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

[redacted]

APPEAL NO. 19F-05130

PETITIONER,

Vs.

[redacted]

FLORIDA DEPARTMENT
OF CHILDREN AND FAMILIES
CIRCUIT: 07 Volusia
UNIT: 88882

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing telephonically in the above-referenced matter on August 26, 2020 at 2:01 p.m.

APPEARANCES

For Petitioner: [redacted]

For Respondent: [redacted]

STATEMENT OF ISSUE

Petitioner appeals Respondent's actions denying multiple applications related to Petitioner's Institutional Care Program ("ICP") Medicaid. Petitioner carries the burden of proof by a preponderance of the evidence in this appeal.

SUMMARY OF PROCEEDINGS

[redacted], [redacted] appeared as a witness for Respondent.

The appeal was continued numerous times per the parties' requests.

By a Notice of Case Action ("NOCA") dated May 1, 2019, Respondent informed Petitioner that her Medicaid application was denied because Respondent did not receive all the information requested to determine eligibility. On June 21, 2019, Petitioner requested a hearing to challenge Respondent's action.

During the hearing the undersigned noted that some of Petitioner's applications at issue are outside of the jurisdiction covered by the June 21, 2019 hearing request date.

Petitioner submitted three exhibits which were accepted into evidence and marked as Petitioner's Composite Exhibits 1-2 and Petitioner's Exhibit 3. Respondent submitted fourteen (14) exhibits which were accepted into evidence and marked as Respondent's Exhibits 1 – 14. The undersigned left the record open through September 2, 2020 for Petitioner to submit additional information for consideration. The deadline was extended through September 11, 2020 per Petitioner's request. On September 11, 2020, Petitioner submitted a statement indicating she did not have any additional information to submit. The statement directs the undersigned to take notice of Respondent's Program Policy Manual passage 0640.0401. The record closed on September 11, 2020.

Petitioner's Position

Petitioner took the position that Respondent mishandled the case from the beginning, resulting in the initial determinations being botched. Petitioner is seeking ICP eligibility from August 2018 through September 2019 based on numerous applications she submitted between August 31, 2018 and August 30, 2019. Petitioner maintains that Respondent's pending notices were not specific, in that they failed to mention some key items. The challenge is to Respondent's denial of ICP without providing additional notice of what was still needed to approve the application, until the subsequent application was filed.

Respondent's Position

Respondent took the position that since Petitioner failed to submit various documents, Petitioner is not eligible for any ICP Medicaid benefits based on the applications at issue. In addition, since Respondent has eliminated retroactive Medicaid coverage effective February 2019, Petitioner's is not eligible for retroactive Medicaid coverage based on the applications at issue.

FINDINGS OF FACT[1]

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. Effective February 2019, Respondent terminated the three-month retroactive Medicaid eligibility for most of its applicants. Except for pregnant women and children,

[1] Citations within the Findings of Fact and Conclusions of Law in this order follow Florida Rules of Appellate Procedure 9.800 and *The Bluebook: A Uniform System of Citation* as the standard for citation.

eligible applicants are authorized Medicaid benefits effective from the month of application only. (Resp't Ex. 13.)

2. [redacted] admitted Petitioner on April 29, 2018. (Resp't Ex. 2 at 3.)

3. On August 31, 2018, Petitioner applied for Nursing Home Medicaid Coverage, also known as ICP Medicaid. On October 2, 2018, Respondent issued a NOCA to Petitioner at the address of record denying Petitioner's application. Petitioner did not file an appeal. (Pet'r Comp Ex. 1 at 2 & 8.)

