

DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF DIRECTOR

ACTION REFERRAL

TO <i>Singleton</i>	DATE <i>6-10-10</i>
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DIRECTOR'S USE ONLY		ACTION REQUESTED	
1. LOG NUMBER <i>100484</i>	<input type="checkbox"/> Prepare reply for the Director's signature DATE DUE _____		
2. DATE SIGNED BY DIRECTOR <i>cc: Wells</i> <i>Cleared 6/15/10, BTLW</i> <i>Attache</i>	<input checked="" type="checkbox"/> Prepare reply for appropriate signature DATE DUE <i>6-22-10</i> <input type="checkbox"/> FOIA DATE DUE _____ <input type="checkbox"/> Necessary Action		

APPROVALS (Only when prepared for director's signature)	APPROVE	* DISAPPROVE (Note reason for disapproval and return to preparer.)	COMMENT
1.			
2.			
3.			
4.			

DUPLICATE

Law Office of
H. JEFF MCLEOD
212 East Shockley Ferry Road
Anderson SC 29624
Phone 864.226.3330 Toll-Free 800.698.1786
Fax 864.226.9912

RECEIVED

June 8, 2010

JUN 10 2010

Ms. Deidre T. Singleton
General Counsel
P. O. Box 8206
Columbia SC 29202-8206

Ms. Emma Forkner
Director
Department of Health & Human Services
OFFICE OF THE DIRECTOR
P. O. Box 8206
Columbia SC 29202-8206

RE: Request for Copy of SC's State [Medicaid] Plan Needed for a "Fair Hearing"
Myrtle Wells, House No. 100036518
Appeals' Case # 10-MAO-141
Waiver of Penalty, Transfer of Assets

Dear Ms. Singleton and Ms. Forkner:

I represent Ms. Wells who, via her POA, has requested a fair hearing in regard to a transfer of assets and the resulting penalty period. To properly prepare for the fair hearing, and in accordance with Due process, I need a free, searchable copy of the State's Medicaid Plan or, more preferably ---and for the benefit of the public at large--- internet access to it.

Background: Ms. Wells is 88 years of age, has been documented incompetent for years and had a history of generosity both before and after the look-back period (2/2006 forward). She was in a Medicaid nursing home when she was ruled ineligible, indicating she was "too wealthy", due to her gifting of "deemed" assets and assessed a penalty period of ineligibility of some 14 months. After the initial denial of a waiver, she, via her POA, timely requested a fair hearing. On the eve of the hearing, there was a conference call with Judge Robert French, General Counsel's attorney, Mr. George Burnett (Counsel) and myself. Counsel's position was that the hearing was mooted by the fact that Ms. Wells had "voluntarily" withdrawn from the Medicaid nursing home. Because Ms. Wells' benefits for the nursing home were denied and she was unable to afford the "private pay", the nursing home gave her the maximum notice of 30 days and, essentially, evicted her. My client was lead to believe she had no choice but to leave. I requested a continuance to research that issue and to move the hearing to Anderson because of the expense involved in having a hearing in Columbia. As I understand it, the General Counsel's office is in the process of re-scheduling the hearing.



June 7, 2010
Page Two

Counsel has offered to allow me to view the State Medicaid Plan (Plain) in Columbia or, in the alternative, stated that I can make a FOIA request for it (apparently, at a cost of \$150). E-mails, Exhibit A, attached. My client is now indigent and cannot afford these options. Judge French reports that the Plan was, in the past, online and available to the public. He kindly gave me his internal link to it but that link is NOT assessable to the public.

However, the Federal requirements for State Plans are readily assessable online and provide for copies of the State Plan for those seeking a fair hearing and "other entities" for public access.

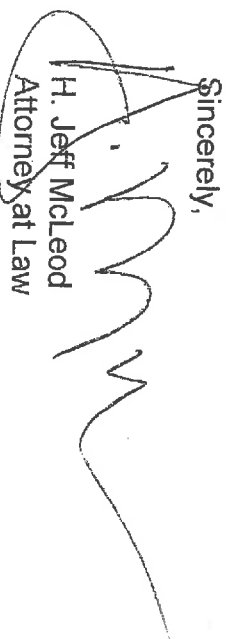
The [State] agency must provide copies of its current rules and policies to—

- (1) Public and university libraries;...
- (4) Other entities that—...
- (i) Request the material in order to make it accessible to the public...
- (e) Availability in relation to fair hearings. The agency must make available to an applicant or recipient, or his representative, a copy of the specific policy materials necessary—...
- (2) To prepare for a fair hearing...
- (g) Charges for reproduction. The agency must make copies of its program policy materials available without charge or at a charge related to the cost of reproduction. 42 CFR §431.18.

