

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

[REDACTED]

APPEAL NO. 10F-06968

PETITIONER,

Vs.

CASE NO. 1339160439

FLORIDA DEPARTMENT OF  
CHILDREN AND FAMILIES  
CIRCUIT: 08 Alachua  
UNIT: 88324

FILED

Feb 3, 2011

OFFICE OF APPEAL HEARINGS  
DEPT. OF CHILDREN AND FAMILIES

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned telephonically convened an administrative hearing in the above-referenced matter on February 8, 2011 at 4:15 p.m.

**APPEARANCES**

For the Petitioner: [REDACTED] son-in-law

For the Respondent: Louella Teague, supervisor, ACCESS  
FLORIDA

**STATEMENT OF ISSUE**

At issue is whether the Department correctly denied the petitioner's request for Institutional Care Program (ICP) benefits for the months of May and June 2010 based on excess income.

### **PRELIMINARY STATEMENT**

On August 19, 2010, the Department informed the petitioner that her application for ICP benefits was being denied for the months of May and June 2010 based on the contention that household income was too high to qualify for the program. On October 10, 2010, the petitioner timely requested a hearing through the Department to challenge the denial.

Appearing on behalf of the petitioner were her daughters, [REDACTED] and

[REDACTED]. Petitioner submitted into evidence Exhibit 1.

The Respondent submitted into evidence Exhibits 1 through 4.

The hearing was originally scheduled to convene on December 8, 2010. The hearing was convened but the undersigned was advised that the petitioner died in August 2010. The hearing was rescheduled so that the petitioner's daughter, next of kin, could represent the petitioner. The hearing was rescheduled for December 28, 2010. The Department representative failed to appear for the hearing and the petitioner did not receive the evidence packet. With the representative's permission, the hearing was rescheduled for January 20, 2011. The hearing was scheduled for 3:30 p.m. but both the hearing officer and respondent appeared fifteen minutes late (3:45 p.m.). The hearing officer contacted the representative immediately to attempt to convene the hearing but the petitioner's witness was no longer available. The hearing was once again scheduled for February 8, 2011 with the representative's permission.

The hearing record was held open until February 15, 2011 to allow the petitioner's representative to submit additional evidence which was received and entered as Petitioner's Exhibit 2.

### **FINDINGS OF FACT**

1. On or about the end of April 2010 through June 30, 2010, the petitioner was admitted into a nursing facility. The petitioner, through the nursing home social work department at that facility, filed an application for ICP and Medicaid benefits on May 25, 2010 (Respondent's Exhibit 3). The May 25, 2010 application indicated the petitioner's income was from SSA in the amount of \$1,940 monthly.

2. A pending Notice of Case Action dated May 28, 2010 was sent to the nursing facility and the petitioner's daughter, LW, requesting proof of savings/checking balances, liquid asset availability, proof of life insurance cash value, life insurance to be used for burial, and proof of type of medical coverage (Petitioner's Exhibit 2). The petitioner's daughter argued that the notice did not indicate a need for an Irrevocable Medicaid Income Trust. Based on the reported income, the Department was unaware of the need for an Income Trust.

3. The petitioner transferred from the first facility into another nursing home in the latter part of June 2010. The social worker at that facility recognized the need for an income trust and advised the petitioner's family of the need to establish and fund an income trust. The petitioner's family was not aware of the need for an income trust until the social worker at the second facility explained that requirement.

4. The petitioner's representative established an Irrevocable Qualified Income Trust on July 8, 2010 and funded it with an initial deposit of \$200 on July 12, 2010.

5. At the time of the application, the petitioner's gross monthly income was SSA of \$2,036. The petitioner's total gross monthly income exceeded the income standard for the ICP Medicaid Program of \$2,022 for an individual. Therefore, the petitioner was

not eligible to receive ICP Medicaid unless she established an income trust and adequately funded the trust each month so that income outside of the trust was within the income standard.

6. The petitioner transferred from ICP to Hospice in the latter part of July 2010 and expired on August 3, 2010. On August 19, 2010, the Department mailed the petitioner a Notice of Case Action informing her that her application for ICP Medicaid was approved with the exception of the months of May and June 2010, the months at issue. These months were denied because her income was too high to qualify.

7. The petitioner disagrees with the Department's action. The family relied on the community partner, (social worker at the first nursing facility), to complete the application process. It was not until July 2010, when the petitioner was transferred to the second nursing facility, that the petitioner's representative was advised, by the social worker at that facility, that there was a need for an income trust. The petitioner's representative argued that they followed the instruction of the health care personnel regarding the necessary paperwork to establish eligibility. The representative acknowledged that they had no contact with the Department and relied totally on the nursing home personnel to apply for ICP and Medicaid coverage.

#### **CONCLUSIONS OF LAW**

8. The Department of Children and Families, Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties, pursuant to § 409.285, Fla. Stat. This order is the final administrative decision of the Department of Children and Families under Fla. Stat. § 409.285.

9. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code

§ 65-2.056.

