

part of the Department's process of redetermining Medicaid eligibility after the ending of the continuous coverage Medicaid requirement of the COVID-19 public health emergency. Petitioner appealed this decision, and this case resulted.

3. As explained in the Memorandum of Law that follows, pursuant to federal regulation and the Department's policy manual, whether Petitioner is disabled and, as a result, eligible for disability-related Medicaid, should have been determined prior to terminating Petitioner's Medicaid by Notice of Case Action in April.

4. This issue is relevant to the issue of a continuance, because Petitioner's disability is now being reviewed by the Florida Division of Disability Determinations, and his disability must be considered in any hearing on whether termination of Petitioner's Medicaid was proper. *See Fla. Admin. Code R. 65-2.056* ("The hearing officer must determine whether the Department's decision on eligibility or procedural compliance was correct at the time the decision was made.").

5. Further, despite multiple requests for deposition dates for the representative of the Department, the Department has not yet provided any deposition dates, and, as of Petitioner's most recent request for a date, the Department indicated that "ripeness and continuance still need to be addressed." However, the Department opposes continuing this hearing. It would be prejudicial to Petitioner to proceed to an evidentiary fair hearing without a deposition of the Respondent concerning the issues presented in this appeal.

6. As such, undersigned counsel for Petitioner moves this Honorable Hearing Officer to grant a continuance to allow for a rendering of a disability decision that bears on Petitioner's Medicaid eligibility, and time to complete discovery, including preparation of deposition transcript(s). *See Fla. Admin. Code R. 65-2.059 and 28-106.210.*

7. This continuance is being requested not merely for delay but so that justice can be done.

MEMORANDUM OF LAW

Pursuant to Rule 65-2.059 of the Florida Administrative Code, “The hearings officer may grant a continuance of the hearing pursuant to Rule 28-106.210, F.A.C.” Rule 28-106.210 provides that, “The presiding officer may grant a continuance of a hearing for good cause shown” and that “[R]equests for continuance must be made at least five days prior to the date noticed for the hearing.” Further, Rule 65-2.057(6) provides that the rules of discovery in the Florida Rules of Civil Procedure are applicable, and that “The hearings officer may issue appropriate orders to effectuate the purposes of discovery.” Finally, Rule 65-2.057(1) provides that “[T]he appellant, or his/her representative, shall have adequate opportunity to examine the contents of the case file and all documents and records to be used by the Department at the hearing at a reasonable time before the date of the hearing.”

The motion for continuance is timely filed more than five days prior to July 26, 2023. *Id.* After this Honorable Hearing Officer granted Petitioner’s first Motion for Continuance, the parties conferred on more than one occasion regarding the issues this case presents and possible avenues toward resolution. Further, unknown to Petitioner’s counsel prior to filing its last Motion for Continuance, Petitioner encountered unexpected legal issues that needed to be researched more fully as part of the efforts to resolve this matter before hearing and before identifying the full information needed from the Department in the discovery in this case.

In June, when it became clear that a resolution may not be reached imminently, the Petitioner completed its written discovery requests and served same to the Department. Responses are due July 21st. The discovery served upon Respondent in June included a

deposition designation request pursuant to Rule 1.310(b)(6), Florida Rules of Civil Procedure. Petitioner has requested deposition dates for deposition of the Department's representative three times, and has not yet received any dates. In response to Petitioner's latest request for deposition dates, on July 7th, the Department did not provide dates and indicated that "ripeness and continuance issues still need to be addressed." However, on that same date, the Department indicated it opposes a continuance of the July 26th hearing. It would cause undue prejudice to Petitioner to proceed to an evidentiary fair hearing without a deposition of the Respondent concerning the issues presented here. This matter is also still ripe and not moot, because the issue to be determined is whether the Department erroneously terminated Petitioner's Medicaid. The matters to be determined includes whether the Department properly conducted an *ex parte* determination of Petitioner's eligibility for other categories of Medicaid, including SSI-Related Medicaid, prior to terminating his eligibility.

More specifically, Department policy requires that, for individuals like Petitioner, who are eligible for Medicaid under a MAGI or Family Related Category and who claim a disability, the Department must undertake a full review of the individual's eligibility, including continue the individual's MAGI Medicaid eligibility until the Florida Division of Disability Determinations (Florida DDD) renders a disability decision. , *See, e.g.*, Department of Children and Families Economic Self Sufficiency (ESS) Program Policy Manual, Section 0830.0600 ("Perform *ex partes* when . . . An adult or child receiving MAGI Medicaid coverage claims disability, evaluate eligibility under SSI-Related Medicaid. Continue MAGI Medicaid pending a disability decision from DDD"); U.S. Centers for Medicare and Medicaid Services, State Health Official Letter #23-002, January 27, 2023 ("[S]tates must conduct Medicaid redeterminations consistent with federal requirements . . . Determine Eligibility on All Bases: Consider all bases of Medicaid

eligibility prior to determining an individual is ineligible for Medicaid and terminating coverage.”) (emphasis in original); 42 CFR § 435.916 (“Prior to making a determination of ineligibility, the agency must consider all bases of eligibility”).

With the Department’s intervention, the Florida DDD is currently reviewing and making a determination as to Petitioner’s disability. Because this process should have taken place prior to terminating Petitioner’s Medicaid benefits, the hearing in this matter should be continued until the determination is completed so that, if denied, this issue will be evaluated in the *de novo* fair hearing. Granting a continuance also will preserve the Hearing Officer’s and Office of Appeals Hearings’ resources because it is likely that the Florida DDD will determine that Petitioner is disabled thereby resolving the question of whether Petitioner remained eligible for Medicaid at the time he was terminated. The matter should also be continued to allow Petitioner’s counsel time to obtain the written discovery responses due to them on July 21st and to, if necessary, unilaterally set the deposition date of a Department representative to inquire into its decision to terminate Petitioner without conducting a full *ex parte* review as required by Section 0830.0600 of the Department’s ESS Program Policy Manual as this is a predominant issue to be decided at the hearing.

Petitioner seeks no more additional time than what is needed to receive the outcome of the Department disability determination and by extension Petitioner’s eligibility for disability-related Medicaid, and to complete discovery before the hearing. Thus, Petitioner’s request for additional time to conduct discovery is made with good faith and cause. *Id.*

STATEMENT OF CONFERENCE WITH OPPOSING COUNSEL

On July 7, 2023, Petitioner’s counsel emailed counsel for the Respondent concerning agreement to this Motion, and Respondent’s counsel opposes the granting of this continuance.

WHEREFORE, Petitioner respectfully requests that the Honorable Hearing Officer in the above captioned matter order that the hearing currently scheduled on July 26, 2023, be continued.

Dated: July 11, 2023

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been sent via electronic mail to the following

on this 11th day of July, 2023:

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