

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

FILED

AUG 19 2009

OFFICE OF APPEAL HEARINGS  
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-03639

PETITIONER,

Vs.

CASE NO. 1299511686

FLORIDA DEPT OF CHILDREN AND FAMILIES  
CIRCUIT: 12 Sarasota  
UNIT: 88326

RESPONDENT.

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**FINAL ORDER**

Per notice, a hearing was held by telephone before the undersigned hearing officer on July 10, 2009, at 9:58 a.m. Both parties appeared by telephone. The petitioner herself was not present but was represented by her daughter, \_\_\_\_\_ also testified. The respondent was represented by Patricia Higel, supervisor in the ACCESS Program. \_\_\_\_\_ also testified.

**ISSUE**

At issue is the respondent decision of March 20, 2009 to deny Institutional Care Program (ICP) Medicaid benefits for the months December 2008 through March 2009 based on excess counted income.

**FINDINGS OF FACT**

1. The petitioner was first admitted to a nursing facility in the State of Florida on September 24, 2008. The petitioner was discharged from the facility on March 6, 2009. The petitioner now lives with her daughter who is her representative in this appeal.
2. On December 9, 2008, the nursing home administrator, applied for ICP benefits for the petitioner. On this application, income sources were listed as: Social Security \$1,108 and a Civil Service Annuity of \$104 monthly. The application also listed a nursing home supplemental insurance policy. However, the application did not list the amount of the insurance policy nor whether or not proceeds of the policy were paid directly to the nursing facility or not.
3. On December 11, 2008, the respondent sent the nursing home administrator representative an appointment for interview and pending notice. The petitioner's daughter was not sent this request. This notice included a request for the amount of the monthly civil service income, bank statements for the past four months, proof of health insurance premiums, and proof of who directly received payment from the nursing home insurance. The listed due date for return of verification was December 22, 2008.
4. On February 9, 2009, the application was first denied due to the lack of returned verification as above. On March 6, 2009, the nursing home representative telephoned the respondent to request that the denial be

revisited. On March 9, 2009, the respondent re-examined ICP eligibility per this request. The respondent first received the nursing home insurance policy in March 2009, labeled Respondent Exhibit 10. On March 19, 2009, the respondent determined that payments for nursing care were paid on a flat rate directly to the petitioner, rather than the nursing home. The respondent then determined that such insurance payments are countable in the ICP program. No income trust was established.

5. The respondent validated that the petitioner received \$1,108 monthly Social Security Income in the month of December 2008. This amount increased to \$1,172 in January 2009 and after. The respondent also validated that the petitioner received a civil service pension amount of \$103.63 in each of the months at issue. Direct payments from the insurance company were: \$2,600 in December 2008, \$2,630 in January 2009, and \$2,015 in February 2009. Based on insurance reimbursement of \$65.00 daily, it is established that the petitioner received \$2,015 in insurance reimbursement for a thirty-one day period of January 25, 2009 through February 24, 2009 in March 2009.
6. The respondent determines the petitioner had excess total income for the months of December 2008 through March 2009 to be eligible for ICP benefits. The respondent approved ICP benefits for the months of September and October 2008. The petitioner's daughter has paid over \$4,000 in the petitioner's behalf for nursing expenses. The petitioner's

daughter did not know of the need to establish an income trust, per testimony.

### **CONCLUSIONS OF LAW**

The Florida Administrative Code (F.A.C.) 65A-1.713 **SSI-Related**

**Medicaid Income Eligibility Criteria** states in part:

(1) Income limits. An individual's income must be within limits established by federal or state law and the Medicaid State Plan. The income limits are as follows:

(d) For ICP, gross income cannot exceed 300 percent of the SSI federal benefit rate after consideration of allowable deductions set forth in subsection 65A-1.713(2), F.A.C. Individuals with income over this limit may qualify for institutional care services by establishing an income trust which meets criteria set forth in subsection 65A-1.702(15), F.A.C.

The ACCESS Florida Program Policy Manual, passage 1840.0110 Income

Trusts (MSSI) states in part:

#### **1840.0110 Income Trusts (MSSI)**

The following policy applies only to the Institutionalized Care Program (ICP), institutionalized MEDS-AD, institutionalized Hospice, Home and Community Based Services (HCBS) and PACE. It does not apply to Community Hospice.

To qualify, an individual's gross income cannot exceed 300 percent of the SSI federal benefit rate (refer to Appendix A-9 for the current income standard). If an individual has income above the ICP income limit, they may become eligible for institutional care or HCBS if they set up and fund a qualified income trust. A trust is considered a qualified income trust if:

1. it is established on or after 10/01/93 for the benefit of the individual;
2. it is irrevocable;
3. it is composed only of the individual's income (Social Security, pensions, or other income sources); and

4. the trust stipulates the state will receive the balance in the trust upon the death of the individual up to an amount equal to the total medical assistance paid on their behalf.

The above-cited F.A.C. rule shows that countable income may not exceed 300% of the federal benefit rate to be eligible for ICP benefits. This amount is interpreted as \$2,022 per Attachment 9 of the ACCESS Florida Program Policy Manual, for the months in question. Findings show that the petitioner had total income of \$3,811.63 in December 2008, \$3,905.63 in January 2009, \$3,290.63 in February 2009, and \$3,290.63 in March 2009. These income amounts included Social Security, pension income and proceeds from a nursing home insurance policy that are all countable income sources. Since the proceeds from the nursing home policy were paid directly to the petitioner for reimbursement, such proceeds are also countable income per section 1840.1007 of the Respondent's interpretive manual. Since total countable income in each month at issue exceeds the maximum of \$2,022, the petitioner is correctly ineligible based on excess income.

F.A.C. Rule 65A-1.713 permits the establishment of a qualified income trust to potentially create ICP eligibility by reducing countable income to an amount below the income standard. However, no qualified income trust was established and funded by the petitioner's prior representative to potentially reduce countable income.

In sum, the petitioner's total income from Social Security, pension, and medical insurance policy reimbursement exceeded the income standard for ICP eligibility in all the months at issue. Since the excess countable income was not

reduced by sufficient funding of an income trust account below the maximum limit, the respondent is correct to deny ICP benefits for the months at issue.

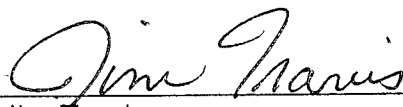

**DECISION**

The appeal is denied and the respondent's denial action is affirmed based on excess countable income.

**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 First District Court of Appeal in Tallahassee, Florida, or with the District Court of Appeal in the district where the party resides. 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.

DONE AND ORDERED this 19<sup>th</sup> day of August, 2009,  
in Tallahassee, Florida.

  
\_\_\_\_\_  
Jim Travis   
Hearing Officer  
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