



The Delaware Code (31 Del. C. §520) provides for judicial review of hearing decisions. In order to have a review of this decision in Court, a notice of appeal must be filed with the clerk (Prothonotary) of the Superior Court within 30 days of the date of the decision. An appeal may result in a reversal of the decision. Readers are directed to notify the DSS Hearing Office, P.O. Box 906, New Castle, DE 19720 of any formal errors in the text so that corrections can be made.

**DELAWARE DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF SOCIAL SERVICES**

In re:

DCIS No. Redacted

Redacted

Appearances: Redacted, pro se, Appellant, by telephone

Mary Lawson, Sr. Social Worker/Case Manager, Division of Social Services
Heather Turssline, Sr. Social Worker/Case Manager, Division of Social Services

I.

Redacted ("Appellant") opposes a decision by the Division of Social Services ("DSS") to close her medical assistance benefits.

The Division of Social Services ("DSS") contends that the Appellant did not cooperate with the Division of Child Support Enforcement (DCSE). DSS sanctioned her case by closing her Medical Assistance benefits on June 30, 2010.

II.

On June 11, 2010, DSS sent to Appellant a Notice to Close Your Medical Assistance, effective June 30, 2010. (Exhibit 3).

The Appellant filed a request for a fair hearing dated June 23, 2010 requesting that benefits remain open during the pendency of the hearing process. (Exhibit 2). The Fair Hearing Summary indicates that benefits have continued.

The Appellant was notified by certified letter dated July 6, 2010, that a fair hearing would be held on July 12, 2010. The hearing was conducted on that date in Georgetown, Delaware.

This is the decision resulting from that hearing.

III.

The agency received an e-mail from, Barbara Vendrick, at the Division of Child Support Enforcement (“DCSE”), on June 11, 2010 requesting the sanction because the Appellant did not cooperate with DCSE. Ms. Vendrick did not appear at the hearing on July 12, 2010 to provide evidence for the State.

The Appellant testified by telephone from her home because she has no transportation. She admitted receiving a letter from the DCSE about an appointment but could not locate any contact number to inform DCSE that she was unable to attend due to transportation issues. The Appellant additionally testified that she later contacted Ms. Vendrick and left several messages for her but her telephone calls were not returned. The Appellant testified that she was waiting for Ms. Vendrick to contact her.

DSS did not provide any testimony about the underlying facts of the case. They conjectured that DCSE would work with the Appellant if she explained her transportation issue. DSS felt sure that the Appellant could participate in a telephone interview if one (1) could be set up in the future. DSS urged the Appellant to re-contact Ms. Vendrick about the matter. DSS further informed the Appellant that once the matter was settled, they would receive an e-mail from Ms. Vendrick and remove the sanction from her case.

IV.

Pursuant to Delaware Social Services Manual (“DSSM”) 14660 individuals who fail to meet the assignment provisions including assignment of rights to benefits and cooperation must be denied Medicaid eligibility or have eligibility terminated if already receiving Medicaid. This includes individuals who refuse to assign his or her own rights or those of any other individual for whom he or she can legally make an assignment. Pregnant and postpartum women do not have to cooperate in establishing paternity and obtaining medical support.

Medicaid must be provided to any individual who cannot legally assign his or her own rights and is otherwise eligible for Medicaid, when the person who has the legal authority refuses to assign the eligible individual’s rights. For example, if a mother refuses to assign benefits for herself and her children, only the mother becomes ineligible for Medicaid. The children remain eligible. However, if a mother with a newborn refuses to assign rights or to cooperate, both the mother and the newborn are ineligible, since the newborn’s eligibility is dependent upon the mother’s eligibility. An application must be filed on behalf of the newborn to establish eligibility on his or her own behalf as a child.

In other similar cases where the Division of Child Support Enforcement has requested to close a case and that request has been denied, the Appellant has engaged in activities which correspond with cooperation, i.e., telephoning Child Support Enforcement, providing requested documentation or information promptly, and rescheduling meetings when a conflict arose.

DSS testified at the hearing and provided testimony for both agencies. No representative from DCSE was available to testify, even by telephone. No testimony was provided by the State to prove their case because all of the testimony involved procedural matters concerning working with DCSE. No evidence was produced at the hearing to prove the matter asserted: that the Appellant did not cooperate with DCSE. Because the issue in this case involved the information that DCSE requested and whether the Appellant complied with the request, to adjudicate the issue properly testimony from DCSE was necessary but was not provided at the hearing.

As with the previous cases before me where no representative from DCSE was available to testify, I find that substantial evidence does not support the agency's actions.

V.

For these reasons, the June 11, 2010 decision of the Division of Social Services to Close the Appellant's medical assistance effective June 30, 2010, is REVERSED and REMANDED to the Division of Child Support Enforcement to determine whether good cause has been established for non-cooperation.

Date: August 10, 2010



MICHAEL L. STEINBERG, J.D.
HEARING OFFICER

THE FOREGOING IS THE FINAL DECISION OF THE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES

August 10, 2010
POSTED

cc: Redacted
Mary Lawson, Team 812
Heather Turrline, Team 812
Phil Krauss, Team 812
Barbara Vendrick, DCSE

EXHIBITS FILED IN OR FOR THE PROCEEDING

EXHIBIT #1 - DSS Fair Hearing Summary consisting of two (2) pages dated June 28, 2010.

EXHIBIT #2 - Copy of Appellant's request for a fair hearing, date-stamped June 23, 2010 consisting of one (1) page.

EXHIBIT #3 – Copy of a Notice to Close Your Medical Assistance dated June 11, 2010 consisting of one (1) pages.

EXHIBIT #4 – Copy of Case Remarks dated June 11, 2010 consisting of one (1) pages.