



FLORIDA HEALTH
JUSTICE PROJECT

Florida Medicaid Appeals Toolkit

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Table of Contents

| | |
|---|-----------|
| Section 1: Introduction | 4 |
| Section 2: Termination Notices..... | 5 |
| When should a termination notice be issued? | 5 |
| What should be in my termination notice? | 5 |
| How do I interpret my termination notice?..... | 5 |
| Section 3: Determining whether an appeal is appropriate | 7 |
| Does the reason given for termination explain why you are no longer eligible?..... | 7 |
| Is the reason given for termination factually accurate? | 7 |
| What are some bases for appeal?..... | 8 |
| Section 4: Initiating an appeal..... | 10 |
| What if the termination notice is incorrect? | 10 |
| What is the best way to request an appeal?..... | 10 |
| How can I ensure Medicaid benefits do not stop? | 11 |
| What if I didn't receive advance written notice, and I only learned that Medicaid ended when my medical provider or pharmacist told me I no longer have coverage? | 12 |
| What if the written notice is not dated 10 days before my benefits ended? | 12 |
| What if the DCF notice is dated 10 days before the end of my Medicaid, but I did not receive the notice until after my Medicaid ended?..... | 12 |
| Filing an appeal because you believe DCF failed to consider your disability when determining your eligibility for Medicaid..... | 13 |
| 1. What is the standard for disability, and how do I apply for benefits?..... | 13 |
| 2. How do I let DCF know that I have applied for disability? | 13 |
| 3. Can I stay on Medicaid if SSA has denied my disability application?..... | 13 |
| 4. What are the exceptions requiring DCF to make an independent disability determination? .. | 13 |
| | 13 |
| 5. If I have a new disability application, or meet an exception after having been denied, can I appeal my Medicaid termination as a parent/caregiver or 19/20-year-old and stay on Medicaid?. | 15 |
| | 15 |
| What if I don't appeal before the date that Medicaid ends?..... | 15 |
| How can I get advice or assistance with deciding whether to appeal, and with handling my appeal? | 16 |
| | 16 |
| Section 5: What to expect after initiating an appeal | 17 |

| | |
|--|-----------|
| Communications you will receive from the Office of Appeal Hearings | 17 |
| “Acknowledgement of Hearing Request” | 17 |
| “Hearings before Office of Appeal Hearings” | 17 |
| “Notice of Hearing” | 17 |
| Communications with DCF and the Office of Appeal Hearings | 18 |
| Ensuring coverage pending the outcome of an appeal | 18 |
| Informal Conference | 20 |
| Section 6: Preparing for a hearing | 21 |
| What you must show at your hearing | 21 |
| Review your information in ACCESS | 21 |
| Request a copy of your case file from DCF | 22 |
| Discovery: Gathering and organizing relevant information from DCF | 23 |
| Identifying and arranging for witnesses | 23 |
| Need more time to prepare for your hearing? | 24 |
| Motions | 24 |
| Traveling to the Hearing | 25 |
| Disclosure of Documents to the Hearing Officer and DCF | 25 |
| Section 7: Withdrawing an appeal | 26 |
| Section 8: What to expect at the hearing | 27 |
| Telephone and Video Hearings | 27 |
| In-person Hearings | 27 |
| Hearing Procedures | 27 |
| Order of Presentation | 27 |
| Admissible Evidence | 28 |
| Audio Recording | 28 |
| What happens if I cannot attend the hearing? | 28 |
| Section 9: What to expect after the hearing | 28 |
| If your appeal is successful | 29 |
| If your appeal is not successful | 29 |
| Will I have to pay anything back if my appeal is unsuccessful? | 29 |

Section 1: Introduction

At the beginning of the COVID-19 pandemic, Congress passed legislation that provided states with significant federal funding to provide continuous Medicaid coverage for individuals enrolled in the program as of March 2020. States were required to keep all Medicaid recipients enrolled in the program, even those no longer technically eligible.

Congress ended the continuous coverage requirement for Medicaid effective March 31, 2023. Since then, Florida’s Department of Children and Families (DCF) has been reviewing the eligibility of all Medicaid participants and those recipients whom DCF deems ineligible or who did not timely demonstrate eligibility are being sent notices that their Medicaid is ending. The 12-month process of ending the continuous Medicaid coverage provided during the pandemic has been colloquially termed the “Medicaid unwind.”

DCF’s [Redetermination Plan](#) stated that approximately 900,000 households contain one or more individuals who are ineligible to remain on Medicaid, mostly due to income level or age.

While many Floridians are no longer technically eligible for Medicaid, everyone has the right to adequate notice explaining why DCF has determined that one or more household members are no longer eligible. Individuals who believe their Medicaid benefits have been wrongly terminated have the right to appeal this determination through DCF’s Office of Appeal Hearings.

This Toolkit is intended to help Medicaid recipients and their advocates better understand the termination notice, determine whether an appeal is appropriate, and navigate the appeal process. The language in this guide is intended to be accessible to everyone. Tips are inserted throughout the guide to provide additional advice for anyone filing an appeal. Occasionally, attorney tips are included to provide more detailed guidance relevant to attorneys representing individuals in Medicaid appeals. Citations to relevant statutes are also included in endnotes to assist attorneys using this guide.

This Toolkit is a work in progress. As such, there will be updates as more information about the appeal process becomes available. We welcome [your feedback](#) on this resource, and you may also send questions, comments, and redacted materials to help@floridahealthjustice.org. We know that the need for the Toolkit will remain even after the “Medicaid unwinding” ends.

We are extremely grateful to the Florida Bar Foundation for its generous Administration of Justice grant which made this Toolkit possible.

We would also like to thank Suzanne Baldwin, a rising 2L at the University of Florida Fred Levin College of Law, and Ruby Shealy, a rising 2L at Harvard Law School, who worked diligently to collect, organize, and refine much of the material in this Toolkit.

1st Edition: September 2023

Section 2: Termination Notices

When should a termination notice be issued?

- A termination notice should generally be issued at least 10 days before the date of action.¹
- There are a few exceptions to this 10-day notice requirement including when:
 - DCF has reason to believe that a beneficiary probably committed fraud, in which case the notice must be issued at least 5 days before the date of action.²
 - You are admitted to an institution where you are ineligible for further services.³
 - Your whereabouts are unknown and the post office returns agency mail directed to you indicating no forwarding address.⁴
 - The agency establishes the fact that you have been accepted for Medicaid services by another local jurisdiction.⁵
 - A change in the level of medical care is prescribed by your physician.⁶

What should be in my termination notice?⁷

- The action DCF intends to take (e.g. termination or to “end” Medicaid benefits)
- The date the action will be effective
- A clear statement of the specific reasons for the action
- Specific regulations or laws that support the action
- Explanation of the right to request a hearing
- If the action is based on a change in the law, an explanation of when a hearing will be granted
- Explanation of the circumstances under which Medicaid is continued if a hearing is requested

How do I interpret my termination notice?