Apparently, the issues are not going to be narrowly focused on the issue of the hardship waiver, but that of mootness, voluntary withdrawal of application, penalty periods, right to Due Process notice that she could have stayed in the nursing home pending the appeal etc. The Federal regulations only allow a withdrawn of her request for fair hearing if it is in writing (42 CFR §431.223), which has not happened. But I, apparently, need access to the corresponding regulations in the SC State's Plan, and I cannot predict which regulations may have some relevance without access to the entire State Plan.

In accordance with 42 CFR §431.18 and Constitutional Due Process, I, as an "other entity" request that the State [Medicaid] Plan be posted and available online to the Public OR that I, as "an applicant" for a fair hearing, be sent a downloadable copy, at no cost, in order to properly prepare for a fair hearing—hopefully, before my 88 year old client dies.

Sincerely,



H. Jeff McLeod
Attorney at Law

HJM:mk

cc: Mr. George Burnett
Mr. Robert French
Ms. Freda Morse, POA

EXHIBIT 4

Compose  Address Book  Folders  Options  Search  Log Out

Logged in as jeffslaw@nuvox.net

Current Folder: Inbox

Message List | Delete Previous | Next Forward | Forward as Attachment | Reply | Reply All

Subject: Re: "No Go" on link to State Plan

From: "George Burnett" <burnett@scdhs.gov>

Date: Wed, June 2, 2010 12:14 pm

To: jeffslaw@nuvox.net (more)

Priority: Normal

Options: View Full Header | View Printable Version | View as HTML

Jeff

No, that cite will not work for you. I do not know that the State Plan is computer searchable. It is a very thick volume that is very hard to use. The bases of the State Plan are contained in 'check-off' pages that say things like: "The Single State Agency gives assurances that it complies with XXXX regulation or yyy statute." Then there are attachments that flesh out various topics in the state plan.

I do not mind making it available to you if you want to set up in an office here and read. You can make a FOIA request and we can probably get a copy burned off for you. There will be the standard FOIA charges for that though.

Call me if I can assist

George

>>>
Mr. French,

Thanks for the link but it must have been an exclusively internal link. In any event, I had no luck finding the State's Medicaid Plan. Perhaps the IT department can suggest a download etc. but I do need it to properly make my case.

I tried the suggested link and every variation I could think of; then I googled it; all to no avail.
(http://wihl.scdhs.gov/stateplan/index.php/Main_Page)

It is difficult to properly present the claimant's case without the rules of the road, the State Plan. I can easily search the US code and CFR for Medicaid's requirement for SC's Medicaid Plan but I am handicapped without the State's Plan, itself.

I appreciate your help and understand you are wearing a lot of hats and have a lot on your plate. But perhaps someone in the IT department could send me a download, working link to the State Plan or more directly and publicly, post it on the HHS's website

H. Jeff McLeod
Attorney for Myrtle Wells

Log # 000484 ✓

June 15, 2010

H. Jeff McLeod, Esquire
Law Office of H. Jeff McLeod
212 East Shockley Ferry Road
Anderson, South Carolina 29624


Re: Myrtle Wells

Dear Mr. McLeod:

Thank you for your letter of June 8, 2010. I have examined the citation you gave to 42 CFR § 431.18 and believe that you are misreading it. This section requires the State to make its policies and current rules that affect the public readily assessable to the public. I believe that the Department complies with this regulation. Both our Medicaid Policy and Procedures Manual, which sets out how the Department determines a person's eligibility for Medicaid and our various program area manuals, which detail the rules and policies that affect each of the Department's programs, are available online through our website.

As Mr. Burnett has indicated in his email, you are free to come to Columbia, examine the State Plan, and make copies of any pages that may assist you in your research. Three copies of the State Plan are also available in the State Library in Columbia for the public. You may also arrange to obtain the State Plan by either paying \$150, which will entitle you to all updates to the plan in the future, or by paying a per page charge for the plan as it now stands. I regret that we are unable to provide the State Plan without charge but our position is consistent with the federal regulation you cited.

Sincerely,


Dendia T. Singleton
General Counsel

DTS/bb