10. In accordance with Fla. Admin. Code § 65-2.060(1) the burden of proof was assigned to the petitioner.

11. Fla. Admin. Code 65A-1.710, SSI-Related Medicaid Coverage Groups, defines the ICP Medicaid Program and states in part:

(2) Institutional Care Program (ICP). A coverage group for institutionalized aged, blind or disabled individuals (or couples) who would be eligible for cash assistance except for their institutional status and income as provided in 42 C.F.R. §§ 435.211 and 435.231. Institutional benefits include institutional provider payment or payment of Medicare coinsurance for skilled nursing facility care.

12. The above rule explains that the ICP Medicaid Program provides institutional provider payment for skilled nursing facility care.

13. Fla. Admin. Code 65A-1.713, SSI-Related Medicaid Income Eligibility Criteria, in part states:

SSI-Related Medicaid Income Eligibility Criteria.

(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(15), F.A.C. ... (2) Included and Excluded Income. For all SSI-related coverage groups the department follows the SSI policy specified in 20 C.F.R. 416.1100 (2007) (incorporated by reference) et seq., including exclusionary policies regarding Veterans Administration benefits such as VA Aid and Attendance, unreimbursed Medical Expenses, and reduced VA Improved pensions, to determine what counts as income and what is excluded as income with the following exceptions: ... (d) Income placed into a qualified income trust is not considered when determining if an individual meets the income standard for ICP, institutional Hospice program or HCBS... (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.

14. The above rule explains that an individual's income must be within limits established by federal or state law and the Medicaid State Plan. An individual's gross income cannot exceed a percentage of the federal poverty level to qualify for ICP Medicaid. However, individuals with income over this limit may qualify for ICP by establishing an income trust which meets certain criteria as established by federal policy. The above rule also explains that income placed into a qualified income trust is not considered when determining if an individual meets the income standard for ICP. 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 each month requested.

15. The Department's ACCESS Florida Program Policy Manual 165-22, Appendix A-9 sets forth the ICP income limit for an individual at \$2022. Appendix A-10 sets forth the federal benefit rate at \$674. Three hundred percent of the federal benefit rate at the time of the application at issue was \$2022.

16. The applicable income limit for an individual for ICP was \$2022. The findings show that the petitioner's gross income was \$2,036.50. In addition, the findings show that an income trust was not established or funded until July 2010. Therefore, for the months of May and June 2010, prior to the income trust account being established and properly funded, the petitioner would not have been eligible.

17. The Department's ACCESS Florida Program Policy Manual, 165-22, Section 1840.0110 in part states:

Income Trusts (MSSI)

The following policy applies only to the Institutionalized Care Program (ICP), institutionalized MEDS-AD, institutionalized Hospice, Home and Community Based Services (HCBS) and PACE. It does NOT apply to Community Hospice.

To qualify, an individual's gross income cannot exceed 300 percent of the SSI federal benefit rate (refer to Appendix A-8 for the current income standard). If an individual has income above the ICP income limit, they may become eligible for institutional care or HCBS if they set up and fund a qualified income trust. A trust is considered a qualified income trust if:

1. it is established on or after 10/01/93 for the benefit of the individual;
2. it is irrevocable;
3. it is composed only of the individual's income (Social Security, pensions, or other income sources); and
4. the trust stipulates the state will receive the balance in the trust upon the death of the individual up to an amount equal to the total medical assistance paid on their behalf.

The eligibility specialist must forward all income trusts to their Region or Circuit Program Office for review and submission to the District Legal Counsel (DLC) for a decision on whether the trust meets the criteria to be a qualified income trust. Refer to Appendix A-22.1, "Guidance for Reviewing Income Trusts," for instructions on processing income trust cases.

**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....(emphasis added)**

18. The above authorities provide for the establishment of an income trust by an ICP Medicaid applicant in order to reduce monthly income below the state income limitations. The income trust must be funded monthly in order to reduce the monthly income below the state income limitations (for each month eligibility is requested). The

findings show that the income trust was established on July 8, 2010. The findings show that the trustee funded the account with a deposit of \$200 for that month on July 12, 2010. As a result, the petitioner's total income, minus the deposited amount to the trust, was available to be counted in the eligibility determination process for July and August 2010. As the total gross income of \$2,036, for the months prior to establishing and funding of the Income Trust, exceeded the ICP Medicaid income limitation of \$2022, the petitioner was not eligible to receive ICP Medicaid for the months of May and June 2010.

19. The petitioner's representative explained that she did everything the health care personnel asked of her to make sure that her mother received benefits. By her own admission, the representative never spoke with the Department (who determines ICP eligibility) and relied on the community partner to assist her with the application process.

20. The undersigned considered the petitioner's arguments. However, no exceptions to the above-cited controlling authorities could be found. Based on these rules applicable to the ICP Medicaid Program, the undersigned concludes that the Department correctly denied ICP Medicaid for the months of May and June 2010 as her income (outside of a Qualified Income Trust) exceeded the income limitation for the Program. ICP eligibility was achieved for July 2010, once the Qualified Income Trust was set up and properly funded.



**DECISION**

Based upon the foregoing Findings of Fact and Conclusion of Law, it is determined that the petitioner was not eligible to receive ICP Medicaid during the months at issue. Therefore, the Department's denial action is 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 \_\_\_\_\_ day of \_\_\_\_\_, 2011,

in Tallahassee, Florida.

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Copies Furnished To: [REDACTED] Petitioner  
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[REDACTED]