

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

FILED
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DEPT. OF CHILDREN & FAMILIES

PETITIONER, APPEAL NO. 10F-00519
Vs. CASE NO. 1311873660

FLORIDA DEPT OF CHILDREN AND FAMILIES
CIRCUIT: 06 Pasco
UNIT: ICP

RESPONDENT.
_____ /

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on March 18, 2010, at 2:21 p.m., in Port Richey, Florida. The petitioner was not present. She was represented by _____ Medicaid specialist with Medicaid Benefits Incorporated. The respondent was represented by Greg Egnatuk, economic self-sufficiency specialist.

The administrative hearing was reconvened by telephone on March 30, 2010, at 1:18 p.m. The petitioner was not present. She was represented by _____ Medicaid specialist with Medicaid Benefits Incorporated. The respondent was represented by Edward Broom, economic self-sufficiency specialist, and Sandra Walker, supervisor Adult Payments Unit.

ISSUE

The petitioner is appealing the notice of December 10, 2009 for the respondent's action to deny Institutional Care Program (ICP) benefits for November 2009 on the basis that the petitioner's income exceeded the Program eligibility limits.

FINDINGS OF FACT

1. An application for ICP benefits was filed for the petitioner on May 28, 2009 for the months of May and June 2009. The petitioner is married. Her husband is considered the community spouse. The assets listed on the application were a checking account for the petitioner and two savings accounts for the community spouse. On July 7, 2009, the representative reported that the petitioner received annually distributions from her Vanguard Individual Retirement Account (IRA). The last payment was November 2008. The next anticipated distribution would be in November 2009 in the amount of \$1,687.29. The respondent applied the distribution to the month in which received, November 2008. The respondent approved the petitioner application for ICP benefits on July 16, 2009 for the months of May and June 2009.

2. The petitioner reapplied on October 20, 2009. The assets listed were a checking account for the petitioner and checking and a savings account for the community spouse. The respondent did not conduct an interview regarding the petitioner's application, as an interview was not required.

3. On December 9, 2009, the economic self-sufficiency specialist processed the case. He discovered that letter from the representative dated July 7, 2009 which indicated that the petitioner would receive a distribution from her IRA in November 2008 in the amount of \$1,687.29. This was the respondent's discovery date that the

petitioner would potentially be over income if a Qualified Income Trust was not established. The respondent sent the petitioner an Appointment Notice/Request for Information on December 10, 2009 in which the economic self-sufficiency specialist denied the petitioner's application for November 2009. The basis for the denial was that the petitioner was over income based on the anticipated IRA distribution reported on July 7, 2009. In the same Appointment Notice/Request for Information, the economic self-sufficiency specialist requested documentation of a Qualifying Income Trust and proof of sufficient deposits in November 2009. The due date for the documentation was December 21, 2009. The economic self-sufficiency specialist stated that case would be reopened if this documentation was received.

4. On December 16, 2009, the represented responded to the respondent's request for documentation. The representative provided documentation that on November 16, 2009 the petitioner's annual distribution from her IRA was discontinued, the petitioner took distribution in the amount of \$34,475.09, there was a Federal withholding of \$3,850.57 and the account value was \$.00. The Vanguard statement indicated that the transaction description was "normal distribution" in amount of \$34,475.09. The \$34,475.09 from the petitioner's IRA was deposited into the petitioner's bank account November 23, 2009. On November 25, 2009, the petitioner wrote a check for \$34,475.09 from her checking account. The check in the amount of \$34,475.09 was deposited into her spouse's account on November 25, 2009. The representative sent the respondent a statement of her position: Once the request to close the IRA was made there was no longer a retirement fund. Regular payments would not continue. The proceeds then became a countable asset. The countable

asset was transferred to the community spouse. The transfer to the community spouse was an allowable transfer. An individual who is eligible on any day of the month is eligible for the whole month. Therefore the petitioner was eligible for November 2009.

5. On January 26, 2010, the representative sent the economic self-sufficiency specialist an email. She inquired that she had not received any response to the documentation she had sent him in on December 16, 2009.

6. The economic self-sufficiency specialist responded on January 26, 2010. His response was: The respondent could only consider the depletion of the IRA account as an asset conversion if distribution had not previously been received. Since distribution was already being received, the gross distribution of \$38,326.46 is counted as income for Medicaid eligibility. November 2009 remained a denied month.

CONCLUSIONS OF LAW

The SSI-Related Medicaid Resource Eligibility Criteria is set forth in the Florida Administrative Code 65A-1.712. The SSI-Related Medicaid Income Eligibility Criteria is set forth in the Florida Administrative Code 65A-1.712. The income and resource criteria for the ICP Program are set forth in the Florida Administrative Code at, 65A-1.716. The income limit for ICP benefits is \$2,022. The asset limit for ICP benefits is \$2,000.

The Code of Federal Regulations at 20 C.F.R. § 416.1121 "Types of unearned income" states:

Some types of unearned income are--

(a) Annuities, pensions, and other periodic payments. This unearned income is usually related to prior work or service. It includes, for example, private pensions, social security benefits, disability benefits, veterans

benefits, worker's compensation, railroad retirement annuities and unemployment insurance benefits...

The ACCESS Policy Manual at 1640.0505.04 "Retirement Funds (MSSI, SFP)"

states:

... Retirement funds are work-related annuities and plans for providing income when employment ends (for example, retirement plans administered by an employer or union, disability or pension). Other examples are funds held in an individual retirement account (IRA) and plans for self-employed individuals, sometimes referred to as Keogh plans.

Retirement funds must be treated as an asset or as income, unless they are considered unavailable.

If an individual is eligible to receive regular payments from a retirement fund, the payments are considered unearned income and the fund is not considered a countable asset to the individual...

Retirement funds are established to provide income to an individual. The petitioner was receiving regular annual payments from her Vanguard IRA. The Vanguard IRA was an available asset that was not countable in the asset consideration. Policy sets forth that if an individual is eligible to receive regular payments from a retirement fund, the payments are considered unearned income. The Vanguard IRA statement indicated that the petitioner took a normal distribution in the amount of \$34,475.09 and there was a Federal withholding of \$3,850.57. The hearing officer concludes that the petitioner voluntarily took payment of the entire balance and paid Federal withholding from that payment. Based upon the above cited authorities, the hearing officer concludes the payment taken by the petitioner November 16, 2009 is unearned income. Income is countable in the month received. This income, \$38,325.66, is over the income limit for ICP benefits. The respondent's action to deny ICP benefits for November 2009 was within the rules of the Program.

DECISION

This appeal is denied.

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 12th day of April, 2010,

in Tallahassee, Florida.



Linda Jo Nicholson
Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
850-488-1429

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