seven calendar days from the application date.**
2. Request a disability/blindness decision within two calendar days of receipt of appropriate information.
3. Submit the packet no more than nine calendar days following the date of application.

26. The Policy Manual, passage 0640.0401 "Requests for Additional Information/Time Standards (MSSI, SFP)" states in relevant part:

If the Department needs additional information or verification from the applicant, provide:

1. a written list of items required in order to complete the application process,
2. the date the items are due in order to process the application timely, and
3. the consequences for not returning additional information by the due date.

The verification/information due date is 10 calendar days after the date of the interview or if there is no interview requirement, 10 days after the date the pending notice is generated. In cases where medical information is required, the return due date is 30 calendar days from date of request. If the due date falls on a holiday or weekend, the deadline for the requested information is the next business day. At the individual's request, extend the due date. Leave the case pending until the 30th day after the date of application to allow the household a chance to provide verifications. Assist applicants with getting missing verifications when needed.

27. In accordance with the above controlling authority, the undersigned concludes the Department correctly denied the petitioner's application for SSI-Related Medicaid when no contact was received by the 30th day following the date of application.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeals are denied and the Department'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 26 day of January, 2016,
in Tallahassee, Florida.



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Copies Furnished To: [REDACTED] Petitioner
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