The sample notice below is annotated to show where to locate relevant information.

ACCESS CENTRAL MAIL CENTER
P.O. BOX 1770
OCALA FL 34478

Notice of Case Action
State of Florida Department
of Children and Families



June 19, 2023

Case: 1234567890

Phone: _____

The date the notice was issued

Your Medicaid case number with DCF

Dear F M

The following is information about your eligibility.

Medicaid

Look for the section of the notice that refers to Medicaid. Many people get notices that also include eligibility for food stamps and other benefits.

Your Medicaid benefits for the person(s) listed below will end on June 30, 2023.

The date your Medicaid coverage will end

Name

Brian Johnson
Brittney Johnson
Laura Johnson
Carter Johnson
Mary Jones

The names of the people who will lose their Medicaid coverage by the above date

The reason why you are being terminated from Medicaid.

This reason does not explain why the person is ineligible.

Reason: YOUR MEDICAID FOR THIS PERIOD IS ENDING

The law that supports this action is.

(FL Admin. Code = R) (FL Statute = S).

This notice is missing the law that supports DCF's determination, which is required by law to include it. If your notice does not include the law, that is an error on DCF's part.

To keep up to date with the status of your eligibility, complete your review, and submit documents, go to www.myflorida.com/accessflorida using your My ACCESS Account. Log into your account with the User ID and Password used if you applied online. You can also create one with your case number, if you haven't already. If you need to turn in paper documents, please include your name and case number and mail them to: ACCESS CENTRAL MAIL CENTER, P.O. BOX 1770, OCALA FL 34478.

If you are unable to complete your review online, you may call our ESS Customer Call Center at 850-300-4323 for assistance. If you need help completing your review online, you may visit a Department of Children and Families' (DCF) Community Partner or a DCF Office in your area for assistance. To locate a Community Partner, go to www.myflfamilies.com/services/public-assistance/additional-resources-and-services/community. To locate a DCF Office, go to www.myflfamilies.com/services/public-assistance/additional-resources-and-services/ess-storefronts-and-lobbies.

Section 3: Determining whether an appeal is appropriate

You are entitled to an opportunity for a hearing when DCF denies, terminates, or modifies your benefits.⁸ In deciding if an appeal is appropriate, consider the following:

Does the reason given for termination explain why you are no longer eligible?

Your notice should provide a clear explanation of why DCF determined that you or other household member(s) are no longer eligible for Medicaid.

Here are common examples of reasons for termination:

- “YOU FAILED TO COMPLETE OR FOLLOW THROUGH WITH YOUR MEDICAID RENEWAL.”
- “YOUR MEDICAID FOR THIS PERIOD IS ENDING.”
- “NO HOUSEHOLD MEMBERS ARE ELIGIBLE FOR THIS PROGRAM.”
- “YOU ARE RECEIVING THE SAME TYPE OF ASSISTANCE FROM ANOTHER PROGRAM.”

If your notice does not clearly explain the reason for termination of your benefits, you may consider contacting a legal aid program in your area ([this link](#) has program contact information) to learn whether you or other household members who were terminated might still be eligible for Medicaid and whether an appeal is appropriate

Or you can submit [this online form](#) and send a copy of your termination notice to the Florida Health Justice Project at help@floridahealthjustice.org. We may be able to help you evaluate your eligibility; however, please be advised that due to our size and the scope of our work, FHJP provides advice, counsel and direct legal services in very few individual cases.

Is the reason given for termination factually accurate?

If the notice does provide a reason for termination that relates to a Medicaid eligibility factor, you should verify whether the reason is factually correct.

For instance, if your notice says that Medicaid for you and your minor children will end and the reason given is “OVER INCOME,” you should verify what income DCF used to calculate eligibility and compare it to the applicable income limits for your household size.

Most Floridians losing Medicaid during the unwind are in a low-income family. It is important to remember that the income limits for family members vary greatly between children and adults. Thus, children should often remain eligible for Medicaid even though the parents are now over income. You can watch this [video](#) for information about how eligibility is calculated for different family

members. This [chart](#), which is found in the video portal materials, will help you understand who in your household might still be eligible.

What are some bases for appeal?

You may want to appeal in these situations:

1. Incorrect calculation of family income

Some ways in which DCF could incorrectly calculate your income include:

- Outdated or incorrect information about your current employment
- If you are self-employed, failure to deduct your business expenses from your total revenue
- Inclusion of sources of income that should not be included when determining your family-related Medicaid eligibility, such as:
 - Child support
 - Supplemental Security Income (SSI)
 - Temporary Cash Assistance (TANF)
 - Gifts and Loans
 - Proceeds from Insurance Claims
 - Inheritance
 - Tax Credits/Refunds
 - Scholarships, awards, and fellowship grants (unless they are used for living expenses rather than for education)⁹

TIP: Since the current DCF notices do not specify the amount of income DCF thinks the family has, if you think you or other family members might possibly be eligible, you or your advocate should consider appealing and asking DCF for this information.

2. Failure of DCF to consider alternative bases for eligibility

Before terminating Medicaid coverage, DCF must consider all potential bases of eligibility.¹⁰ For example:

- **Disability:** If you have been receiving family-related Medicaid as a low-income parent and are no longer eligible for that coverage category because you no longer have a minor child, you may be eligible for SSI-related Medicaid if you are disabled and cannot work. (See Section 4 for more detailed discussion of this topic).
- **Pregnancy:** If you are pregnant, the allowable family income limit is higher than for non-pregnant people.

- Once eligible for Pregnancy Medicaid, you remain eligible throughout the pregnancy and for twelve months after birth.¹¹
- **Children:** Depending on their age, children under 19 are entitled to receive continued Medicaid coverage for either 6 or 12 months even if their family's income exceeds the income limits for Medicaid at some point during that period.¹²
 - Children under age 5 are covered for 12 months
 - Children under age 19 are covered for 6 months
- **Being age 65 years or older**

If you think you should have Medicaid through one of these categories, but DCF terminated your benefits anyway, you may have a good reason to appeal.

3. **Did not receive another Medicaid program you are eligible for:**

Many people losing “full” Medicaid may still be eligible for other Medicaid programs.

