

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

FILED

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OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

PETITIONER, APPEAL NO. 09F-04274
Vs. CASE NO. 1304668312

FLORIDA DEPT OF CHILDREN AND FAMILIES
CIRCUIT: 20 Lee
UNIT: 88806

RESPONDENT.
_____ /

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on August 26, 2009, at 12:12 p.m., in Ft. Myers, Florida. The petitioner was not present. He was represented by his daughter, . The respondent was represented by Bernice Gorman, economic self-sufficiency specialist supervisor.

ISSUE

The petitioner is appealing the respondent's action in determining the amount of the patient responsibility and community spouse diversion amount in the Institutional Care Program and Medicaid Program for the application of July 6, 2009.

FINDINGS OF FACT

1. The petitioner lives in a nursing facility. The petitioner has a spouse that lives in the community in an assisted living facility (ALF). The daughter submitted an application for Institutional Care Program (ICP) and Medicaid Program benefits for the petitioner on July 6, 2009.

2. In determining eligibility for the ICP program the Respondent takes into consideration the income and assets of both the institutionalized petitioner and the community spouse. The petitioner's income is \$123 in Veteran Administration benefits, \$1,569 in Social Security benefits and \$665.89 retirement from the State of Michigan for a total gross monthly income of \$2,357.89.

3. There was no deduction from the petitioner's Social Security as the state is paying the petitioner's Medicare Part B premium. There were deductions from the petitioner's retirement benefit of \$7.57 for dental insurance and \$1.05 for vision insurance that were not credited to the petitioner in the original budget.

4. The community spouse's gross monthly income received from Social Security was \$612.83. There are deductions from the Social Security of \$96.40 for Medicare Part B and \$47.43 for Medicare Part D. The community spouse is not entitled to a deduction from medical expenses in determining income. Her monthly income is \$612.83.

5. The community spouse and the petitioner have a checking account that has less than a dollar each month in interest. This would add \$1 to the income. When the petitioner and the community spouse are combined together, the gross

monthly income of the community spouse and the petitioner is \$2,971.72. The petitioner's gross income of \$2,358.89 less the \$35 personal needs deduction and less the \$8.72 in medical expenses results in the net income of \$2,315.17. Therefore, the couple's combined countable income is \$2,928.

6. The community spouse was unable to continue living in the community as she requires custodial care. The community spouse entered the ALF on May 1, 2009. She pays \$93.70 a day (based on a 30 day month) which includes an assisted living base fee for room and board of \$83.70 a day and a \$10 a day medication assistance and administration fee.

7. The petitioner and his wife have expenses in addition to the nursing facility and the ALF. They own the home the wife occupied prior to being admitted to the ALF. This home is for sale. Until the home is sold, the property must be maintained. They are paying \$100 a month for electric, \$25 a month for water, \$35 a month for lawn care and \$2,500 a year for taxes.

8. In order to become eligible for ICP benefits, the applicant must be income and asset limits. The petitioner was initially over the income limit so an income trust was established. \$500 per month is being placed in the income trust to allow the petitioner to become eligible for ICP benefits. The petitioner has been approved to receive ICP benefits. Once an individual is approved to receive ICP Medicaid the Respondent determines a patient responsibility. Patient responsibility is the portion of the individual's income that must be paid to the nursing facility. When there is a community spouse, some or all of the

individual's income can be diverted to help the community spouse meet her needs.

9. The respondent determined the community spouse allowance budget for the purpose of diverting funds from the patient responsibility to the community spouse. The allowance takes into consideration the community spouse's shelter cost. The respondent requested information from the ALF on how much of the community spouse's base fee (room and board) was for her room and how much was for food. The ALF would not breakdown the costs. As the ALF would not break down the costs, the total shelter cost for the wife's shelter used by the respondent was zero. The respondent did not recognize the cost of maintaining the unoccupied home of the community spouse.

10. The respondent used the Minimum Monthly Maintenance Income Allowance Standard for the community spouse of \$1,822. The respondent determined the community spouse allowance would be \$1,209.17. The respondent allowed for a \$35 deduction for the institutionalized spouse's personal needs. The amount of the patient responsibility is the amount remaining of the petitioner's income after deductions and diversion to the community spouse. The respondent used an income amount for the petitioner of \$2,358.72. The respondent determined the patient responsibility was \$1,114.55 without allowing for a deduction for the medical expenses.

11. The daughter is requesting additional diversion to the community spouse to cover the expenses of the ALF and the home.

CONCLUSIONS OF LAW

Once an individual has been determined eligible for ICP benefits, it is necessary to determine what if any portion of their bill for services will be their responsibility. This is called patient responsibility. Patient responsibility is determined in accordance with Fla. Admin. Code 65A-1.711. The petitioner's actual income is used and various items may be deducted to determine what portion of their income must be paid monthly to the nursing facility. The income is different than the income standard for eligibility. The total income amount used in this appeal will include the amount that has been set aside for the income trust (ACCESS Florida Program Policy Manual 1840.0110 and 2640.0117). However, the patient responsibility may be adjusted to allow for funds to be diverted to the community spouse.

