

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

FILED

SEP 28 2009

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-04608

PETITIONER,

Vs.

CASE NO. 1306999014

FLORIDA DEPT OF CHILDREN AND FAMILIES
CIRCUIT: 11 Dade
UNIT: 88601

RESPONDENT.

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on August 27, 2009, at 11:08 a.m., at the Opa Locka Service Center, in Opa Locka, Florida. The petitioner was not present, but was represented at the hearing, via the telephone, by her friend who has power of attorney, . The Department was represented by Oneida Gamboa, economic self-sufficiency specialist supervisor. Also present as a witness for the Department was Paula Henoa, economic self-sufficiency specialist. A continuance was granted on behalf of the respondent for a hearing previously scheduled on August 13, 2009.

ISSUE

At issue is the Department's action of May 27, 2009 to deny the petitioner's March 23, 2009 application for Institutional Care Program (ICP) and Medicaid benefits

starting March 2009, based on excess income, and; "No deposits done into the income trust." The petitioner has the burden of proof.

FINDINGS OF FACT

1. The petitioner or her representative filed an application for ICP benefits with the Department on March 23, 2009.
2. The petitioner was in a nursing home at least as of March 2009. She was voluntary discharged from the nursing home around April 7, 2009.
3. The petitioner's representative was informed that the petitioner needed to set up an income trust, based on the petitioner receiving income in excess of the ICP income limit. The petitioner's representative had submitted the income trust information to the Department, Respondent Exhibit 1. The Department approved this income trust in June 2009.
4. The petitioner receives \$721.70 a month in Social Security benefits. She also receives \$2,619 a month in Veterans benefits. Her income totals \$3,340.70 a month. The income limit for the ICP Program is \$2,022 a month.
5. The petitioner's representative had set up the income trust account at the SunTrust bank in February 2009. In February 2009 he had deposited about \$3,200 in the account. The petitioner was receiving her income through a Bank of America account. The petitioner's representative was trying to arrange for the Defense Department (in charge of sending the petitioner's Veterans benefits) to send the income to the petitioner, so he could further fund the trust account in the future. He was having difficulties with the Defense Department. They had advised him that they were sending January 2009 and February 2009 checks to the petitioner. These checks were sent to the petitioner's Bank

of America account in March 2009 in which over \$5,000 was deposited in this account. The petitioner or her representative did not fund trust fund account (SunTrust) in March 2009. In May 2009 the funds were deposited in the trust fund account.

6. Based on the above scenario; the Department denied the petitioner's ICP application for March 2009, based on excess income and based on the petitioner not funding the trust fund account in March 2009.

CONCLUSIONS OF LAW

Fla. Admin. Code 65A-1.713 sets forth the SSI-Related Medicaid Income Eligibility Criteria that includes the ICP Program and 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 paragraph 65A-1.702(14)(a), F.A.C.

...(3) When Income Is Considered Available for Budgeting. The department counts income when it is received, when it is credited to the individual's account, or when it is set aside for their use, whichever is earlier.

...(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...

The Department's Florida Integrated Public Assistance Policy Manual section 1840.0110 states in part:

The individual (or their legally authorized representative) must deposit sufficient income into the income trust account in the month in which the income is received to reduce their countable income (the income outside the trust) to within the program income standard. The individual must make the deposit each month that eligibility is requested. This may require the individual to begin funding an executed income trust account prior to its official approval by the District Legal Counsel.

As shown in the Findings of Fact, the Department denied the petitioner's request for ICP benefits for March 2009, based on the petitioner's income exceeded the ICP Program income limit. The petitioner's representative did not sufficiently fund the income trust for March 2009.

The petitioner's representative argued that by no fault of his own, he tried to get the Defense Department to send the money to the petitioner's account and thus (he could) fund the trust fund in March 2009. He argued that he started to fund the trust fund in February 2009 as he had access to the funds. He argued that he was paying the nursing home the daily rate for the petitioner's stay at the facility except for the period in March 2009. He argued that is "afraid" the nursing facility will either go after the petitioner or himself for the lack of payment for part of March 2009. The petitioner also argued that he did not know when the Defense Department was going to send the funds as he had "bounced" several checks of payments for the petitioner.

The Department argued that the petitioner's representative should have funded the trust fund in March 2009, as the income was available in an account not the trust account, during this month.

After considering the evidence, the Florida Administrative Code Rules and all of the appropriate authorities set forth in the findings above, the hearing officer affirms the Department's action of May 27, 2009 to deny the petitioner's application for ICP benefits for March 2009, as the petitioner or her representative did not adequately fund the income trust in March 2009 and the petitioner's income exceeded the Department's ICP and Medicaid income standard.

DECISION

This appeal is denied and the Department's action affirmed.

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.)
09F-04608
PAGE -6

DONE and ORDERED this 28th day of September 2009,

in Tallahassee, Florida.

Robert Akel

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Hearing Officer
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