

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
OFFICE OF DIRECTOR

ACTION REFERRAL

TO <i>Wills</i>	DATE <i>8/21/09</i>
--------------------	------------------------

DIRECTOR'S USE ONLY		ACTION REQUESTED	
1. LOG NUMBER  <i>101094</i>	<input type="checkbox"/> Prepare reply for the Director's signature DATE DUE _____		
2. DATE SIGNED BY DIRECTOR  <i>C: Emma Holmes</i> <i>Jelicia Myers</i>	<input checked="" type="checkbox"/> Prepare reply for appropriate signature DATE DUE <i>9/1/09</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. <i>Letter dated 8/28/09 attached.</i>			
2. <i>2<sup>nd</sup> letter dated 10/21/09 attached.</i>			
3.			
4.			

August 18, 2009

Ms. Felicity Myers  
Deputy Director  
Dept. of Health and Human Services  
P.O. Box 8206  
Columbia, S.C. 29202-8206

**RECEIVED**  
AUG 21 2009  
Department of Health & Human Services  
OFFICE OF THE DIRECTOR

Dear Ms. Myers:

I am in receipt of your letter dated August 13, 2009 regarding my mother's pharmacy services. Let me first say that I have followed all of the required steps regarding Medicare Part D. When I was advised that the program existed, I was told that if my mother's insurance coverage was as good or better than Medicare Part D, she could keep her insurance. I verified that with both Blue Cross and Medicare. Are you telling me now that she must give up good insurance for an inferior government plan? I certainly hope that is not the case. She is covered by policy number R13764101 of the Federal Employee Program of Blue Cross and Blue Shield.

I find it ridiculous that a hearing may be required for her to keep her insurance. If, however, that is what is required, then accept this as a request for that hearing. I am sending a copy of this letter to the Division of Appeals for that purpose. Since I live in Hilton Head, I would prefer to handle the appeal via telephone or at least at a location closer to my home. I look forward to hearing from you soon.

Sincerely,



Robert N. Dunlap



State of South Carolina  
Department of Health and Human Services

Mark Sanford  
Governor

August 28, 2009

Mr. Robert N. Dunlap  
#8 Winding Trail Lane  
Hilton Head, South Carolina 29926

Dear Mr. Dunlap:

Thank you for writing our agency on behalf of your mother concerning the recent letter you received regarding her prescription drug coverage.

Effective September 1, 2009 your mother's only drug coverage will be through her private insurance plan. In the past, Medicaid paid secondary towards some of her prescriptions. Medicaid is not required to cover pharmacy services for individuals eligible for Medicare Part D.

For those that receive insurance through a private company, enrollment in a Medicare Part D Prescription Drug Plan is not mandatory; however, it is the responsibility of the individual or their *Authorized Representative* to contact Medicare and "opt-out" of Part D due to their creditable coverage. An individual may "opt-out" by calling Medicare at 1-800-633-4227.

If you have additional questions regarding the Medicaid program, please contact Ms. Jenny Lynch in Constituent Services at (803) 898-3965, and she will be happy to assist you.

Sincerely,

Alicia Jacobs  
Deputy Director

AJ/c

✓ Ref. log # 0094  
Menda,  
Here is the  
addition to log 0094's  
response. This does  
not close the log.  
Thanks!  
Mue



State of South Carolina  
Department of Health and Human Services

Mark Sanford  
Governor

Emma Forkner  
Director

August 28, 2009

Ms. Alice E. Shook, Executive Director  
Berkeley Citizens, Inc.  
Post Office Drawer 429  
Moncks Corner, South Carolina 29461

Dear Ms. Shook:

Thank you for writing our agency on behalf of Mr. Patrick D. Woods concerning the recent letter you received regarding his prescription drug coverage.

Effective September 1, 2009 Mr. Woods' only drug coverage will be through his private insurance plan. In the past, Medicaid paid secondary towards some of Mr. Woods' prescriptions. Medicaid is not required to cover pharmacy services for individuals eligible for Medicare Part D.

For those that receive insurance through a private company, enrollment in a Medicare Part D Prescription Drug Plan is not mandatory; however, it is the responsibility of the individual or their *Authorized Representative* to contact Medicare and "opt-out" of Part D due to their creditable coverage. An individual may "opt-out" by calling Medicare at 1-800-633-4227.

If you have additional questions, please contact Ms. Jenny Lynch in Constituent Services at (803) 898-3965, and she will be happy to assist you.

Sincerely,

A handwritten signature in cursive script that reads "Alicia Jacobs".

Alicia Jacobs  
Deputy Director

AJ/c



**State of South Carolina**  
**Department of Health and Human Services**

*Reg 094* ✓

Mark Sanford  
Governor

Emma Forkner  
Director

**CERTIFIED MAIL**

October 21, 2009

Robert N. Dunlap  
8 Winding Trail Lane  
Hilton Head, South Carolina 29926

RE: Order of Dismissal in the Appeal Matter of Robert N. Dunlap v. SCDHHS  
Appeals' Case # 09-MISC-085

Dear Mr. Dunlap:

The Order of Dismissal in the referenced appeal matter is set forth in the enclosure.