For example, you may qualify for:

- The [family planning waiver program](#) (FPW) which covers family planning services to eligible women, ages 14 through 55. Services are provided for up to 24 months. Women with family incomes at or below 191 percent of the Federal Poverty Level and are otherwise ineligible for Medicaid should be automatically enrolled in the FPW when their Medicaid is terminated.
- Individuals who are over income for Medicaid, but would otherwise be eligible, should be automatically enrolled in the [Medically Needy program](#) when terminated from full Medicaid. Once enrolled in the medically needy program, an individual will be assigned a “share of cost,” which is like a deductible. If you lost full Medicaid due to income, but did not get enrolled in the medically needy program, or your share of cost was wrong, you may want to appeal. The [video](#) at 12 minutes 36 seconds explains how to calculate share of cost.

Section 4: Initiating an appeal

The state is required to send the notice of termination at least 10 days before the end of coverage.¹³ Under state and federal law, beneficiaries who appeal a termination have a right to continued coverage under certain circumstances. When you receive the termination notice can affect how and when you should initiate an appeal.

What if the termination notice is incorrect?

If you believe that DCF's termination of your Medicaid coverage is incorrect, you can request a hearing as explained below (“What is the best way to request an appeal?”).

This video¹⁴ explains who in the family should stay eligible for Medicaid, including different types of Medicaid.

What is the best way to request an appeal?

A request for an appeal hearing is defined as “any clear written or oral statement to [DCF] that the applicant/recipient or his/her authorized representative wants an opportunity to present the case to a higher authority.”¹⁵ Moreover, “[t]he freedom to make such a request shall not be limited or interfered with in any way.”¹⁶

Appeals can be requested multiple ways, including calling DCF, mailing a request or going to a DCF office, but it is best to send an email to appeal.hearings@myflfamilies.com. This enables you to keep a record of when you submitted it. You can also complete an [Online Request](#).¹⁷ Although the online request asks that you “describe the action the Department took and why you disagree with the action,” you can leave that blank.

A sample email request for a hearing is shown below.

Template for Requesting an Appeal via email:

Re: Appeal on behalf of [First name, Last name], Case No [Medicaid case number]

This email is to appeal the Notice of Case Action dated [date on top of notice] ending Medicaid for [names of all people whose eligibility you are appealing] on [date of end of Medicaid]. I request that the hearing be held [select one: in person / by video conference / by telephone conference].

If you are appealing before the date of termination include:

As this appeal is being filed before the end of my Medicaid coverage, please continue my Medicaid pending the hearing decision.

If you are representing someone in their appeal include:

I will be representing [name of person appealing eligibility] in this appeal. Please let me know if you have any questions.

Sincerely,

[Name of person filing the appeal (either an attorney or the beneficiary themself)]

[Mailing Address]

[Email address]

[Phone number]

REMINDER: Be sure to include both your email and U.S. mail address, because DCF may contact you by mail.

TIP: If you don't specify that you want an in-person or video hearing, the hearing will be scheduled to be conducted via telephone. It is best to request the hearing be in person or via a video because phone hearings can be more difficult.

ATTORNEY TIP: Once an attorney appears on behalf of the petitioner, the Office of Appeal Hearings will assign an in-house DCF attorney to represent DCF in the case. Also, you should file a Notice of Appearance and Designation of Email Address,¹⁸ even if you appeared by filing the appeal. Otherwise, the Office of Appeal Hearings will not communicate with you via email. If OAH continues to send you paper notices, you should call and request email notices.

How can I ensure Medicaid benefits do not stop?

If you submit your hearing request before the date the notice says Medicaid benefits will end, DCF is required to continue the benefits at least until the hearing decision. For example, you received a

notice dated July 19, 2023 that says Medicaid is ending on July 31, 2023 for your children because “you are over income.” After watching the video, you know that your children are eligible for Medicaid. If you file your appeal by July 31st, their Medicaid coverage is required to continue.

TIP: You should submit your hearing request as early as possible to reduce the risk of DCF terminating your benefits erroneously.

TIP: If you appeal before your Medicaid was scheduled to end, DCF may send you a new notice saying you are eligible for Medicaid going forward. This may only mean that you are eligible for Medicaid because you are appealing. Don’t withdraw your appeal based upon this notice! If you think it might mean that DCF has changed its mind about your eligibility, you should check your Individual Medicaid Eligibility History in your Access account (as described in [Section 7](#)) before withdrawing your appeal.

What if I didn’t receive advance written notice, and I only learned that Medicaid ended when my medical provider or pharmacist told me I no longer have coverage?

You can still appeal and ask that Medicaid be reinstated pending the outcome of the appeal. You should file an appeal as explained above (“What is the best way to request an appeal?”) and say that your Medicaid was terminated without any advance notice of the termination.

What if the written notice is not dated 10 days before my benefits ended?

For example, on August 3, 2023 you receive a notice dated July 24, 2023 stating that Medicaid will end on July 31, 2023. If you request a hearing within 15 days of the date the notice was issued (in this example by August 8, 2023), your Medicaid benefits must be reinstated and continued until a hearing decision is issued. If you received the notice more than 15 days after the date the notice was issued, you may still be able to have your benefits reinstated pending the appeal if you submit proof of the date you actually received the notice, such as a sworn statement. If this happened to you, we recommend contacting legal aid¹⁹ or Florida Health Justice Project at help@floridahealthjustice.org for assistance.

What if the DCF notice is dated 10 days before the end of my Medicaid, but I did not receive the notice until after my Medicaid ended?

For example, the notice is dated July 19, 2023 saying that your Medicaid will end on July 31, 2023, but you did not receive it until after July 31, 2023. If you appeal not more than 10 days after the date of termination (in this example by August 10, 2023), DCF may reinstate your Medicaid benefits.

Filing an appeal because you believe DCF failed to consider your disability when determining your eligibility for Medicaid.

As this [video](#) explains, the vast majority of those losing Medicaid eligibility are adults in a “family-related” Medicaid coverage group. This includes low-income parents and caregivers who are being terminated because the [income limit](#) for that coverage group is very low and they are now [over income](#), or because they no longer have a [minor child](#). Youth [age 19-20](#) are also being terminated because they have the same very low income limit as parents/caregivers. However, some adults losing “family-related” coverage may still be eligible for Medicaid if they are disabled. In certain circumstances, you may be able to stay on Medicaid while your disability application is pending.

1. What is the standard for disability, and how do I apply for benefits?

A qualifying disability must prevent you from working for at least 12 months or be expected to result in death. You can find more information about Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI) and how to apply on the Social Security Administration (SSA) [website](#). If you think you have a qualifying disability, you must apply for disability benefits with the SSA **and let DCF know**.

2. How do I let DCF know that I have applied for disability?

You can **report your disability application to DCF** when renewing your Medicaid application. If you do not need to renew your application, you can still report your SSA disability application in your ACCESS account. Once logged into your account, select “Report My Changes” at the top of the screen, then select “Someone had a change in disability status” on the next screen.

