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January 2015

Mason Surber vs. F & A

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**BEFORE THE COMMISSIONER OF THE TENNESSEE
DEPARTMENT OF FINANCE AND ADMINISTRATION**

IN THE MATTER OF:)	
)	
MASON SURBER,)	
Petitioner)	
v.)	DOCKET NO. 09.03-128997J
)	
BUREAU OF TENNCARE,)	
Respondent)	

INITIAL ORDER

This matter was set to be heard as a contested case on January 20, 2015 before Anthony Adgent, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Finance and Administration. The Honorable Assistant General Counsel Blake Alford represented the State.

The Petitioner’s representative was not present for the hearing as scheduled. The State therefore moved for a default. The motion was granted based upon the following Findings of Fact and Conclusions of Law.

NOTICE OF DEFAULT

NOTICE IS HEREBY GIVEN THE PETITIONER HAS BEEN HELD IN DEFAULT FOR HER FAILURE TO APPEAR AT A HEARING ON THE MERITS AFTER RECEIVING ADEQUATE NOTICE. T.C.A. §4-5-309. PETITIONER HAS 15 DAYS FROM THE EFFECTIVE DATE OF THIS ORDER TO REQUEST THAT THIS FINDING OF DEFAULT BE SET ASIDE. THIS REQUEST MUST BE RECEIVED IN THE OFFICE OF THE SECRETARY OF STATE, ADMINISTRATIVE PROCEDURES DIVISION, 312 8th AVENUE NORTH, WILLIAM R. SNODGRASS TOWER, NASHVILLE, TENNESSEE

37243. THE REQUEST TO HAVE THE FINDING OF DEFAULT SET ASIDE SHOULD INCLUDE THE REASONS TO JUSTIFY THE PETITIONER'S FAILURE TO ATTEND. IF PETITIONER DOES NOT REQUEST THE DEFAULT BE SET ASIDE OR OTHERWISE APPEAL THE ACCOMPANYING INITIAL ORDER, THEN THE INITIAL ORDER WILL BECOME A FINAL ORDER SUBJECT TO COURT REVIEW. ANY QUESTIONS REGARDING THIS NOTICE OF DEFAULT OR THE STEPS NECESSARY TO HAVE IT SET ASIDE SHOULD BE SUBMITTED TO THE ADMINISTRATIVE JUDGE SIGNING THIS ORDER BY LETTER OR BY TELEPHONING (615) 741-7008.

FINDINGS OF FACT

1. Petitioner applied for TennCare benefits, which were denied, and Petitioner subsequently appealed this denial. A hearing on the denial was set for January 20, 2015.
2. On the date and time designated for the hearing, the Petitioner was not available for the hearing as scheduled.
3. The State provided proof that Petitioner received proper notice of the hearing.

CONCLUSIONS OF LAW

1. Rule 1360-4-1-.15(1)(a) of the "Uniform Rules of Procedure for Hearing Contested Cases before State Administrative Agencies" states:

The failure of a party to attend or participate in a prehearing conference, hearing or other stage of contested case proceedings after due notice thereof is cause for holding such party in default pursuant to T.C.A. §4-5-309.

2. Rule 1360-4-1-.02(3) states, in pertinent part:

The "petitioner" in a contested case proceeding is the "moving" party, i.e., the party who has initiated the proceedings. The petitioner usually bears the ultimate burden of proof.

3. Because the Petitioner did not participate in the hearing after due notice, or carry the burden of proof, it is therefore **ORDERED** that this matter be **DISMISSED** and the requested benefits and/or coverage be denied.

Entered this _____ day of _____, 2015.

Anthony Adgent
Administrative Judge

Filed in the Administrative Procedures Division, this _____ day of _____, 2015.

Richard Collier, Director
Administrative Procedures Division
Office of the Secretary of State