



State of Florida
Department of Children and Families

Charlie Crist
Governor

George H. Sheldon
Secretary

DATE: October 1, 2010

TO: Regional Directors

THROUGH: Pete Dore, Assistant Secretary for Operations
David L. Fairbanks, Assistant Secretary for Programs

FROM: Alan Abramowitz, State Director, Office of Family Safety

SUBJECT: Continuance of Independent Living (IL) benefits after a hearing officer affirms the agency's decision that is adverse to the young adult
ACTION REQUIRED: Disseminate to CBC Lead Agencies
DATE DUE: Immediately

PURPOSE: The purpose of this memorandum is to clarify that for all cases now awaiting a hearing officer's decision, or in which a hearing officer has ruled for the Department but no appeal has yet been filed, IL benefits are not to be continued pending an appeal to the DCA, unless the DCA enters an order staying the hearing officer's decision.

BACKGROUND: When a young adult's Independent Living benefits are denied, reduced or terminated, the young adult has the right to appeal that action. Rule 65C-31.009, F.A.C. [concerning due process requirements as to IL benefits], specifically states at 65C-31.009(e)2:

2. If a request for hearing is received by the services worker on or before the day prior to the effective date of the reduction or termination of benefits, those benefits shall continue at their current level until the **fair hearing process** is completed.

Florida's IL fair hearing process incorporates federal fair hearing processes in Rule 65C-31.001(8), F.A.C. The federal rule is found at 45 CFR 205.10. At subsection (6)(ii), this rule specifically states: "Assistance shall not be continued after an adverse decision to the claimant at the evidentiary hearing." In order to avoid a conflict with this federal requirement, the agency will not enter orders staying its final decisions pending appeal.

There is no statutory or rule requirement that benefits continue to a young adult once the hearing officer rules adversely to the young adult. There is no continuation of IL benefits to a young adult who does not prevail in a fair hearing challenging the agency's actions to deny, terminate or reduce benefits, and then appeals the fair hearing decision to the DCA. However, a young adult who appeals an adverse fair hearing decision to the DCA may

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utilize the Rules of Appellate Procedure to request that the appellate court enter an order staying the effects of the hearing officer's ruling. In that event, if the court enters the stay, the IL provider shall continue paying benefits until the appellate court's ruling.

ACTION REQUIRED: For any existing cases in which IL benefits have been continued during an appeal to the DCA, those benefits are not to be stopped. For all cases now awaiting a hearing officer's decision, or in which a hearing officer has ruled but no appeal has yet been filed, IL benefits are not to be continued pending an appeal to the DCA, unless the DCA enters an order staying the hearing officer's decision.

CONTACT INFORMATION: For additional information please contact Alan Abramowitz at 850-922-2298 or by email at alan_abramowitz@dcf.state.fl.us.

cc: Mary Cagle, CLS