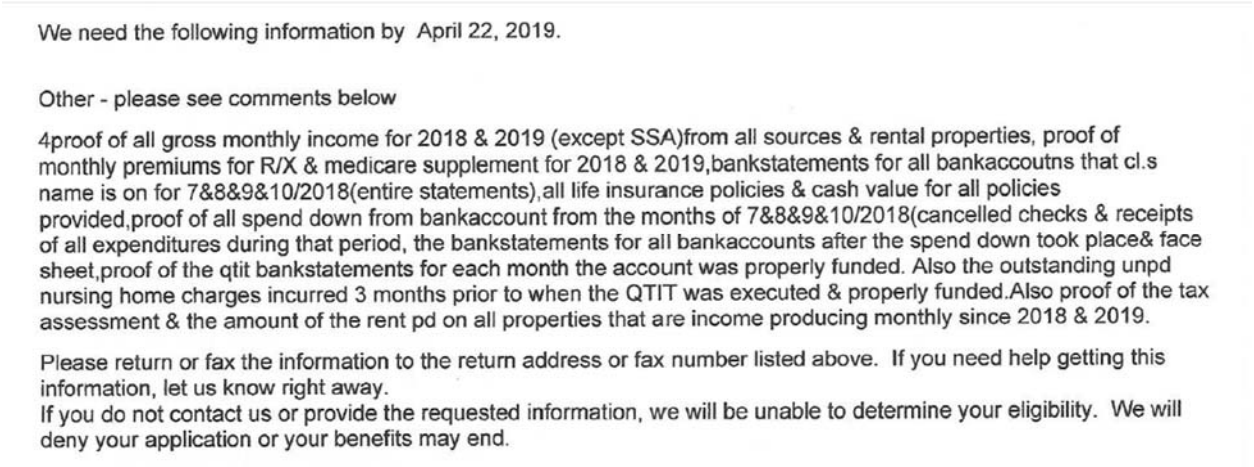
4. On October 31, 2018, Petitioner applied for ICP Medicaid Coverage. On December 3, 2018, Respondent issued a NOCA to Petitioner denying the application. Petitioner did not file an appeal. (Pet'r Comp Ex. 1 at 12.)

5. On January 31, 2019, Petitioner applied for ICP Medicaid Coverage. On March 7, 2019, Respondent issued a NOCA to Petitioner denying the application. (Pet'r Comp Ex. 1 at 16.) Petitioner did not file an appeal challenging the above-mentioned denials. (Hr'g R.)

6. On March 29, 2019, Petitioner reapplied for ICP. On that application, Petitioner indicated she had one savings and two checking accounts with [redacted] and a whole Life Insurance policy with [redacted]. (Resp't Ex. 2 at 4.)

7. ICP Medicaid coverage assists residents by covering their medical expenses, if they meet certain eligibility criteria. Applications are valid for 60 days. The 60th day of the March 29, 2019 Application is May 28, 2019. Respondent must follow SSI-Medicaid related rules to determine an individual's eligibility for ICP Medicaid. (Resp't Test.)

8. On April 12, 2019, Respondent issued NOCA to Petitioner at the address of record requesting the following information by April 22, 2019. (Resp't Ex. 4.)



We need the following information by April 22, 2019.

Other - please see comments below

4proof of all gross monthly income for 2018 & 2019 (except SSA)from all sources & rental properties, proof of monthly premiums for R/X & medicare supplement for 2018 & 2019,bankstatements for all bankaccoutns that cl.s name is on for 7&8&9&10/2018(entire statements),all life insurance policies & cash value for all policies provided,proof of all spend down from bankaccount from the months of 7&8&9&10/2018(cancelled checks & receipts of all expenditures during that period, the bankstatements for all bankaccounts after the spend down took place& face sheet,proof of the qtit bankstatements for each month the account was properly funded. Also the outstanding unpd nursing home charges incurred 3 months prior to when the QTIT was executed & properly funded.Also proof of the tax assessment & the amount of the rent pd on all properties that are income producing monthly since 2018 & 2019.

Please return or fax the information to the return address or fax number listed above. If you need help getting this information, let us know right away.
If you do not contact us or provide the requested information, we will be unable to determine your eligibility. We will deny your application or your benefits may end.

9. On May 1, 2019, Respondent issued a NOCA to Petitioner at the address of record denying Petitioner's March 29, 2019 ICP application for January 2019 and from March 2019 through June 2019 as it "did not receive all the information requested to determine eligibility." (Resp't Ex. 1 at 1.)

10. Respondent denied Petitioner's March 29, 2019 ICP application because Petitioner did not provide several items (proof of gross income, insurance premiums, bank statements and life insurance verification) within the allotted time for Respondent to establish Petitioner's eligibility. (Resp't Wit Test. Aug. 26, 2020.)

11. On June 21, 2019, Petitioner requested a hearing to challenge Respondent's action. (Hr'g R.)

12. On June 28, 20119, Petitioner reapplied for ICP benefits. (Resp't Ex. 7.) The 60th day of the June 28, 2019 Application is August 27, 2019. (Resp't Test.)

13. On July 10, 2019, Respondent issued NOCA to Petitioner at the address of record requesting the following information by July 22, 2019. (Resp't Ex. 10.)

We need the following information by July 22, 2019.

