

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

APPEAL NO. 09F-05727

PETITIONER,

Vs.

CASE NO. 1291586261

FLORIDA DEPT OF CHILDREN AND FAMILIES  
CIRCUIT: 11 Dade  
UNIT: 66301

RESPONDENT.  
\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, an administrative hearing was convened before the undersigned-hearing officer on October 1, 2009, at 10:53 a.m., at the Opa Locka Service Center, in Opa Locka, Florida. The petitioner was not present, but was represented at the hearing by her husband, . . . The Department was represented by Paula Henao, economic self sufficiency specialist II.

**ISSUE**

At issue is the petitioner's request for an increase in the community spouse's income allowance that is diverted from the petitioner's patient responsibility ICP (Institutional Care Program) payment made to the nursing home. The petitioner has the burden of proof.

**FINDINGS OF FACT**

1. The petitioner is a resident of a nursing home and receives ICP benefits. Her husband lives in the community and is known to the Department as the community spouse. The petitioner's patient responsibility is \$1,367, as of September 2009. The income diverted to the community spouse from the petitioner's income as an allowance is \$0.

2. The facts were not disputed in this case. The Department has a process to determine the petitioner's patient responsibility and the community spouse's allowance. The community spouse's "allowance" is a diversion of the petitioner's income to the community spouse.

3. Department Composite Exhibit 1, contains a copy of the Department's Institutional budget sheet and a copy of the Department's institutional allowance worksheet for the petitioner. All of the above "copies" indicate the Department's budget process.

4. The community spouse receives income from the Social Security Administration, which is \$1,188.40. He receives \$1,967 as a civil service income. He receives \$1,721.60 in earned income. The community spouse's income total is \$4,877 monthly.

5. The Department's institutional allowance worksheet for the petitioner indicates the community spouse pays \$1,698.52 for shelter cost. He pays \$142.66 for insurance. He received the Food Stamp Utility allowance of \$198. These expenses added together equals; \$2,039.18.

6. The Department then subtracted the excess shelter deduction, which is thirty percent of the minimum monthly maintenance income allowance (MMMIA) of \$547 from the above total of \$2,039.18, to arrive at the excess shelter cost of \$1,492.18. The Department then added the MMMIA amount of \$1,822 to \$1,492.18 for a subtotal of \$3,314.18. The Department subtracted the community spouse's income as noted above, of \$4,877 from \$3,314.18 to arrive at the community spouse income allowance of \$0. The Department thus did not divert any of the petitioner's patient responsibility for payment to the nursing home, to the community spouse.

7. The petitioner submitted into evidence, as part of Petitioner Exhibit 1, a copy of a list of his expenses.

### **CONCLUSIONS OF LAW**

Fla. Admin. Code 65A-1.716(5) 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.

Fla. Admin. Code 65A-1.712 states in part:

(4) Spousal Impoverishment. The department follows 42 U.S.C. § 1396r-5 for resource allocation and income attribution and protection when an institutionalized individual, including a hospice recipient residing in a nursing facility, has a community spouse.

(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 Fla. Integrated Pub. Policy Manual, passage 2640.0119.02 explains

Community Spouse's Monthly Income Allowance (MSSI):

A community spouse's monthly income allowance depends on the amount of monthly income available to the community spouse and the amount of excess shelter costs the community spouse must pay.

The actual community spouse monthly income allowance is equal to how much the state's MMMIA plus the community spouse's excess shelter costs exceed the community spouse's income.

Note: The community spouse income allowance is included as income to the community spouse during the hearing process when determining if the community spouse qualifies for an increase in the community spouse resource allowance.

The Fla. Integrated Pub. Policy Manual, passage 2640.0119.03 explains the formula for the Community Spouse Income Allowance (MSSI):

The following is the formula used to determine the community spouse's income allowance:

(State's MMMIA + community spouse's excess shelter costs) - (the community spouse's total gross income) = (the community spouse's income allowance.)

The community spouse's income allowance is the total amount that can be allotted to the community spouse from the institutionalized individual.

The state's MMMIA plus CS excess shelter cost cannot exceed the state's cap on CS income allowance (see Appendix A-9).

The institutionalized individual's personal needs allowance and deduction for therapeutic wages is deducted prior to deducting the community spouse's income allowance.

The community spouse can refuse all or part of the allowance. The total amount of the community spouse allowance is always included in the budget for the community spouse during the hearing process when determining if the community spouse qualifies for an increase in the community spouse resource allowance.

If there is court ordered support against an institutionalized spouse (for monthly support income for the community spouse), the community spouse's monthly income allowance cannot be less than the amount ordered.

The Fla. Integrated Pub. Policy Manual, passage 2640.0119.04 sets forth determining the Community Spouse's Excess Shelter Costs (MSSI):

The following steps are used to determine the community spouse's excess shelter costs:

Step 1 - Obtain verification of the community spouse's monthly assistance group expenses if questionable. Allowed expenses are limited to rent or mortgage payment (including principal and interest), taxes, insurance (homeowners or renters), maintenance charges if a condominium and mandatory homeowner's association fees. Do not include expenses paid by someone other than the community spouse. Add all of these expenses.

Step 2 - To the total obtained above, add the current food stamp standard utility disregard (refer to Appendix A-3.1) if the community spouse pays utility bills. Allowed utilities are limited to water, sewage, gas, and electric.

Step 3 - To determine what portion of the total shelter costs is excess, subtract 30% of the state's income allowance, from the total costs. The difference is the community spouse's excess shelter costs.

As shown in the Findings of Fact, through its policy, determined that the petitioner's husband or community spouse, would have \$0 diverted to him from the petitioner's nursing home patient responsibility amount of \$1,367.

The petitioner's representative argued that he does not receive the gross income amount, but receives a lesser net income amount. He argued that he has to pay for his car; car insurance and other expenses that the Department does not count. He argued that he needs about \$500 diverted to him just to break even.

The Department argued that they include the expenses related to shelter and utilities to determine any diversion of the patient responsibility.

For the case at hand and by rule; the hearing officer has the flexibility to adjust the patient responsibility if exceptional circumstances resulting in significant inadequacy of the allowance to meet the community spouse needs exist. The evidence presented does not support such a conclusion to adjust or modify the petitioner's patient responsibility.

After considering the evidence, the Florida Administrative Code Rule and all of the appropriate authorities set forth in the findings above, the hearing officer concludes the Department's action to set petitioner's patient responsibility as \$1,367 and set the community spouse's allowance from the petitioner's income at \$0, remains correct. The petitioner's request for the adjustment, do not meet the exceptional circumstances or unavoidable costs for the hearing officer to override the Department decision.

#### **DECISION**

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

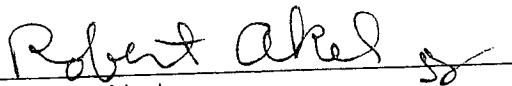
#### **NOTICE OF RIGHT TO APPEAL**

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.

DONE and ORDERED this 16<sup>th</sup> day of November, 2009,

in Tallahassee, Florida.



Robert Akel  
Hearing Officer  
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Copies Furnished To:

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