3. Can I stay on Medicaid if SSA has denied my disability application?

You can stay on Medicaid in certain circumstances described above if you appeal before the end of your Medicaid. DCF uses the same criteria as SSA to determine disability for Medicaid eligibility. Thus, if you have already applied for disability benefits with SSA and have been denied, DCF’s general position is that it does not need to do an independent disability determination and your Medicaid will be terminated. However, there are exceptions.

4. What are the exceptions requiring DCF to make an independent disability determination?²⁰

(i) You have a disabling condition **different from or in addition** to what was considered by SSA,

(ii) You received an SSA determination **more than 12 months ago**, but your disabling condition has changed or deteriorated and you have not reapplied to SSA for a redetermination, or

(iii) You received an SSA determination **less than 12 months ago**, but your disabling condition has changed or deteriorated and

1. You applied to SSA for reconsideration or reopening of its denial, and SSA refused to consider the new allegations, or
2. You no longer meet other SSI criteria, such as income or assets.

If you think you meet one of the exceptions, you should **inform DCF and file an appeal of your Medicaid termination**. When reporting a change in your ACCESS account, you will be asked to complete the screen titled “Disability Details.”

First you click “Report my changes”

1.



Then click “Someone had a change in disability status”

2.

You will then see this screen:

3.

Disability Details

A disability is a condition that may prevent a person from working and be expected to last for a continuous period of at least 12 months.

[Click here to read or print the Authorization to Disclose Information form.](#)

[Click here to read or print the Statement of the Need for Care form.](#)

You have told us that [REDACTED] is disabled or blind. Please complete the following disability information.

Disability Status

* Has [REDACTED] disability been decided? Yes No

Did [REDACTED] ever get and then stop getting disability for any reason? Yes No

Denial Details

Has [REDACTED] ever applied for and been denied disability (SSI or SSDI) by the Social Security Administration (SSA) because medical conditions were not met? Yes No

If yes, please enter the denial date. Note: If you cannot remember the date, give us your best guess (mm/dd/yyyy)

Is the denial currently under appeal with Social Security Administration(SSA)? Yes No

Does [REDACTED] have a new condition since the denial or a condition that SSA did not know about when they denied the disability? Yes No

When complete, click NEXT.

Unfortunately, the screen does not include prompts for each of the exceptions discussed in section 4 above. If you need help explaining your exception to DCF, you should contact your local legal aid program for assistance ([this link](#) has program contact information).

5. If I have a new disability application, or meet an exception after having been denied, can I appeal my Medicaid termination as a parent/caregiver or 19/20-year-old and stay on Medicaid?

Yes. If you submit your hearing request **before** the date the notice says Medicaid benefits will end, coverage is required to continue at least until the hearing decision. ([This link](#) has more information). For example, you receive a notice dated July 20, 2023 stating that your Medicaid is ending on July 31, 2023 because you no longer have a minor child. However, you believe you meet the income requirement for [SSI-related Medicaid](#) and have a qualifying disability. If you apply for disability and file your appeal before July 31, DCF is required to continue your Medicaid at least through your appeal.

What if I don't appeal before the date that Medicaid ends?

You can still submit a hearing request after your benefits end, **up to 90 days after the date at the top of the notice** (not the date the benefits ended). Your benefits will end on the date stated in the

notice but will be reinstated if you win the appeal. It is important to file an appeal if you incur medical bills. While children are entitled to 3 months of retroactive coverage, the only way for an adult to ensure reimbursement is if you successfully appeal.

How can I get advice or assistance with deciding whether to appeal, and with handling my appeal?

If you need assistance determining if you or a family member is eligible for Medicaid, and whether to proceed with an appeal, you may consider contacting a legal aid program in your area ([this link](#) has program contact information).

Alternatively you can submit [this online form](#) and send a copy of your termination notice to the Florida Health Justice Project at help@floridahealthjustice.org. We may be able to help you evaluate your eligibility; however, please be advised that due to our size and the scope of our work, FHJP provides advice, counsel and direct legal services in very few cases.

Once you have determined that an appeal is appropriate, it is our hope that this Toolkit will equip you to proceed. If you still want the help of legal counsel, we suggest you contact the legal aid program in your area at [this link](#).

Section 5: What to expect after initiating an appeal

Communications you will receive from the Office of Appeal Hearings

“Acknowledgement of Hearing Request”

The first document you will receive from the Office of Appeal Hearings after you file your appeal is an **Acknowledgement of a Hearing Request**.²¹ This is an important document which you should read carefully, because it includes instructions about how appeals are conducted by the Office of Appeal Hearings and how to prepare for your appeal.

IMPORTANT: The last paragraph of the Acknowledgement of Hearing request contains the name, address and phone number of the DCF contact for your case. This is who you will be in contact with as you prepare for the hearing. You may want to call and ask for this person’s email address so you can communicate with them via email as you prepare for the hearing.

“Hearings before Office of Appeal Hearings”

Together with the Acknowledgment of Hearing Request you will also receive an informational insert titled "Hearings before Office of Appeal Hearings."²² This document contains general information about several topics, including:

- The legal authority for the administrative hearing process
- The Office of Appeal Hearings
- The notices you will receive from the Office of Appeal Hearings
- How to request an accommodations under the Americans with Disabilities Act
- Your right to see the evidence DCF plans to present at the hearing
- How to prepare for the hearing
- What to expect at the hearing

ATTORNEY TIP: When an attorney appears on behalf of a beneficiary, the Hearing Officer may issue an Initial Order to direct the parties to confer and prepare a pre-hearing stipulation.²³ The pre-hearing stipulation may require the parties to address possible settlement, stipulated facts, expedited discovery, and the exchange of witness lists and exchange of exhibits.

“Notice of Hearing”

After you receive the initial documents described above, the next document you will receive from the Office of Appeal Hearings is a Notice of Hearing.²⁴ Unless you requested otherwise, a hearing will be set to take place by phone.

You will also receive Hearing Conference Call Instructions.²⁵ These documents will include information about:

- How to join the conference call

- How to exchange evidence
- Conference call guidelines
- How to have witnesses participate in the call

If your hearing is set as a telephone hearing and you wish to request an in-person or video hearing, you can request this by sending an email to the Office of Appeal Hearings with a copy to your DCF contact. (See “Communicating with DCF and the Office of Appeal Hearings,” below).

IMPORTANT: The notice of hearing states “Both parties should send any evidence they wish to present at the hearing to the hearing officer and the other party at least seven (7) days prior to the hearing.”