Other - please see comments below

You are applying for ICP Medicaid. Case is pending for: 1) CURRENT Cash value FOR 2019 FOR LIFE INS Policies, 2) Bank STATEMETS FOR TRUST [redacted] we need statements for 01/19 THRU CURRENT MONTH, 3) Bank [redacted], We NEED STMST FOR 02/19 TO CURRENT Month and 4) PROPERTY [redacted] NEEDS TO BE ADDRESSED IF PROPERTY SOLD, or RENTED out.

Please return or fax the information to the return address or fax number listed above. If you need help getting this information, let us know right away.
If you do not contact us or provide the requested information, we will be unable to determine your eligibility. We will deny your application or your benefits may end.

14. On July 24, 2019, Respondent's witness emailed Petitioner indicating the following items were due by July 26, 2019. (Resp't Ex. 12 at 5.)

> Legible copy of the pension benefit verification
> Current bank statements for all accounts from January 2019 through current month for accounts ending in [redacted].
> Current cash value of all life insurance for 2019
> Status or property located at [redacted] sold/rented
> Proof of rental amount and proof of monthly expenses paid on rental property
> Bank statement from January 2019 through current for account ending in [redacted]

15. On August 7, 2019, Respondent's witness emailed Petitioner to inquire about the pending documents. (Pet'r Comp Ex. 2 at 23.)

16. On August 9, 2019, Respondent issued a NOCA to Petitioner at the address of record denying Petitioner's June 28, 2019 ICP application for March 2019 and from June 2019 through September 2019 as it "did not receive all the information requested to determine eligibility." (Resp't Ex. 6 at 1.)

17. Respondent denied Petitioner's June 28, 2019 ICP application because Petitioner did not provide several items within the allotted time for Respondent to establish Petitioner's eligibility. (Resp't Wit. Test. Aug. 26, 2020.)

18. On August 22 and 23, 2019, Petitioner submitted several assets document to Respondent. (Pet'r Comp Ex. 2 at 4.)

[redacted]

19. On August 27, 2019, Petitioner replied to an August 7, 2019 email from Respondent's witness stating that she "believed everything was uploaded last week." Respondent's witness replied additional document is needed because the bank statement for account ending in [redacted] indicted that money was being transferred to it from Petitioner's account. Petitioner replied: "I am trying. I would love to get this file resolved." To which Respondent's witness replied: "We needed that information by today to use this application." (Pet'r Comp Ex. 2 at 21-22.). Respondent did not issue a new pending notice requesting that information. (Hr'g R.)

20. On August 30, 2019, Petitioner reapplied for ICP Medicaid Coverage. On October 14, 2019, Respondent issued a NOCA to Petitioner at the address of record denying Petitioner's application due to excess income. (Pet'r Comp Ex. 1 at 28.)

21. On October 31, 2019, Petitioner reapplied for ICP Medicaid Coverage. On December 27, 2019, Respondent issued a NOCA to Petitioner approving the application effective October 2019. (Pet'r Comp Ex. 1 at 32.)

22. Petitioner maintains that Petitioner's ICP Medicaid coverage should be effective August 2018 based on the August 31, 2018 application because: 1) the caseworker initially assigned to the case did not handle the file correctly; 2) that the caseworker failed to follow proper procedure with regards to application processing and 3) that the

caseworker kept requesting documents she previously submitted. Petitioner maintains she continued to file applications out of an abundance of caution while waiting to resolve the issue with Respondent.

23. Petitioner acknowledged on occasions that she received pending information from the Power of Attorney ("POA") close to or after the 60th day or that some documents were missing, but contends that the documents she provided to Respondent were done in good faith with the belief that they were sufficient for Respondent to be able to determine Petitioner's eligibility. (Hr'g R.)

24. Respondent's witness maintains that Respondent followed all procedures to determine Petitioner's eligibility for ICP on all applications. Additionally, she explained that the state has terminated retroactive Medicaid eligibly and advised Petitioner to submit medical bills so payments can be explored under the state's UMEDS procedure (Uncovered Medical Expenses Deductions.)

CONTROLLING LAW

25. The Department of Children and Families, Office of Appeal Hearings, has jurisdiction over the subject matter of this proceeding and the parties; this order is the final administrative decision of the Department of Children and Families pursuant to Section 409.285, Florida Statutes ("F.S.").

