

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

[REDACTED]

APPEAL NO. 10F-08164

PETITIONER,

Vs.

CASE NO. 1327404150

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 01 Escambia
UNIT: ICP

FILED
Feb 22, 2011
OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN AND FAMILIES

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on January 18, 2011 at 2:45 p.m. in Pensacola, Florida.

APPEARANCES

For the Petitioner: [REDACTED] wife

For the Respondent: Marixsa Griffith, economic self-sufficiency specialist II

STATEMENT OF ISSUE

At issue is whether the Department correctly denied the petitioner's request for Institutional Care Program benefits for the months of January-February 2010 based on excess income.

PRELIMINARY STATEMENT

On April 9, 2010, the Department informed the petitioner that his application for ICP benefits was being denied for the months of January 2010 and February 2010 based on the contention that household income was too high to qualify for the program. On April 29, 2010, the petitioner timely requested a hearing through the Department to challenge the denial. The hearing request was inadvertently scanned to the Department's document imaging system and was not forwarded to the Office of Appeal Hearings. On November 24, 2010, the Office of Appeal Hearings received a telephone request for the hearing.

Appearing on behalf of the petitioner was his daughter [REDACTED].
Petitioner submitted into evidence Exhibits 1 through 9.

Testifying on behalf of the Department was Shanta Jones, economic self-sufficiency specialist I. The Respondent submitted into evidence Exhibits 1 through 22.

FINDINGS OF FACT

1. On September 16, 2009, the petitioner was admitted into a nursing facility in [REDACTED], Florida. At the advice of the nursing facility social worker, the petitioner's family was referred to an attorney to establish an Irrevocable Medicaid Income Trust, hereinafter referred to as Trust. The Trust was executed on December 15, 2009 and funded with a deposit of \$1,550 on December 18, 2009 upon advice from the attorney.
2. The petitioner, through the nursing home social work department, first applied for Institutional Care Program (ICP) and Medicaid on December 18, 2009. The December 18, 2009 indicated the petitioner's income was from SSA in the amount of

\$1,640.97. The community partner inadvertently provided an incorrect apartment number for the petitioner's spouse.

3. An appointment notice and request for additional information was sent to the nursing facility and the petitioner (at her incorrect address) on December 22, 2009. The petitioner was pended for current bank statements, documentation of real estate, trust funeral/burial accounts proof of gross monthly income, life insurance. Based on the reported income, the Department believed the petitioner's income was within allowable income standards. Therefore, the Department was unaware of the need for an Income Trust or that an Income Trust had previously been established. The original interview was scheduled for December 30, 2009. The petitioner received the notice from the nursing home. The appointment was rescheduled for January 12, 2010.

4. The petitioner attended the rescheduled appointment on January 12, 2010. It was at that time that the Department was advised that the petitioner's income was from the Veteran's Administration and Civil Service. The petitioner was requested to provide a copy of the Trust and proof of funding. The Income Trust document and proof of funding was not received and the original application was denied on February 2, 2010. Subsequent to the denial, a copy of the Income Trust was received by the Department on February 17, 2010 and was forwarded to District Legal for review. District Legal approved the Trust on March 12, 2010.

5. According to the Department's sixty day rule, the petitioner had until 60 days from the date of application to provide documentation without the requirement to file a new application. Sixty days from the date of the application (December 18, 2009) was

February 16, 2010. As the documentation was not received until February 17, 2010, the Department determined there was a need for a new application.

6. The petitioner reapplied on March 24, 2010 and requested ICP and Medicaid coverage to include the retroactive months of January and February 2010. December 2009 was not identified as a month at issue. It was not until March 2010 that the petitioner was advised of the need to deposit additional funds into the Income Trust. The petitioner deposited \$1,500 on March 4, 2010 and \$35 on March 29, 2010.

7. At the time of the applications, the petitioner's gross monthly income was VA compensation of \$1,547 and a Civil Service retirement pension of \$2,044. The petitioner's total gross monthly income was \$3,591. The petitioner's total gross monthly income exceeded the income standard for the ICP Medicaid Program of \$2,022 for an individual (Respondent's Exhibit 22). Therefore the petitioner was not eligible to receive ICP Medicaid unless he established an income trust and adequately funded the trust each month so that income outside of the trust was within the income standard.

8. The petitioner continued to make deposits to the income trust on January 14, 2010 (\$1,550) and February 12, 2010 (\$1,550) based on the attorney's advice. It was not until March 2010 that the petitioner was advised by the Department of the amount to be deposited in order to adequately fund the "trust".

9. On April 9, 2010, the Department mailed the petitioner a Notice of Case Action informing him that his application for ICP Medicaid was approved with the exception of the retroactive months of January and February 2010, the months at issue. The retroactive months at issue were denied because his income was too high to qualify.

10. The petitioner disagrees with the Department's action. They relied on the community partner and their attorney of the need to establish an Income Trust. It was not until March 2010 that the Department advised petitioner that the trust was inadequately funded.

CONCLUSIONS OF LAW

11. 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.

12. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code § 65-2.056.

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

14. 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.

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

16. 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.

17. 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.

18. The Department's ACCESS Florida Program Policy Manual 165-22, Appendix A-9 sets forth the ICP income limit for an individual at \$2022 effective January 2010. 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.

19. The applicable income limit for an individual for ICP was \$2022. The findings show that the petitioner's gross income was \$3591 and that insufficient income (not enough to allow eligibility) was placed into a qualifying income trust for January and February 2010, the months at issue.

20. 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)

21. 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 limitation (for each month eligibility is requested). The findings show that the income trust was established on December 15, 2009. The findings show that the petitioner funded the account with a deposit of \$1,500 for the months at issue. As a result, the petitioner's total income, with the exception of the \$1,500 monthly deposit to the trust, was available to be counted in the eligibility determination process for January and February 2010. As the total gross income of \$2041 retained outside the trust exceeded the ICP Medicaid income limitation of \$2022, the petitioner was not eligible to receive ICP Medicaid for the months at issue. Based on the above controlling authorities, the undersigned concludes that the Department correctly denied ICP Medicaid for those months.

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 appeal is denied. The Department's actions are 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.

Linda Garton
Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
Office: 850-488-1429
Fax: 850-487-0662
Email: Appeal_Hearings@dcf.state.fl.us

Copies Furnished To: [REDACTED] Petitioner
1 DPOES: Jan Blauvelt