

STATE OF FLORIDA  
DEPARTMENT OF CHILDREN AND FAMILIES  
OFFICE OF APPEAL HEARINGS

FILED

AUG 20 2009

OFFICE OF APPEAL HEARINGS  
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-02890

PETITIONER,

Vs.

CASE NO. 1234507285

FLORIDA DEPT OF CHILDREN AND FAMILIES  
CIRCUIT: 06 Pinellas  
UNIT: 88605

RESPONDENT.

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**FINAL ORDER**

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on July 10, 2009, at 3:15 p.m., in Largo, Florida. The petitioner was not present and was represented by \_\_\_\_\_ guardian with \_\_\_\_\_. The respondent was represented by Suzi Jackson, economic self-sufficiency specialist supervisor.

**ISSUE**

The petitioner is appealing the notice of March 19, 2009 for the respondent's action to consider the petitioner's gross income when determining the petitioner patient responsibility of \$1,835.

**FINDINGS OF FACT**

1. The petitioner resides in a nursing facility. He is a single individual. The petitioner receives Social Security Administration benefits and a pension.

The petitioner's gross monthly Social Security benefit is \$1,528. The petitioner's gross monthly pension amount is \$342.88. The petitioner has no other income or assets.

2. The Child Support Enforcement Unit of Monroe County, New York is collecting \$217.50 each month from the petitioner's Social Security benefit. The petitioner submitted a letter from Child Support Enforcement Unit of Monroe County, New York which stated that New York law requires the garnishment and there was no other legal authority which would permit the State of New York to cease collecting the petitioner's past due child support debt.

3. The respondent computed the petitioner's gross monthly income to be \$1,870.89. The respondent determined based on the gross monthly income of \$1,870.89, the petitioner's patient responsibility was \$1,835.89.

4. The representative argued that the net income received by the petitioner is insufficient for the petitioner to pay his patient responsibility to the nursing facility. As a result, the petitioner owes the facility an amount equal to the child support garnished every month. The guardian has made every effort to terminate the garnishment for child support and the petitioner has not received an exemption. The representative is requesting that the determination of the patient responsibility be based on the net income.

#### **CONCLUSIONS OF LAW**

The Florida Administrative Code at 65A-1.701 under "Definitions" states:

(14) Income...For SSI-related programs refer to 20 C.F.R. §416.1100 et al. and Rule 65A-1.713.

(21) Patient Responsibility: That portion of an individual's monthly income which the department determines must be considered as available to pay for the individual's institutional care, ALW/HCBS or Hospice care.

The Florida Administrative Code at 65A-1.713 sets forth the SSI-Related Medicaid income eligibility criteria:

(2) Included and Excluded Income. For all SSI-related coverage groups the department follows the SSI policy specified in 20 C.F.R. 416.1100, et seq...

The Code of Federal Regulations at 20 C.F.R. §416.1123 sets forth the treatment of unearned income:

- (a) When we count unearned income. We count unearned income at the earliest of the following points: When you receive it or when it is credited to your account or set aside for your use. We determine your unearned income for each month...
- (b) Amount considered as income. We may include more or less of your unearned income than you actually receive.
  - (1) We include more than you actually receive where... You are repaying a legal obligation through the withholding of portions of your benefit amount...

The Florida Administrative Code at 65A-1.714 sets forth SSI-Related Medicaid post-eligibility treatment of income:

After an individual satisfies all non-financial and financial eligibility criteria for Hospice, institutional care services or ALW/HCBS, the department determines the amount of the individual's patient responsibility. This process is called post-eligibility treatment of income.

- (1) For Hospice and institutional care services, the following deductions are applied to the individual's income to determine patient responsibility:
  - (a) Individuals residing in medical institutions shall have \$35 of their monthly income protected for their personal need allowance...

The ACCESS Program Policy Manual further describes what is income and income which must be included in the budget:

1840.0101 Earned and Unearned Income (MSSI, SFP)

Income is classified into two categories for budgeting purposes: earned income and unearned income. All non-exempt income must be verified at application and review unless otherwise specified. Exempt income is income (earned or unearned) that is excluded from consideration when determining eligibility or patient responsibility. Accept the individual's statement for amount and type of exempt income, unless information is questionable or verification is required.

Earned income is the receipt of wages, salary, commission, or profit from an individual's performance of work or services, or a self-employment enterprise.

Unearned income is income for which there is no performance of work or services. Unearned income may include:

1. retirement, disability payments, unemployment/workers' compensation, etc.;
2. annuities, pensions, and other regular payments;
3. alimony and support payments;
4. dividends, interest, and royalties;
5. proceeds of life insurance policies;
6. prizes and awards;
7. gifts and inheritances; and
8. SSA, SSD, and SSI.

1840.0102 Deductions from Gross Income (MSSI, SFP)

Some deductions withheld from gross income must be included as income. Examples of these deductions include:

1. premiums for Supplemental Medical Insurance (SMI/Medicare) from a Title II (Social Security) benefit,
2. premiums for health insurance or hospitalization,
3. premiums for life insurance,
4. federal and state income taxes,
5. Social Security taxes,
6. optional deductions,
7. a garnished or seized payment,
8. guardianship fees, and
9. child support if redirected irrevocably from the source...

The rule and policy set forth income that must be included in the calculation of the patient responsibility includes garnished or seized payment and child support if redirected irrevocably from the source. The income that the respondent is including in the calculation is child support garnished by the State

of New York. The hearing officer recognizes that the guardian has made every effort to have the child support garnishment terminated without success. The hearing officer recognizes that this presents a short fall in the petitioner's payment to the nursing home. However, the hearing officer found no rule to exclude the child support payment which is being garnished from his Social Security as income.

Based on the documentations submitted the actual monthly gross income was \$1,835.88. The rule indicates that the patient responsibility is gross monthly income less a \$35 personal needs allowance. The petitioner's gross monthly income of \$1,835 less the \$35 personal needs allowance is a calculation of \$1,835 for the patient responsibility. Based upon the above cited authorities, the respondent's action to consider the petitioner's to consider the petitioner's gross income when determining the petitioner patient responsibility of \$1,835 was within the rules of the Program.

### **DECISION**

This appeal is denied.


### **NOTICE OF RIGHT TO APPEAL**

This decision is final and binding on the part of the department. If the petitioner disagrees with this decision, the petitioner may seek a judicial review. To begin the judicial review, the petitioner must file one copy of a "Notice of Appeal" with the Agency Clerk, Office of Legal Services, Bldg. 2, Rm. 204, 1317 Winewood Blvd., Tallahassee, FL 32399-0700. The petitioner must also file another copy of the "Notice of Appeal" with the appropriate District Court of Appeal. The Notices must be filed within thirty (30) days of the date stamped on the first page of the final order. The petitioner must either pay the court fees required by law or seek an order of indigency to waive those fees. The department has no funds to assist in this review, and any financial obligations incurred will be the petitioner's responsibility.

FINAL ORDER (Cont.)  
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DONE and ORDERED this 20<sup>th</sup> day of August 2009,

in Tallahassee, Florida.



Linda Jo Nicholson  
Hearing Officer  
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