26. This proceeding is a *de novo* proceeding pursuant to Florida Administrative Code ("F.A.C.") Rule 65-2.056.

As to the August 31, 2018, October 31, 2018, and January 31, 2019 applications and Jurisdiction

27. F.A.C. Rule 65-2.068 addresses Time Limits in which to Request a Hearing and states:

> (1) **The appellant or authorized representative must exercise the right to appeal within 90 calendar days in all programs** except the Road to Independence (RTI) Program under Section 409.1451(4), F.S., and the Adoption Subsidy Program under Sections 120.569 and 120.57, F.S. The right to appeal under the RTI Program must be exercised within 30 calendar days from the date of receipt of the notice of adverse action pursuant to paragraph 65C-42.004(3)(a), F.A.C. The right to appeal under the Adoption Subsidy Program must be exercised within 21 calendar days from the receipt of the notice of adverse action pursuant to subsection 65C-16.013(2), F.A.C. Additionally, in the Supplemental Nutrition Assistance Program (SNAP), a household may request a fair hearing at any time within a certification period to dispute its current level of benefits. The 30-day time period under the RTI Program begins on the date the written notification is received. The 90-day time period for all other programs begins with the date following:
>
> (a) The date on the written notification of the decision on an application.
>
> (b) The date on the written notification of reduction or termination of program benefits.
>
> (c) The date of the Department's written notification of denial or a request or other action which aggrieves the petitioner when that denial or action is other than an application decision or a decision to reduce or terminate program benefits.
>
> …
>
> **[Emphasis added]**
>
> **…**

CONCLUSIONS OF LAW

28. The above authority indicates that any applicant who chooses to challenge the Department's actions must do so within 90 days from the written notification of the decision on an application or date on the written notification of reduction or termination of program benefits. Respondent sent notices to Petitioner on October 2, 2018, December 3, 2018 and March 7, 2019, respectively, denying the August 31, 2018, October 31, 2018, and January 31, 2019.

29. This appeal was requested on June 21, 2019. The actions taken by Respondent with regards to above applications will not be reviewed as the undersigned lacks jurisdiction to review those matters. Therefore, this portion of the appeal is dismissed as non-jurisdictional

The March 29, 2019 ICP application will be addressed now

CONTROLLING LAW

30. F.A.C. Rule 65A-1.710 defines SSI-Related Medicaid Coverage Groups and states in relevant part:

> The Department covers all mandatory coverage groups and the following optional coverage groups:
> …
> (2) Institutional Care Program (ICP). A coverage group for institutionalized aged, blind or disabled individuals (or couples) who would be eligible for cash assistance except for their institutional status and income as provided in 42 C.F.R. §§435.211 and 435.236. Institutional benefits include institutional provider payment or payment of Medicare coinsurance for skilled nursing facility care.

31. F.A.C. Rule 65A-1.205, addresses the eligibility determination process and 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.
> …
>
> (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**, or that a member of the assistance group must comply with Child Support Enforcement or register

> for employment services, **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.
> …
> **[Emphasis added]**
> …

32. F.A.C. Rule 65A-1.203(9) defines representative: "Authorized/Designated Representative: An individual who has knowledge of the assistance group's circumstances and is authorized to act responsibly on their behalf."

33. The Department's Program Policy Manual (The Policy Manual), CFOP 165-22 passage number 3240.0115 Designated Representative (MSSI, SFP) states: "A designated representative is someone who assumes responsibility for acting on behalf of the individual or assistance group by providing information for the eligibility determination."

CONCLUSIONS OF LAW

34. The DR assumes the same rights and responsibilities as the applicant, including the responsibility of furnishing information, documentation and verification needed. The DR must have knowledge of the assistance group's circumstances and must be willing to act on Petitioner's behalf by providing information for the eligibility determination.

35 The above cited authority states that it is Petitioner's responsibility to furnish information needed to establish eligibility. Though Respondent is directed to provide assistance in obtaining verification when requested, the ultimate responsibility for providing this verification rests with Petitioner. If Petitioner does not provide required verifications or information necessary to establish eligibility, the application will be denied.

36. The findings show Respondent sent a pending notice to Petitioner on April 12, 2019 requesting additional documents. Petitioner acknowledged that information received from the POA was not complete at times.

37. In careful review of the above-cited authorities and evidence, the undersigned concludes Petitioner did not meet the burden of proof that Respondent erred in denying Petitioner's March 29, 2019 ICP application. The undersigned concludes that Respondent's action denying Petitioner's ICP applications at issue is correct.