Communications with DCF and the Office of Appeal Hearings

You can communicate with the Office of Appeal Hearings by email at Appeal.Hearings@myflfamilies.com. They will generally communicate with you by mail. The hearing officer may choose to communicate with you or counsel via email as well, but that is up to the individual hearing officer.

Anytime you communicate in writing with the Office of Appeal Hearings, you must also send a copy to your DCF contact.

Ensuring coverage pending the outcome of an appeal

As discussed above (“How can I ensure Medicaid benefits do not stop?”), if a hearing request is submitted before the date the notice says Medicaid benefits will end, DCF is required to continue the benefits least until the hearing decision.²⁶

However, DCF does not always ensure that an individual who files a timely appeal receives continuous coverage. Indeed, DCF’s policies allow it 10 calendar days to “reinstate” the benefits to the prior level.”²⁷

You can verify that you are currently covered by following the following steps:

1. Log into ACCESS
2. On the benefit summary page, look under the section titled “my benefits” and click the “click here” link to the right of “medical assistance.”

My Benefits **My Applications**

If you have a security (secret) code on your EBT account, you MUST call EBT Customer Service at 888-356-3281 to request a replacement card.

Benefit Summary

You are currently receiving paperless notices. If you would like to receive notices by US Mail, [click here](#)

Step 2

Case Information

This information is current as of July 09, 2023. If you made any changes to your case within the last 24 hours, please allow time for this information to be processed into the system. Please check back later.

| Case Number | Head of the Household | Scheduled Appointments | Upload and View My Documents | My Notices | Verifications Needed | Replace My EBT Card |
|-------------|-----------------------|---------------------------|------------------------------|----------------------------|-------------------------|----------------------------|
| | | No appointments scheduled | click here | click here | No verifications needed | click here |

My Benefits

| Benefits | Details |
|---------------------------------------|--|
| Food Assistance Medical Assistance | click here click here |

3. This page will say the status of each household member’s Medicaid coverage.

Medical Assistance

Step 3

| Individual | Pin No | Status | Coverage Type | Print Temporary Medicaid Card | Re-issue Medicaid Card | History | Information |
|------------|--------|----------|-----------------|-------------------------------|----------------------------|----------------------------|----------------------------|
| | | ENROLLED | MEDICALLY_NEEDY | | | click here | click here |
| | | OPEN | MEDICAID | click here | click here | click here | click here |
| | | OPEN | MEDICAID | click here | click here | click here | click here |
| | | OPEN | MEDICAID | click here | click here | click here | click here |
| | | OPEN | MEDICAID | click here | click here | click here | click here |

If your coverage was terminated even though you filed an appeal before the date Medicaid was scheduled to end, you should contact your DCF contact (found at the bottom of the “Acknowledgement of Hearing Request”) and explain that it should be reinstated. A sample email is below.

Template Email Requesting Immediate Reinstatement:

Re: Request for Reinstatement of Medicaid Benefits Pending Appeal on Behalf of [First name, Last name], Case No [Medicaid case number]

I requested an appeal on [date appeal was filed]. I need my Medicaid benefits to continue through the appeal process. I understand that this continuation of coverage is also required by federal regulations and DCF’s Program Policy Manual. 42 C.F.R. § 431.230; Department of Children and Families, Economic Self Sufficiency (ESS) Program Policy Manual, Section 0410.0604.

I am requesting immediate reinstatement of Medicaid coverage pending my appeal for [name(s) of household members that you are requesting be reinstated].

Sincerely,

[Name of person sending the request]

ATTORNEY TIP: If you are represented by an attorney, your attorney should contact the DCF attorney who was furnished copies of the “Acknowledgement of Hearing Request” and/or Initial Order. If no DCF attorney name is provided your attorney may contact the appropriate regional counsel, whose contact information can be found here.

If your coverage is not restored promptly after you make this request to your DCF contact, you may also submit a Motion to Reinstate Medicaid Coverage Pending Appeal.²⁸

Informal Conference

A DCF supervisor may contact you after you file the appeal to discuss your case.²⁹ You can use this opportunity to ask any questions you may have about your case such as why you were found ineligible. You should only agree to withdraw your appeal if you fully understand and are satisfied with the explanation and/or change offered by the DCF representative. See [Section 7](#) for more information about when and how to withdraw your appeal.

Section 6: Preparing for a hearing

What you must show at your hearing

The first step in preparing for your hearing is determining what the applicable legal standard is and the facts you will need to prove to win your appeal under that standard.

For instance, if you are appealing a termination of your family-related Medicaid because you believe that DCF incorrectly calculated your income:

- the applicable legal standard would be [DCF's income limits](#) for family related Medicaid
- the main fact that you would need to show to win your case would be your income level

Alternatively, if you believe DCF incorrectly calculated your household size:

- the applicable legal standard would be DCF's methodology for calculating family size³⁰
- the main fact that you would need to establish would be which individuals are members of your household.

Once you have determined which facts you must prove to be successful in your appeal, you can determine which documents and/or witnesses will establish these facts at your hearing.

Review your information in ACCESS

You should review the information in your ACCESS account to understand what information DCF used to determine your eligibility. You will want to review your notices, your applications, your renewals, and any reported changes.

It is important to carefully read and understand as much as you can about why DCF terminated your Medicaid coverage. You can learn more about how to read a notice in Section 2 of this toolkit.

You should also review the information you have submitted to DCF to ensure it is accurate and know what information DCF used to make its eligibility determination.

To view your applications:

1. Log into your ACCESS account
2. Click "My Applications" on the right side of the screen



3. Click the magnifying glass icon under “details”

My Applications

This table displays all the applications, change reports, renewals and requests for additional assistance submitted and in progress.

My Applications

To view a PDF copy of your submitted applications click the Details icon.

| Submitted By | Application Number | Status | Date Received by Agency | Details |
|--------------|--------------------|-----------|-------------------------|---|
| | | Completed | 10/07/2019 |  |

To view your renewals:

1. Log into your ACCESS account
2. Click “My Applications” on the right side of the screen
3. Click “My Submitted Renewals”

Manage My Account Print

[Back to Benefit Summary](#) [Report My Changes](#) [Apply for Additional Benefits](#) [Case Closure](#)

My Benefits **My Applications**

[My Reported Changes](#) [My Request for Additional Assistance](#) [My Submitted Renewals](#)

4. Click the magnifying glass icon under “details”

To view your reported changes:

1. Log into your ACCESS account
2. Click “My Applications” on the right side of the screen
3. Click “My Reported Changes”

Manage My Account Print

[Back to Benefit Summary](#) [Report My Changes](#) [Apply for Additional Benefits](#) [Case Closure](#)

My Benefits **My Applications**

[My Reported Changes](#) [My Request for Additional Assistance](#) [My Submitted Renewals](#)

4. Click the magnifying glass icon under “details”

Request a copy of your case file from DCF

You are entitled to examine your case record, including documents and records to be used at the hearing, at a reasonable time before the hearing and at any point during the hearing.³¹ DCF must provide free copies of the relevant portions of the case record.³² You should request this from the DCF contact listed on the Acknowledgment of Hearing Request document. This information can

help you understand why DCF determined that you were ineligible for Medicaid and what information they used to make that determination.

