

**IN THE DISTRICT COURT OF APPEAL
FOR THE FIFTH DISTRICT
STATE OF FLORIDA**

SARAH FRENCH,

Appellant,

CASE NO.: 5D04-4205

vs.

DEPARTMENT OF CHILDREN
AND FAMILIES,

Appellee.

APPELLANT SARAH FRENCH'S

MOTION FOR APPELLATE ATTORNEY'S FEES AND COSTS

Appellant Sarah French, by and through her undersigned counsel, pursuant to Rule 9.400(b), Florida Rules of Appellate Procedure, moves for attorney's fees and costs on appeal and states:

1. The Appellant, Sarah French, brought an action in the Florida Department of Children and Families Office of Appeals Hearings to reinstate her Medicaid benefits.
2. Appellant Sarah French is contractually obligated to compensate undersigned counsel for the professional legal services and costs expended in this appeal and the underlying matter.
3. The Final Order that is the subject of this appeal contains a finding that the Appellant, Sarah French, had been inappropriately disenrolled from the Medicaid program. However, in contravention of 42 C.F.R. Section 431.246 and Rule 65-2.066(6), Florida Administrative Code, the Hearing Officer omitted a finding that the Appellant is entitled to

an award of retroactive benefits to the date of the inappropriate disenrollment from the Medicaid program.

4. Appellant Sarah French is a disabled person, the victim of cerebral palsy. She is completely disabled and requires around the clock attendance. She is unable to perform the routine activities of daily living such as bathing, cleaning herself, dressing, feeding herself, going to the bathroom, or walking. She requires personal care assistance to perform all such activities.

5. Appellant Sarah French is an indigent and has received an Order of Indigency in this case. It has been filed with this court.

6. Furthermore, there was a prior Final Order in a related case involving Appellant Sarah French, which Appellant contends the Appellee Agency failed to implement. A hearing was held on July 8, 2003, before a DCF Hearing Officer, Jim Travis, in DCF Appeal No. 03F-0266. Appellant Sarah French prevailed in the prior related hearing as well, resulting in a Final Order dated August 15, 2003, in favor of Appellant Sarah French. A copy of this Final Order dated August 15, 2003, is contained in the Record on Appeal. DCF failed to implement the Final Order, refused to allow the personal care assistant (PCA) services authorized by the Final Order, and commenced action to terminate Appellant Sarah French from the Consumer Directed Care (CDC) Project, a Medicaid program, as a result. This action resulted in the underlying administrative hearing in the present case, which resulted in an additional Final Order in favor of Appellant Sarah French in this case.

7. Section 120.595(1), Florida Statutes (2004), provides for an award of reasonable attorney's fees and costs to the prevailing party in an administrative action

upon the Court's finding that the agency action which precipitated the appeal was a gross abuse of the agency's discretion, such as in the instant case where the Agency participated the proceedings primarily to cause unnecessary delay and needlessly increase the cost of litigation to the Appellant, constituting a gross abuse of Agency discretion and justifying an award of reasonable attorney's fees and costs to the Appellant. Section 120.595(5), Florida Statutes (2004), authorizes appellate attorney's fees in such cases.

8. In the present case, in October 2003, Appellant Sarah French appealed the Agency's adverse decision in a timely manner and requested a formal hearing pursuant to Chapter 120, Florida Statutes, in accordance with state law, federal law and the regulations and program handbook for the CDC Project. Appellee DCF failed to act on Sarah French's hearing request, failed to schedule a hearing and sent a letter to her in December 2003 that advised the Appellant that she was not entitled to a hearing. After multiple letters from undersigned counsel to the DCF's counsel and the Secretary of DCF, a hearing was scheduled in March 2004, some six months after it had been requested. Meanwhile, contrary to federal and state law, Sarah French had been terminated from the CDC Project and her Medicaid benefits ceased. Appellee DCF continued to take the position that Sarah French was not entitled to a hearing on the decision to terminate her from the CDC Project. This legal position was contrary to the fact that federal law, state law, federal regulations and the Florida Administrative Code, as well as the brochures, pamphlets and program handbook from the CDC Project, all stated that she was entitled to a hearing.

9. DCF continued to urge its unfounded legal position throughout months of administrative hearings on this matter. Finally, on November 22, 2004, a Final Order was entered by the second DCF Hearing Officer, Ms. Terry Oberhausen, ruling in favor of

Sarah French, in the present case.

10. Section 120.569(2)(e), Florida Statutes (2004), provides that an appropriate sanction may be imposed in the form of payment of the other party's attorney's fees and reasonable expenses incurred when a party files pleadings, motions and papers in a proceeding for improper purposes, such as to cause unnecessary delay or to needlessly increase the cost of litigation such as the Agency's actions in this matter have done.

WHEREFORE, the Appellant, Sarah French, requests that this Honorable Court enter an order awarding reasonable appellate attorney's fees and costs, pursuant to Sections 120.569(2)(e), 120.595(1) and 120.595(5) and Florida Statutes (2004), and remand this matter to the Hearing Officer in the Florida Department of Children and Families Office of Appeals Hearings for a hearing on the proper amount of such fees.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished via U.S. mail, postage prepaid, to Ann Cocheu, Esquire, Assistant Attorney General, Office of the Attorney General, PL-01, The Capital, Tallahassee, Florida 32399-1050 on this _____ day of September, 2005.

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