

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION
OFFICE OF FAIR HEARINGS



FILED

Oct 09, 2023, 11:10 am

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH2144

vs.

CHILDREN'S MEDICAL SERVICES,

RESPONDENT.

_____ /

FINAL ORDER OF DISMISSAL

On August 29, 2023, [REDACTED] ("Petitioner's Authorized Representative") requested a Fair Hearing on behalf of Petitioner. Pursuant to Florida Administrative Code Rule ("Fla. Admin. Code R.") 59G-1.100(3), the Agency for Health Care Administration ("AHCA" or "Agency") has jurisdiction and must provide a Fair Hearing for:

- (a) A [Fee-For-Service] recipient who makes a hearing request regarding:
 1. The reduction, suspension, or termination by the Agency of a previously authorized service,
 2. The denial, in whole or in part, of a requested service or supply by the Agency, or
 3. The failure of the Agency to provide a timely [Notice of Action] subsequent to the Agency's failure to provide all medically necessary services to the recipient with reasonable promptness.
- (b) An enrollee who makes a hearing request regarding:
 1. A notice of plan appeal resolution indicating that the plan appeal did not result in the reversal of a prior denial of a new service, or the reduction, suspension, or termination of a previously authorized service, if timely challenged by the enrollee in accordance with the plan appeal procedures following the timely issuance of the plan's [Notice of Adverse Benefit Determination] to the enrollee,
 2. The failure of the plan to adhere to notice and timing requirements applicable to plan appeals, or
 3. The failure of the plan to timely notice the enrollee through a [Notice of Adverse Benefit Determination], subsequent to the plan's failure to provide medically

necessary services requested by the enrollee to the enrollee with reasonable promptness.

(c) An enrollee who makes a hearing request regarding a disenrollment denial.

(d) A recipient who receives notification from the Agency pursuant to rule 59G-5.110, F.A.C., that a reimbursement request is denied in whole or in part.

(e) A recipient entitled to a fair hearing pursuant to section 409.285(2), F.S.

(f) The Agency need not grant a fair hearing if the sole issue is a federal or state law requiring an automatic change adversely affecting some or all recipients.

(g) A recipient who makes a hearing request regarding a denial or reduction to a medically necessary Florida Medicaid service and seeks corrective action.

When a Plan, in this case Children's Medical Services (“CMS” or “Respondent”), reduces, suspends, terminates, or denies a service provided under Medicaid, it issues a Notice of Adverse Benefit Determination (“NABD”). The NABD provides information related to the determination and explains how to ask for an appeal. A plan appeal is a review by the Plan of an adverse benefit determination. Once the Plan makes a determination regarding the plan appeal, it issues to the Enrollee, in this case Petitioner, a Notice of Plan Appeal Resolution (“NPAR”). The NPAR explains how to ask for a Fair Hearing if the Enrollee does not agree with the decision. In the instant case, the Office of Fair Hearings (“Office”) does not have an NABD and NPAR, or any other information that would establish jurisdiction under Fla. Admin. Code R. 59G-1.100(3).

Because the reduction, suspension, termination, or denial of a service is a jurisdictional requirement for the Office, Fla. Admin. Code R. 59G-1.100(9)(b)(1) authorizes a Hearing Officer to deny or dismiss a request for a Fair Hearing if the Office lacks jurisdiction over the subject matter of the Fair Hearing request.

On September 26, 2023, the undersigned issued an Order to Show Cause (“Order”) why the Fair Hearing request should not be dismissed for failure to comply with the Office’s jurisdictional requirements under Fla. Admin. Code R. 59G-1.100(3). The Order notified Petitioner

that failure comply with the rule requirement on or before October 6, 2023, would result in dismissal of the case.

On October 6, 2023, the Office of Fair Hearings received various documents from Petitioner's Authorized Representative including a letter from [REDACTED] and a Behavior Analysis Assessment and Treatment Plan from [REDACTED]. These documents are unresponsive to the rule requirement to complete a plan appeal prior to making a Fair Hearing request. Alternatively, the Office of Fair Hearings did not receive any documentation that the Plan failed to adhere to notice and timing requirements applicable to plan appeals. Because completion of a plan appeal is a jurisdictional requirement for the Office of Fair Hearings, Fla. Admin. Code R. 59G-1.100(9)(b)(2) authorizes a Hearing Officer to deny or dismiss a request for a Fair Hearing if the Enrollee has not completed the plan appeal.


In this case, the Office has not received an NABD and NPAR or other documentation or explanation to show cause why the request for Fair Hearing should not be dismissed for failure to comply with the Office of Fair Hearing's jurisdictional requirements.

Based on the foregoing,

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

This case is dismissed without prejudice and is now closed.

DONE and ORDERED this 9th day of October, 2023 in Tallahassee, Leon County, Florida.

 Kimberly Roche
23-FH2144
2023.10.09
09:28:36 -04'00'

KIMBERLY ROCHE, Hearing Officer
Agency for Health Care Administration
Office of Fair Hearings
2727 Mahan Drive, Mail Stop # 11

NOTICE OF A RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW, WHICH SHALL BE INSTITUTED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A COPY, ALONG WITH THE FILING FEE PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE RENDITION OF THE ORDER TO BE REVIEWED.

COPIES FURNISHED TO:

[REDACTED]
[REDACTED]

Children's Medical Services
CMSPlanContract@flhealth.gov

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