Discovery: Gathering and organizing relevant information from DCF

You may find that the information in the case file you receive from DCF is sufficient to understand why you were deemed ineligible. However, if you need more information from DCF, you can use “Discovery” to request this information. Discovery is a process through which you can obtain information about your case from DCF to use in your hearing. Florida allows full discovery in the fair hearing process.³³ While the following section is intended primarily for attorneys, everyone can use the information and templates linked below to request information from DCF for use in their hearing.

ATTORNEY TIP: Discovery

You may want to use the discovery process to find out why DCF found a beneficiary ineligible (especially if the reason given for termination does not relate to eligibility, see Section 3) and how you can prove that they are eligible.

The rules of discovery of the Florida Rules of Civil Procedure apply to discovery in Medicaid fair hearing to the extent that they do not conflict with Chapter 120 F.S. *See* Fla. Admin. Code R. 65-2.057(6). If you choose to request discovery, you should do so immediately after filing the appeal because the appeal moves very quickly.

Sample discovery tools include:

- Requests for production of documents
- Interrogatories
- Depositions

Examples of the kind of information that is helpful to obtain through discovery include: what income DCF used to determine your eligibility, when you were last certified, whether DCF has considered your disability, etc.

DCF has a right to obtain information from you, as well. The agency may send you requests for discovery such as interrogatories or requests for admission. They will probably only do this if you are represented by an attorney.

Identifying and arranging for witnesses

First, you need to know what you are arguing and identify what facts you need the court to understand. What does the court need to know in order to come to the conclusion that you were wrongly terminated? You should call witnesses that can provide the information necessary to help

the court understand why you should not have been terminated. For example, if you need to establish your household size, you may bring an adult household member to testify that they live with you and are a member of your household. You should not plan to have any minors testify.

Need more time to prepare for your hearing?

You can request that your hearing be postponed by submitting a motion for continuance.³⁴ A motion for continuance must state good cause for the continuance and must be filed no later than two days before the hearing date you wish to extend.³⁵

Good cause may include but is not limited to a disabling accident, illness, or declared emergency.³⁶ It may also include if you cannot take time off of work on the day the hearing is scheduled, or if you need more time to request or review documents. If a continuance is granted, you will receive a Notice of Continuance and Rescheduling³⁷ and an Order Granting Petitioner's Motion to Continuance.³⁸

Before filing a motion for continuance, or any motion, you are required to contact the DCF representative (or attorney, if one has been assigned) and ask if they will agree to the motion. You can ask them by email. If you are unable to reach a DCF representative before filing the motion, you must provide information about the date(s) and method(s) by which you attempted to contact them.³⁹

Ideally, DCF will agree to the continuance and you can file an Unopposed Motion for Continuance. However, in some cases, DCF will oppose your motion, and you will need to explain why it should be granted in your motion.⁴⁰

Motions

If you want the Hearing Officer to do something that hasn't been addressed elsewhere in this Toolkit, you'll need to file a motion. For example, you might file a motion to change the time of the hearing, to change the type of hearing (from phone to in-person or video), or to compel DCF to provide the information you requested regarding why it determined you were ineligible. You can use the general motion template found [here](#). Motions must state the relief requested and the grounds relied upon in support of the motion.

ATTORNEY TIP: If you are represented by an attorney, the motion must be accompanied by a written memorandum of law in support of the motion, unless otherwise permitted by the Hearing Officer.⁴¹

If DCF files a motion that you do not agree with, you must file something in writing with the Office of Appeal Hearings (by email to <mailto:appeal.hearings@myflfamilies.com>) explaining that you do not agree with what DCF is asking for in its motion. You must do this within 7 days from the date

on DCF's motion, and also send a copy to the DCF case contact. If you cannot meet the 7-day deadline, you should still file a response as soon as possible and explain in your response why it is late.

Traveling to the Hearing

If you are scheduled for an in-person hearing and you are concerned about having transportation to the hearing, you should notify your DCF contact that you need transportation. DCF is required to provide you with transportation to the hearing if you request it.⁴²

Disclosure of Documents to the Hearing Officer and DCF

Remember: As stated in the Notice of Hearing, you must send all evidence you wish to present at the hearing to the hearing officer and your DCF contact at least seven (7) days prior to the hearing. See the [Notice of Hearing](#). You can do this by email or facsimile.

Section 7: Withdrawing an appeal

You can decide to withdraw your appeal at any time.

As discussed in [Section 5](#) (“Informal Conference”), a DCF supervisor may contact you after you file the appeal to discuss your case. You should only agree to withdraw your appeal if you fully understand and are satisfied with the explanation and/or change offered by the DCF representative. If you have any doubt, do not withdraw your appeal until you speak with your local legal aid program.

If DCF has tells you it has reinstated your coverage but you want to confirm this:

- Go to your Access Account
- Under the “My Benefits” tab click “Medical Assistance”
- Under the relevant individual click “History”
- This will show the “Coverage Begin Date” and “Coverage End Date” for your Medicaid coverage

Individual Medicaid Eligibility History

| Case Information | | | | | | |
|--|-------------------|-----------------------|-----------------|---------------|------------------------|----------------------------|
| Case Number | | Head of the Household | | | | |
| Individual Medical Assistance Amount History | | | | | | |
| Medical Assistance Benefit Amount History for [REDACTED] | | | | | | |
| Coverage Begin Date | Coverage End Date | Status | Coverage Type | Share of Cost | Patient Responsibility | Information |
| 09/01/2023 | 08/31/2024 | OPEN | MEDICAID | 0 | 0 | click here |
| 08/31/2023 | 08/31/2023 | CLOSED | MEDICAID | 0 | 0 | click here |
| 08/31/2023 | 08/31/2023 | CLOSED | MEDICALLY_NEEDY | [REDACTED] | 0 | click here |
| 08/01/2023 | 08/31/2023 | OPEN | MEDICAID | 0 | 0 | click here |
| 08/01/2023 | 08/31/2023 | ENROLLED | MEDICALLY_NEEDY | [REDACTED] | 0 | click here |
| 07/31/2023 | 07/31/2023 | CLOSED | MEDICAID | 0 | 0 | click here |
| 06/01/2023 | 07/31/2023 | OPEN | MEDICAID | 0 | 0 | click here |
| 04/30/2023 | 04/30/2023 | CLOSED | MEDICALLY_NEEDY | [REDACTED] | 0 | click here |