Any party has the right to petition for further review of this Decision/Order, as provided in the Administrative Procedures Act [S.C. Code Ann. Section 1-23-310, et seq., (1976, as amended).] To request an appeal, a Notice of Appeal must be filed with the Administrative Law Court, 1205 Pendleton Street, Brown Building – Suite 224, Columbia, S. C. 29201-3755 within thirty (30) days of receipt of this Decision/Order. A copy of the Notice of Appeal should be provided to the S. C. Department of Health and Human Services' (SCDHHS) Office of General Counsel. The Notice of Appeal must be submitted in accordance with Rule 33 of the Rules of Procedure for the S.C. Administrative Law Court, which establishes specific requirements for the contents of a Notice of Appeal, as well as the requirement that a copy of the request for transcript accompany the Notice of Appeal. The original request for transcript should be directed to the SCDHHS' Division of Appeals at the address below. In accordance with the ALC rules, the cost of producing the transcript will be the responsibility of the party requesting appellate review. For a copy of the ALC rules, you may contact the Administrative Law Court at (803) 734-0550.

Also, please see the enclosed Rule 71 of the Rules of Procedure for the ALC, which sets forth the required filing fee for an appeal.

Sincerely,

*Vastine G. Crouch*  
Vastine G. Crouch

Director, Division of Appeals and Hearings

VGC/jh  
Enclosures (2)

**Robert N. Dunlap**  
**October 21, 2009**  
**Page Two**

**cc:      Office of General Counsel, SCDHHS**  
**Emma Forkner, Director, SCDHHS**

**ORDER OF DISMISSAL  
IN THE APPEAL MATTER OF  
R. D. (for unnamed Petitioner) vs. SCDHHS (Respondent)**

Appeals' Case #09-MISC-085 (Part D)

Hearing Date: Not held

**JURISDICTION**

This case is adjudicated under the authority granted by the South Carolina General Assembly to the South Carolina Department of Health and Human Services to administer various programs and grants (See, e.g., S.C. Code Ann. 44-6-10, et seq.). The appeal has been conducted pursuant to the provisions of the Appeals and Hearings regulations of the South Carolina Department of Health and Human Services (Reg. 126-150, et seq.) and the South Carolina Administrative Procedures Act (S.C. Code Ann. 1-23-310, et seq.).

**ISSUE**

The issue is whether the Respondent (DHHS) properly denied Medicaid pharmacy benefits to the Petitioner due to eligibility for Medicare Part D. Any issues raised in the proceedings or hearing of this case but not addressed in this Decision are deemed denied.

**STATEMENT OF THE CASE**

The Petitioner's appeal request was received in the Appeals Unit on August 21, 2009.

The Petitioner's Representative appealed what appeared to be a mandatory requirement that the Petitioner enroll in a Medicare Part D (pharmacy) benefit plan based upon the content of a letter received from the SC Department of Health and Human Services (SCDHHS) dated August 13, 2009 addressed to Medicaid beneficiaries who were also eligible to participate in a Medicare Part D prescription drug coverage plan. The intent of the letter was to notify persons with Medicaid who are also eligible for participation in Part D Medicare that those persons would no longer be eligible for prescription drug coverage through Medicaid after September 1, 2009, based upon an applicable provision of the United States Code. The Petitioner in this case has coverage of pharmaceuticals through a private insurance plan not affiliated with Medicare, which is acceptable under the above referenced Section of the United States Code.

On October 5, 2009, an Interlocutory Order/Cause of Action letter was sent to Petitioner's Representative clarifying the provisions of the Federal Code upon which the SCDHHS letter

was based, describing the facts of, and the basis for the decision in this case, and asking for a written statement of any allegation of any error made by the agency in its denial of Medicaid eligibility for prescription drug coverage due to eligibility for participation in a Medicare Part D drug plan. Petitioner was allowed fourteen days from receipt of notice to respond. The Certified Mail Return Receipt was signed on October 6, 2009, and returned to the Appeals Unit on October 08, 2009.

### **FINDINGS OF FACT**

Based on the documentary evidence of record, I make the following Findings of Fact based on a preponderance of the evidence:

1. On October 5, 2009, Hearing Officer mailed an Interlocutory Order/Cause of Action letter to the Petitioner's Representative, (See, Case File), and I so find;
2. On October 08, 2009, Hearing Officer received the Certified Mail Return Receipt showing delivery accepted at Petitioner's Representative's address, (See, Case File), and I so find;
3. As of this date, October 20, 2009, no further contact of any kind has been received from Petitioner's Representative; and I so find.

### **CONCLUSIONS OF LAW**

Based upon the above Findings of Fact, I conclude the following as a matter of law:

In accordance with SCDHHS regulations 126-154, the Petitioner has failed to respond to Hearing Officer's Interlocutory Order, and the matter is therefore subject to dismissal.

### **LAW**

Department of Health and Human Services' regulations on Appeals and Hearings §126-154 states: "A Hearing Officer has the authority, among other things, to: direct all procedures; issue interlocutory orders; schedule hearings and conferences; preside at formal proceedings; rule on procedural and evidentiary issues; require the submission of briefs and/or proposed findings of fact and conclusions of law; call witnesses and cross-examine any witnesses; recess, continue, and conclude any proceedings; . . . ."



**DECISION**

Based on the Findings of Fact and Conclusions of Law, this matter is **DISMISSED**.

**AND IT IS SO ORDERED.**

  
\_\_\_\_\_  
W. Jefferson Bryson

Hearing Officer

DATED AT COLUMBIA,  
South Carolina

~~October~~ 20, 2009

## ACKNOWLEDGMENT RECEIPT

Please sign, date and return this form to the Division of Appeals and Hearings

SENT TO

Emma Forkner, Director, SCDHHS

*Reference log # 000094*

TYPE OF DOCUMENT:

**(OOD #09-MISC-085, Robert N. Dunlap, Petitioner)**

PERSON RECEIVING DOCUMENT: *Emma Forkner*

*(Please return this form only. Keep the attachments for your records)*

DATE RECEIVED: *Nov 4, 2009*

**10/21/09 WJB**