The June 28, 2019 and August 30, 2019 ICP applications will be addressed now.

CONTROLLING LAW

38. F.A.C. Rule 65A-1.205, addresses the eligibility determination process and states in relevant part:

> …
> (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.**
> (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.
> **[Emphasis added]**
> …
> (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.
> (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.
> (b) The Department compares information found through the data exchanges with the information already on file. If the data exchange identifies new or different information than was previously available, the Department conducts a partial eligibility review to determine whether it must change benefit levels.
> (c) The Department considers beneficiary and SSI benefit data from the Social Security Administration, unemployment compensation benefit data and Department of Health, Office of Vital Statistics data verified upon receipt and does not require third party verification. Other data requires third party verification before the Department takes adverse actions on a case.

CONCLUSIONS OF LAW

39. The findings show the Respondent received banks statements from Petitioner indicating that money was being transferred to account ending in [redacted] from Petitioner's account. The findings also show that Respondent did not issue a pending notice requesting any specific information from Petitioner. Respondent failed to provide Petitioner this opportunity as required.

40. In careful review of the cited authorities and evidence, the undersigned concludes Petitioner has met her burden of proof in establishing the potentiality for ICP Medicaid eligibility effective with the June 28, 2019 application.

41. Therefore, the undersigned remands the case to Respondent for further development. In accordance with the controlling legal authorities, Respondent is hereby ordered to explore eligibility for ICP Medicaid benefits for Petitioner based on the household situation for the period at issue. The REMAND does not ensure Petitioner is eligible for ICP Medicaid benefits, but it will give Respondent the opportunity to further review the case to make an eligibility determination protecting the June 28, 2019 and August 30, 2019 applications. Once a decision is made, Respondent shall issue a Notice of Case Action to Petitioner informing her of the decision and said notice shall include appeal rights.

Retroactive ICP Medicaid eligibility will be addressed now.

CONTROLLING LAW

42. F.A.C. Rule 65A-1.702(8) addresses Retroactive Medicaid and provides for "Retroactive Medicaid is based on an approved, denied, or pending application for ongoing Medicaid benefits. **For applications submitted on or after February 1, 2019,**

retroactive coverage only applies to applications for children under age 21 and pregnant women, including their postpartum period."

[Emphasis added]
…

43. On January 10, 2019, Respondent issued Transmittal No: P-19-01-0002 eliminating retroactive Medicaid coverage for most of its Medicaid recipients, except for the group identified above.

44. The Department's Program Policy Manual (The Policy Manual) CFOP 165-22, passage number 0640.0509 addresses Retroactive Medicaid in the SSI-Related Medicaid group (MSSI) and states:

> **Medicaid may be authorized for up to three months prior to the date of application for children under age 21 and pregnant women, including their postpartum period,**
> **provided:**
> 1. at least one member of the AG has received Medicaid reimbursable services during the retroactive period;
>
> 2. the individual meets all factors of eligibility during the month(s) he requests retroactive Medicaid.
>
> The applicant may request retroactive Medicaid at any time, as long as the coverage period is for any one of three months prior to any Medicaid application.
> Retroactive coverage is not affected by:
>
> 1. the application's disposition (approval or denial);
>
> 2. whether or not the individual was alive at the time of the application; or
>
> 3. when the request for assistance or request to add was made.
>
> When the request for retroactive Medicaid for an unpaid bill(s) is for only one member of the household determine Medicaid eligibility for the individual. Determine eligibility for each month there were unpaid medical services provided; do not consider the month the bill was issued. Accept the individual's statement that a member of the household.
> **[Emphasis added]**

CONCLUSIONS OF LAW

45. The above-cited authorities dictate effective February 1, 2019, Respondent should only approve retroactive Medicaid coverage for children under age 21 and pregnant women. In this case, Petitioner applied after the retoractive Mediciad Program was already eliminated.

DECISION

Based upon the foregoing Findings of Fact, Controlling Law and Conclusions of Law, this appeal is decided as follows:

As to the March 29, 2019 application, the appeal is DENIED. Petitioner is not eligible for ICP Medicaid.

As to the June 29, 2019 and August 30, 2019 applications, the appeal is **GRANTED**. Respondent's (denial) action is **REVERSED and REMANDED**.

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 Office of Appeal Hearings, Bldg. 5, Rm. 255, 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 __09__ day of __October_____, 2020,

in Tallahassee, Florida.

[redacted]

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