

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

FILED
AUG 07 2009
OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-04203
PETITIONER,
Vs.
CASE NO. 1178500870
FLORIDA DEPT OF CHILDREN AND FAMILIES
CIRCUIT: 15 Palm Beach
UNIT: 88747
RESPONDENT.
_____ /

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on July 30, 2009, at 10:13 a.m., in West Palm Beach, Florida. The petitioner was not present. Representing the petitioner was her son, _____ Representing the respondent was Idali Hilgenfeldt, specialist II.

ISSUE

At issue is whether the respondent was correct in authorizing Institutional Care Program (ICP) Medicaid with a patient responsibility of \$2,443.76. The respondent has the burden of proof.

FINDINGS OF FACT

1. The petitioner is a resident of the _____ An application for ICP Medicaid was submitted on her behalf.

2. As part of the eligibility determination process, the respondent must consider, when determining patient responsibility, the total household income. The petitioner receives monthly income as follows: from the United States Department of Labor (USDL), \$2,106.46; and from Social Security (SSA) \$373. This totals \$2,479.46.
3. It is noted that because the petitioner had failed to pay federal income taxes, \$140.36 is deducted monthly from the \$2,106.46. The petitioner's net amount from the USDL is \$1,966.10.
4. The respondent explains that it must consider the petitioner's gross income when calculating the patient responsibility. They note that some deductions that are withheld from the gross income such as federal and state income taxes must be included as income.
5. Therefore, the respondent took the gross income, subtracted a \$35 personal needs allowance, and came to the result of \$2,443.46.
6. The representative explains that the respondent should be using the net income because that is what is going into the trust fund. The net check from USDL is \$1,966.10. Again, the Social Security amount of \$373 is added to this.

CONCLUSIONS OF LAW

Fla. Admin. Code 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.

(4) Income Budgeting Methodologies. To determine eligibility SSI budgeting methodologies are applied except where expressly prohibited by 42 U.S.C. § 1396 (2000 Ed., Sup. IV) (incorporated by reference), or another less restrictive option is elected by the state under 42 U.S.C. § 1396a(r)(2) (2000 Ed., Sup. IV) (incorporated by reference).

(b) For institutional care, hospice, and HCBS waiver programs the department applies the following methodology in determining eligibility:

1. To determine if the individual meets the income eligibility standard the client's total gross income, excluding income placed in qualified income trusts, is counted in the month received. The total gross income must be less than the institutional care income standard for the individual to be eligible for that month.

2. If the individual's monthly income does not exceed the institutional care income standard in any month the department will prorate the income over the period it is intended to cover to compute patient responsibility, provided that it does not result in undue hardship to the client. If it causes undue hardship it will be counted for the anticipated month of receipt.

65A-1.7141 SSI-Related Medicaid Post Eligibility Treatment of Income

states in part:

After an individual satisfies all non-financial and financial eligibility criteria for Hospice, institutional care services or Assisted Living waiver (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.

Fla. Integrated Pub. Policy Manual states in part:

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....

Upon review, according to Rule, the respondent must consider the petitioner's gross income. And, according to policy, the respondent must consider the tax deduction from the USDL as income. Therefore, the total gross income (of the USDL and Social Security) is \$2,479.76. Subtracting the \$35 personal needs allowance leaves a patient responsibility of \$2,444.46.

DECISION

The appeal is denied. The respondent's action is affirmed. The respondent will correct the patient responsibility by \$1.

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.

FINAL ORDER (Cont.)


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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.

DONE and ORDERED this 3rd day of August, 2009,

in Tallahassee, Florida.



Melvyn Littman
Hearing Officer
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850-488-1429

Copies Furnished