



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

FILED

Jan 05, 2024, 1:23 pm
OFFICE OF FAIR HEARINGS

[Redacted]

PETITIONER,

AHCA Case No.: 23-FH2360

vs.

AGENCY FOR HEALTH CARE
ADMINISTRATION,

RESPONDENT.

_____ /

FINAL ORDER OF DISMISSAL

On September 20, 2023, [Redacted] (“Petitioner’s Authorized Representative”) requested a Fair Hearing on behalf of Petitioner due to termination of behavior analysis services. 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.

Whenever the Agency reduces, suspends, terminates, or denies a service provided under Medicaid, the Agency or its representative, issues a Notice of Action, sometimes entitled a "Notice of Outcome" or "Notice of Disposition" ("Notice"). The Notice provides information related to the determination and explains how to request a Fair Hearing if the Recipient does not agree with the decision. In the instant case, the Office of Fair Hearings does not have a Notice, 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 of Fair Hearings, 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 of Fair Hearings lacks jurisdiction over the subject matter of the Fair Hearing request.

On December 6, 2023, the Office of Fair Hearings received a Notice of Reconsideration Determination from the Respondent reversing its decision and authorizing all of the Behavior Analysis services at issue in this case. Based on the reversal, it appeared that the Office of Fair Hearings lacks jurisdiction over the subject matter of the Fair Hearing request.


On December 7, 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 of Fair Hearing’s jurisdictional requirements under Fla. Admin. Code R. 59G-1.100(3). The Order notified Petitioner that failure to comply with the rule requirement on or before December 18, 2023, would result in dismissal of the case. To date, the Office of Fair Hearings has not received a Notice 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 5th day of January 2024, in Tallahassee, Leon County, Florida.

Laura Gallagher
23-FH2360
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LAURA GALLAGHER, Hearing Officer
Agency for Health Care Administration
Office of Fair Hearings
2727 Mahan Drive, Mail Stop # 11
Tallahassee, FL 32308-5407

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]
[REDACTED]

AHCA Medicaid Hearing Unit
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