

BEFORE THE COMMISSIONER OF
THE DEPARTMENT OF FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE

NOTICE OF HEARING
on a
PETITION FOR DECLARATORY ORDER

(Pursuant to Tenn. Code Ann. §§ 4-5-223 – 224)

Petitioner: James Butler

Petitioner's Attorney: Daniel Kidd
Wilson Business Center
1308 Wilson Road, Suite 103
Knoxville, TN 37912
Ph. (865)-688-5120; Fax (865)-688-5121
dan@danielkiddlawoffice.com

Background:

The Department of Finance and Administration, Bureau of TennCare (TennCare) provides services to petitioner James Butler, under the Home and Community Based Waiver, *HCBS Waiver (Control#1'N.0128.R04.03) effective January 1, 2013*. Those services are provided through the Department of Developmental and Intellectual Disabilities (DIDD) under a contract with TennCare. The HCBS Waiver states, in relevant part:

“Family Model Residential Support shall mean a type of residential service where a service recipient lives in the home of a trained caregiver who is not a family member.

“Family Model Residential Support shall not be provided in a home where a service recipient lives with family members unless such family members are also service recipients receiving Family Model Residential Support.

“Family member” shall be interpreted to mean the mother, father, grandmother, grandfather, sister, brother, son, daughter, or spouse, whether the relationship is by blood, by marriage, or by adoption.”

On December 4, 2013, DIDD notified the Petitioner that DIDD would not pay for Family Model Residential Services-Level 5. In its notification, DIDD stated:

Our records show that your caregiver is your sister. Our guidelines [the HCBS Waiver] state that Family Model Residential Services cannot be provided in a home where a service recipient lives with family members unless those family members are also service recipients and are getting Family Model Residential services also.”

DIDD determined that the Petitioner and his caregiver, Dee Francis, are brother and sister and live in the same home. Because of that determination, DIDD concluded that the Petitioner is prohibited from receiving the requested Family Model Residential Services because he shares a home with his sister who is not also a service recipient receiving Family Model Residential Support.

Petitioner does not dispute that he is the biological son of Dee Francis. He also does not dispute that in 1978, Petitioner was legally adopted by his maternal grandmother (Dee Francis' mother), Mossie Butler, and her husband, James Edward Butler.

Petitioner's dispute pertains to DIDD's construction of the above-cited provision of the HCBS waiver. Specifically, Petitioner contends that DIDD's denial relies on the word "adopted"—a word which is informed by the TCA §36-1-121. Petitioner contends that TCA §36-1-121 fails to create a familial relationship between an adopted child and the natural born children of the adoptive parents except as it relates to inheritance.

4. Summary of the relief requested:

Petitioner seeks a declaratory order construing the above-cited HCBS waiver provision. Specifically, Petitioner seeks the convening of a contested case hearing by the Commissioner pursuant to Tenn. Code Ann. §§ 4-5-223 – 224.

5. Hearing:

The hearing will be held on Monday, May 11, 2015 at 1:00 p.m. and will be held at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 in room 4 East A. Persons attending the hearing should present appropriate identification at the guard desk on the first floor and ask that the guard contact Rob Bushong in order to be escorted to the hearing room.

The hearing will be held before Assistant Commissioner Patti Killingsworth, sitting as the designee of Commissioner Larry Martin. An Administrative Judge from the agency shall preside at the hearing. This matter will be conducted in accordance with Tenn. Code Ann. §§ 4-5-301 *et seq.*, including the right to be represented by counsel.

RECEIVED
2015 APR -9 PM 2:11
SECRETARY OF STATE
PUBLICATIONS

04-21-15

BEFORE THE COMMISSIONER OF
THE DEPARTMENT OF FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE

AMENDED NOTICE OF HEARING
on a
PETITION FOR DECLARATORY ORDER

(Pursuant to Tenn. Code Ann. §§ 4-5-223 – 224)

Petitioner: James Butler

Petitioner's Attorney: David Kidd
Wilson Business Center
1308 Wilson Road, Suite 103
Knoxville, TN 37212
Ph. (865)688-5120; Fax (865)688-5121
dan@danielkiddlawoffice

Hearing Date Rescheduled for Monday, June 1, 2015

The Petitioner and the Bureau of TennCare have agreed to continue the hearing on the Petition for Declaratory order from Monday, May 11, 2015, at 1:00 p.m. until **Monday, June 1, 2015, at 1:00 p.m.** A copy of the Agreed Order of Continuance is attached. The hearing will be held at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee, 37243 in room 4 East A. Persons attending the hearing should present appropriate identification at the guard contact Rob Bushong in order to be escorted to the hearing room.

The hearing will be held before Assistant Commissioner Patti Killingsworth, sitting as the designee of the Commissioner Larry Martin. An Administrative Judge from the agency shall preside at the hearing. This matter will be conducted in accordance with Tenn. Code Ann. §§ 4-5-301 *et seq*, including the right to be represented by counsel.

BEFORE THE COMMISSIONER OF
THE DEPARTMENT OF FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE

NOTICE OF HEARING
on a
PETITION FOR DECLARATORY ORDER

(Pursuant to Tenn. Code Ann. §§ 4-5-223 – 224)

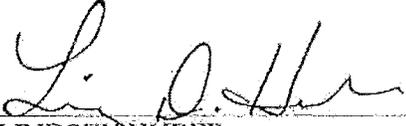
JAMES D. BUTLER,
Petitioner.

AGREED ORDER

It appearing to the court, as evidenced by signature of counsel affixed below, that the Petitioner and the Bureau of TennCare, have reached agreement regarding a continuance of the hearing on the Petition for Declaratory Order; it is therefore

ORDERED that the hearing on the petition in the above styled matter is continued from Monday, May 11, 2015, at 1:00 p.m. until Monday June 1, 2015, at 1:00 p.m.

Entered this 21st day of April, 2015.


LINDSEY HUBER
HCFA Administrative Judge

APPROVED FOR ENTRY:



Paula D. Godsey BPR No. 7010

R. Chase Himes BPR 30774

Office of General Counsel

Attorneys for the Bureau of TennCare

310 Great Circle Road, 3W

Nashville, Tennessee 37243

(615) 507-6609



Daniel Kidd BPR No. 018747

1308 Wilson Road, Ste 103

Knoxville, Tennessee 37912

(865) 688-5120

Attorney for the Petitioner

James Butler

RECEIVED
2015 APR 21 PM 2:22
SECRETARY OF STATE
PUBLICATIONS