You can withdraw your appeal by contacting the Appeal Hearings Section and following up in writing (by email or regular mail) that you are withdrawing your request for a hearing. You can find a notice of withdrawal [here](#). Once your written withdrawal is received by the Appeal Hearings Section, the hearing officer will close your appeal and DCF’s decision will become final.⁴³

Section 8: What to expect at the hearing

Telephone and Video Hearings

At a telephonic hearing, all parties will appear at the hearing via a conference call. The hearing officer will provide call-in information for the hearing which you must share with any of your witnesses.⁴⁴

In-person Hearings

An in-person hearing is typically held in a state agency conference room.⁴⁵ However, you can request that the hearing be held in another location if the proposed state agency building is too far for you or your representative to travel.⁴⁶ Even if you request an in-person hearing, witnesses may appear telephonically.⁴⁷

Hearing Procedures

The Hearing Officer will explain the procedures at the beginning of the hearing. If you have any questions about the hearing procedures, you should ask the Hearing Officer directly.

Order of Presentation

In general, the hearing will proceed in order set out below. DCF presents its case first because it has the burden of proving that its decision to terminate your benefits was proper.⁴⁸

1. DCF opening statement (optional)
2. DCF witness testimony & introduction of documents
 - a. DCF examines witness
 - b. You may cross-examine DCF's witness
 - c. DCF may conduct rebuttal examination of witness
3. DCF closing statement (optional)
4. Your opening statement (optional)⁴⁹
5. Your witness testimony & introduction of documents
 - a. You examination your witness (or you may testify on your own behalf)
 - b. DCF's cross-examination of your witness
 - c. You may conduct rebuttal examination of witness (or may offer rebuttal testimony on your own behalf)
6. Your closing statement (optional)

Note: The Hearing Officer may also ask questions of DCF, you, or any witness at any time.

Admissible Evidence

At the hearing, you may present evidence that you did not report to DCF with your application or renewal, including facts that occurred after you received the termination notice, such as a change in your income or a new medical evaluation.⁵⁰ However, as discussed above you should provide this information to DCF and the Hearing Officer seven (7) days in advance of the hearing with your other exhibits as required by the Notice of Hearing.

If the DCF representative objects to your testimony or exhibits on the ground that the evidence was not available to be considered by the agency before the hearing, you should respond that the hearing is *de novo* (a legal term that means that a presiding officer may consider evidence not initially presented to the Agency and make a decision based on all evidence presented at the hearing). After stating this, you should wait for the presiding officer to rule.

If an issue arises during the hearing that you did not anticipate, but for which you believe there is additional evidence not presented by either side that would help establish your eligibility, you can request to submit it after the hearing is over. You must make this request before the hearing is over. The Hearing Officer will decide whether this is permissible, and if so will give you a deadline for submitting the additional evidence.

Audio Recording

The audio of the hearing will be recorded, so it is important that you speak clearly and loud enough to be heard by everyone present. You are entitled to have access to the recording of the hearing at a convenient place and time.⁵¹

ATTORNEY TIP: Proposed Orders - At the end of the hearing, you may request the opportunity to submit a proposed order.⁵² This may be submitted within the time designated by the Hearing Officer.⁵³

What happens if I cannot attend the hearing?

If an emergency arises that will prevent you from attending the hearing, you should contact the Hearing Officer right away and let them know. If you absolutely cannot do this before the hearing you should do it as soon as possible after the hearing. If you do not contact the Hearing Officer, your case will be considered abandoned and will be dismissed.

Section 9: What to expect after the hearing

The Hearing Officer must issue an order on the appeal within 90 days of the date that you asked for a fair hearing. However, the hearing officer has the discretion to grant delays up to 30 days at the beneficiary's request or if necessary medical evidence cannot be obtained within 90 days.⁵⁴

If your appeal is successful

Hearing decisions are binding on state agencies. If a hearing decision is favorable to the beneficiary, DCF must promptly make corrective payments, retroactive to the date the incorrect action was taken. DCF is required to comply with the hearing decision within 10 calendar days.⁵⁵

If your appeal is not successful

If the hearing decision is not favorable to you, the Office of Appeal Hearings must notify you of your right to seek judicial review in state court.⁵⁶ You have a right to appeal the final decision in the District Court of Appeal. You have 30 days from the date on the Final Order to send in an appeal.⁵⁷ You may file this appeal either in the district where DCF maintains its headquarters (the First District Court of Appeal), or the district in which you reside.⁵⁸

Once the appeal is initiated, the court is limited to reviewing only the evidence that was brought forth in the hearing.⁵⁹ You may not submit new evidence in an appeal.⁶⁰ To prevail in an appeal, you must show one of the following:⁶¹

- The hearing officer's decision depends on a finding of fact that is not supported by competent, substantial evidence in the hearing record. (However, the court may not substitute its judgment for the hearing officer as to the weight of evidence of a disputed fact)
- The fairness of the proceedings or the correctness of the action may have been impaired by a significant error in procedure or a failure to follow prescribed procedure
- The hearing officer erroneously interpreted a provision of law, and the correct interpretation requires a particular action

Will I have to pay anything back if my appeal is unsuccessful?

This is not clear. Under DCF's written policies, repayment is only sought when there has been a court finding that the beneficiary has engaged in fraud or there has been an intentional program violation.⁶²

However, federal regulations do allow states to attempt to recover the cost of any services furnished to you while the appeal was pending.⁶³ Also, the current termination notice states that you will be responsible for repayment if the decision is not in your favor.

If the following happens, you should contact your local legal aid program or FHJP:

- You believed you had a basis for appealing (see Section 3);
- you received benefits pending your appeal;
- you lost your appeal;
- there is no court finding that you committed fraud; and
- DCF asks you to repay the cost of your coverage.