The petitioner's is requesting that his income be diverted to his community spouse to cover her actual expenses. As a result of her placement in the ALF, her expenses exceed her income. The Florida Administrative Code at 65A-1.716(5)(c) sets forth "Spousal Impoverishment Standards" as follows:

(c) Spousal Impoverishment Standards.

1. State's Resource Allocation Standard. The amount of the couple's total countable resources which may be allocated to the community spouse is equal to the maximum allowed by 42 U.S.C. § 1396r-5.
2. State's Minimum Monthly Maintenance Income Allowance (MMMIA). The minimum monthly income allowance the department recognizes for a community spouse is equal to 150 percent of the federal poverty level for a family of two.
3. Excess Shelter Expense Standard. The community spouse's shelter expenses must exceed 30 percent of the MMMIA to be considered excess shelter expenses to be included in the maximum

income allowance: MMIA \times 30% = Excess Shelter Expense Standard. This standard changes July 1 of each year.

4. Food Stamp Standard Utility Allowance: \$198.

5. Cap of Community Spouse Income Allowance. The MMMIA plus excess shelter allowance cannot exceed the maximum amount allowed under 42 U.S.C. \S 1396r-5. This standard changes January 1 of each year.

The ACCESS Policy Manual at Appendix A-9 list the dollar amounts for these standards as:

<u>Spousal Impoverishment</u>	
Minimum Monthly Maintenance Income Allowance (MMMIA)**	\$ 1,822
Excess Shelter Standard**	\$ 547
Maximum Community Spouse Income Allowance (MMMIA plus excess shelter allowance cannot exceed this figure)	\$ 2,739
Community Spouse Asset Allocation Standard	\$ 109,560

Based on these authorities, the respondent determined a community spouse allowance of \$1,209.17 and a patient responsibility \$1,114.55. The respondent did not give the community spouse a deduction for the cost of maintaining un-occupied home. However, as these expenses do not exceed 30% of the Minimum Monthly Maintenance Income Allowance, there would have been no deduction. Therefore, the hearing officer will not address the correctness of this action.

Based on the rules, this is the only way the local office can determine the patient responsibility for an ICP recipient. However, the Florida Administrative

Code at 65A-1.712(4)(f) permits possible adjustment to this methodology and the resulting income allowance as follows:

(f) Either spouse may appeal the post-eligibility amount of the income allowance through the fair hearing process and the allowance may be adjusted by the hearing officer if the couple presents proof that exceptional circumstances resulting in significant inadequacy of the allowance to meet their needs exist. Exceptional circumstances that result in extreme financial duress include circumstances other than those taken into account in establishing maintenance standards for spouses. An example is when a community spouse incurs unavoidable expenses for medical, remedial and other support services which impact the community spouse's ability to maintain themselves in the community and in amounts that they could not be expected to be paid from amounts already recognized for maintenance and/or amounts held in resources. Effective November 1, 2007, the hearing officers must consider all of the community spouse's income and all of the institutionalized spouse's income that could be made available to a community spouse. If the expense causing exceptional circumstances is a temporary expense, the increased income allowance must be adjusted to remove the expenses when no longer needed.

The above rule provides that the Minimum Monthly Maintenance Income Allowance may be increased if the community spouse can establish that she has "exceptional circumstances resulting in significant financial duress." For the hearing officer to increase the Minimum Monthly Maintenance Income Allowance to the maximum allowed it must first be established that the community spouse has an exceptional circumstance. In this appeal, the petitioner's health has deteriorated to such a point that she cannot reside in her home. She requires the assistance that is provided in an ALF. It is found that her health needs meet this requirement.

Next it must be determined that the expenses related to this exceptional circumstance has created significant financial duress. In this appeal, the costs of the ALF substantially exceed the community spouses income. Her cost of maintaining her ability to reside in the community given her exceptional circumstances allow for the deviation from the Minimum Monthly Maintenance Income Allowance. Therefore, the costs of the ALF must be considered in determining what if any amount should be diverted to the community spouse.

The community spouse is paying to reside in the ALF. In addition to the expense of the ALF, the community spouse also pays the cost of maintaining her home which is for sale. The community spouse's monthly allowable expenses are as follows:

ALF	\$2,811.00
Utilities	\$155.00
Taxes	\$208.33
Total	\$3,179.33

Based on the current circumstances reported at the hearing, this amount becomes the new amount of the spouse's Minimum Monthly Maintenance Income Allowance. The couple's combined countable income is \$2,928. The hearing officer determines the community spouse diversion is the remainder of the institutional spouse's income and the patient responsibility to be zero.

DECISION

This appeal is granted. The respondent is to adjust the patient responsibility to zero based upon the application dated July 6, 2009.

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.

DONE and ORDERED this 2nd day of October, 2009,

in Tallahassee, Florida.



Linda Jo Nicholson
Hearing Officer
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