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- ¹ 42 C.F.R. § 431.211 (2022); Fla. Admin. Code R. 65-2.043(4).
- ² 42 C.F.R. § 431.214(a) (2022).
- ³ 42 C.F.R. § 431.213(c) (2022).
- ⁴ 42 C.F.R. § 431.213(d) (2022).
- ⁵ 42 C.F.R. § 431.213(e) (2022).
- ⁶ 42 C.F.R. § 431.213(f) (2022).
- ⁷ 42 C.F.R. § 431.210 (2022).
- ⁸ *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970); Fla. Admin. Code R. 65-2.044.
- ⁹ NATIONAL HEALTH LAW PROGRAM, THE ADVOCATE’S GUIDE TO MAGI 33 (2018), <https://healthlaw.org/resource/advocates-guide-to-magi-updated-guide-for-2018/>; 42 C.F.R. § 435.603(e)(2) (2022).
- ¹⁰ 42 C.F.R. § 435.916(a)(2) (2022).
- ¹¹ 42 U.S.C. § 1396a(e)(5),(6); § 409.903(5), Fla. Stat. (2023).
- ¹² 42 U.S.C. § 1396a(e)(12); § 409.904(6), Fla. Stat. (2023). Effective January 1, 2024, all states must provide 12 months of continuous Medicaid eligibility for all children under the age of 19. *See* Section 5112 of the Consolidated Appropriations Act, 2023 (CAA, 2023).
- ¹³ 42 C.F.R. § 431.211; Fla. Admin. Code R. 65-2.043(4).
- ¹⁴ <https://www.floridahealthjustice.org/ending-the-continuous-medicaid-coverage-requirement.html>
- ¹⁵ Fla. Admin. Code R. 65-2.045(1).
- ¹⁶ *Id.*
- ¹⁷ <https://www.myflfamilies.com/about/additional-services-offices/office-inspector-general/appeal-hearings/online-request--public-assistance-hearing>
- ¹⁸ <https://drive.google.com/drive/folders/1fyz1NIZvdzMYGPnvQHXdJRjOQA5kPCQw>
- ¹⁹ <https://thefloridabarfoundation.org/florida-legal-aid-programs/>
- ²⁰ 42 C.F.R. § 435.541(c)(4)(i)–(iii) (2022); *See also* Department of Children and Families, Economic Self Sufficiency (ESS) Program Policy Manual, Sections 1440.1204-1205. ESS Manual Section 1440.1204-1205.
- ²¹ <https://drive.google.com/file/d/1-ItCQH2MRHYNKKCzm0g129M5cBg0o7sJs/view?usp=sharing> (Sample acknowledgement of a hearing request)
- ²² https://drive.google.com/file/d/1HHF0KEPqfOWFd3AjZrF3vQ4sCCR10Ygx/view?usp=drive_link (“Hearings Before Office of Appeal Hearings”).
- ²³ <https://drive.google.com/drive/folders/1fyz1NIZvdzMYGPnvQHXdJRjOQA5kPCQw> (Initial Order)
- ²⁴ https://drive.google.com/file/d/1GppvVgQ-kYmxMQJbQwzvXMNDJrGKHYnM/view?usp=drive_link (Notice of Hearing by Telephone)
- ²⁵ https://drive.google.com/file/d/1ptrDracz9cPTdoW-7A4CHLs8ABuwwxOg/view?usp=drive_link (Hearing conference call instructions)
- ²⁶ 42 C.F.R. § 431.230(a) (2022); *see also* 42 C.F.R. § 431.231(c) (if the beneficiary requests a hearing within 15 days of the date of the notice, their Medicaid benefits must be reinstated and continued until a hearing decision is issued).
- ²⁷ Department of Children and Families, Economic Self Sufficiency (ESS) Program Policy Manual, Sections 0430.0604, 0440.0604.
- ²⁸ <https://drive.google.com/drive/folders/1fyz1NIZvdzMYGPnvQHXdJRjOQA5kPCQw> (Form Emergency Motion to Reinstate Medicaid Coverage Pending Appeal)
- ²⁹ Department of Children and Families, Economic Self Sufficiency (ESS) Program Policy Manual, Section 0430.0602.
- ³⁰ For family-related Medicaid, the household generally consists of those intended to be included on the family’s tax return for the upcoming tax year. *See* Department of Children and Families, Economic Self Sufficiency (ESS) Program Policy Manual, Section 2230.0400.
- ³¹ Department of Children and Families, Economic Self Sufficiency (ESS) Program Policy Manual, Section 0430.0606.
- ³² *Id.*
- ³³ Fla. Admin. Code R. 59G-1.100(13)(a).
- ³⁴ https://drive.google.com/file/d/1FUZJ_j-7insK1GJ3vL2nJ4RZZvhek--L/view?usp=drive_link (Sample motion for continuance)
- ³⁵ Fla. Admin. Code R. 59G-1.100(15).
- ³⁶ *Id.*
- ³⁷ <https://drive.google.com/file/d/1JgqQ8gaDCpZfTjrjQNA5ArlGMrGN7rj/view> (Sample notice of continuance and rescheduling)

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- ³⁸ <https://drive.google.com/file/d/1rTS7674mLVWjxcNMsBclQl0PmB3xNIc/view> (Sample order granting petitioner’s motion to continuance)
- ³⁹ *Id.*
- ⁴⁰ https://drive.google.com/file/d/1FUZJ_j-7insK1GJ3vL2nJ4RZ/Zvhek-L/view?usp=drive_link (Sample contested motion for continuance)
- ⁴¹ Fla. Admin. Code R. 59G-1.100(15).
- ⁴² Fla. Admin. Code R. 65-2.050.
- ⁴³ <https://www.myflfamilies.com/about/additional-services-offices/office-inspector-general/appeal-hearings/appeal-hearings#:~:text=If%20you%20decide%2C%20at%20any.withdrawing%20your%20request%20for%20hearing.>
- ⁴⁴ *Id.* at 32.
- ⁴⁵ *Id.*
- ⁴⁶ *Id.*
- ⁴⁷ *Id.*
- ⁴⁸ Department of Children and Families, Economic Self Sufficiency (ESS) Program Policy Manual, Section 0430.0607.
- ⁴⁹ 42 C.F.R. § 438.406(b)(4).
- ⁵⁰ 42 C.F.R. § 438.406(b)(5).
- ⁵¹ 42 C.F.R. § 431.244(c).
- ⁵² Fla. Admin. Code R. 28-106.215.
- ⁵³ *Id.*
- ⁵⁴ KAISER FAMILY FOUNDATION, A GUIDE TO THE MEDICAID APPEALS PROCESS (2012), <https://www.kff.org/medicaid/issue-brief/a-guide-to-the-medicaid-appeals-process/>.
- ⁵⁵ Department of Children and Families, Economic Self Sufficiency (ESS) Program Policy Manual, Section 0430.0608.
- ⁵⁶ *Id.* at 13.
- ⁵⁷ § 120.68 (2)(a), Fla. Stat.
- ⁵⁸ *Id.*
- ⁵⁹ § 120.68 (4), Fla. Stat.
- ⁶⁰ *Id.*
- ⁶¹ § 120.68 (7), Fla. Stat.
- ⁶² Department of Children and Families, Economic Self Sufficiency (ESS) Program Policy Manual, Section 3630.0200.
- ⁶³ 42 C.F.R. § 431.230(b).