

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



APPEAL NO. 10F-06911

PETITIONER,

Vs.

CASE NO. 1335471499

FLORIDA DEPT OF CHILDREN AND FAMILIES
CIRCUIT: 05 Marion
UNIT: 88006

FILED
Feb 16, 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 matter on December 22, 2010.

APPEARANCES

For the Petitioner: [REDACTED] social services director with [REDACTED] and Rehabilitation nursing facility.

For the Respondent: Edward Broome, eligibility specialist with the respondent ACCESS program.

ISSUE

At issue is the respondent action of September 7, 2010 to deny Institutional Care Program (ICP) Medicaid benefits for the months of April 2010 through July 2010 based on excess counted income.

PRELIMINARY STATEMENT

By notices dated September 7, 2010, the petitioner was informed that she was denied ICP eligibility for the months of April 2010 through July 2010 based on excess income. The petitioner was approved for ICP benefits effective August 2010 when counted VA income was reduced after the Veteran's Administration reclassified a significant portion of the VA pension income as Aid and Attendance. On September 30, 2010, the petitioner timely requested a hearing to appeal the ICP denial decision for the months of April 2010 through July 2010.

All the parties appeared by phone for the hearing. The petitioner did not appear for the hearing. [REDACTED], social services director at the nursing facility, represented the petitioner and testified. [REDACTED] the nursing facility executive director, appeared as a witness for the petitioner. Edward Broome, economic self-sufficiency specialist I, represented the respondent and testified. Two other individuals with the respondent ACCESS program appeared as witnesses for the respondent: Sandra Maxwell; supervisor, and Edith Wood; senior eligibility specialist. The petitioner has the burden of proof as an applicant for ICP benefits.

FINDINGS OF FACT

1. On February 10, 2010, the petitioner was initially admitted to [REDACTED] [REDACTED] for rehabilitation services. On April 7, 2010, the petitioner became a long-term resident of this nursing facility. The petitioner remained a resident of the nursing facility as of the hearing date.

2. On April 6, 2010, the respondent received an application for ICP benefits in the petitioner's behalf. The petitioner reported \$1,144.50 monthly Social Security, a pension check of \$759.67 monthly and Veteran's income of \$1,644 monthly on this application.

3. On April 21, 2010, the respondent sent the petitioner a request for information. This letter indicated that the petitioner had described the VA income as all Aid and Attendance at the prior interview. The respondent requested proof that all the VA income was Aid and Attendance by a due date of May 3, 2010. The respondent included an income trust information sheet in the event that the VA income was not Aid and Attendance as advised.

4. On May 3, 2010, the respondent received verification of VA income, along with other verification. The VA verification establishes that the petitioner then received total gross VA benefits of \$1,644 monthly. However, only \$659 of these total VA benefits was categorized by the VA as Aid and Attendance. The remaining \$985 was determined by the VA to be a basic pension amount. The respondent counted the \$1,144.50 SSA amount, the \$759.67 Prudential Insurance pension and the \$985 VA pension amount in the ICP eligibility determination. These income sources total \$2,889.17 monthly.

5. On May 16, 2010, the respondent sent the petitioner another request for information. The request indicated that the total countable income was in excess of the asserted income limit so an income trust account was needed to establish eligibility. The due date for requested information was June 7, 2010.

6. On July 29, 2010, the petitioner re-applied for ICP benefits. This application requested ICP benefits retroactive to April 2010. This application reflected the petitioner's belief that more of the total VA income would be reclassified as Aid and Attendance. On August 10, 2010, the respondent requested an income trust document and proof of deposits in a sufficient amount to reduce income below the asserted income limit. The due date for this requested information was August 20, 2010.

7. On August 16, 2010, the respondent received verification of VA benefits from the petitioner dated August 9, 2010. This VA verification shows that the disability VA pension award amount had been reduced to \$90 monthly effective August 2010. The remainder, \$1,554, is considered by the VA as Aid and Attendance effective August 2010.

8. On September 7, 2010, the respondent approved the petitioner to receive ICP benefits for the months of August 2010 and ongoing, per notices. The respondent asserts that the reduced VA pension award amount to \$90 monthly caused the petitioner to meet the income eligibility requirements for the months of August 2010 and after. The petitioner seeks ICP benefits for the prior months of April 2010 through July 2010, as well. The respondent asserts that countable income exceeded the ICP income eligibility limit for these months.

CONCLUSIONS OF LAW

9. The Fla. Admin. Code 65A-1.713 **SSI-Related Medicaid Income Eligibility**

Criteria 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 subsection 65A-1.702(15), F.A.C.

10. The above-cited rule shows that countable income may not exceed 300% of the federal benefit rate to be eligible for ICP benefits. This amount is interpreted as \$2,022 monthly per Appendix 9 of the ACCESS Program Public Policy Manual. Thus, if the petitioner's total countable income exceeds this ICP income limit in a given month; the petitioner is not eligible for ICP benefits in that month.

11. The FLORIDA ACCESS Program Public Assistance Policy Manual, passage 1840.0906 **Veterans Benefits and Payments** states that VA Pension income is a countable income source but the portion determined for Aid and Attendance income is excluded:

1840.0906 Veterans Benefits and Payments (MSSI, SFP)

Veterans' compensation and pensions are based primarily on service in the armed forces and may also be made to the veterans' dependents or survivors. These payments, including stipend payments for participation in a study of Vietnam era veterans' psychological problems (P.L. 99-576) and monthly payments to veterans of the Vietnam era as a result of exposure to Agent Orange (P.L. 102-4) are counted as unearned income. The following are excluded as income:

...

4. Aid and attendance, a housebound allowance and unreimbursed medical expenses for MSSI and HCDA.

12. The petitioner received a total of \$2,889.17 in combined SSA, Prudential pension income and VA pension income in the months of April 2010 through July 2010. The VA Aid and Attendance portion of \$659 was correctly excluded by the respondent as a countable income source. The total correctly countable income of \$2,889.17

exceeded the \$2,022 maximum income standard for ICP eligibility in these months.

Therefore, the respondent correctly determined the petitioner ineligible for ICP benefits in these months unless sufficient income was excluded through the establishment and sufficient funding of an income trust account. The policy manual, passage **1840.0110**

Income Trusts (MSSI) states:

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:
it is established on or after 10/01/93 for the benefit of the individual;
it is irrevocable;
it is composed only of the individual's income (Social Security, pensions, or other income sources); and
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.

13. Fla. Admin. Code Rule 65A-1.713 also permits the establishment of a qualified income trust to potentially create ICP eligibility by reducing countable income to an amount below the income standard. The respondent correctly advised the petitioner of the need to establish this income trust during both the application processes at issue in order. The evidence does not show that an income trust was established.

14. In sum, the respondent correctly determined the petitioner ineligible for ICP benefits for the months of April 2010 through July 2010 due to excess countable

income. The respondent correctly counted the total VA pension amount of \$985 received in these months. When the Veteran's Administration increased the Aid and Attendance portion of the total VA income to \$1,554 effective August 2010, the respondent was correct to then determine the petitioner's total countable income to be below the income standard. Up until the Veteran's Administration changed the increased amount allocated as Aid and Attendance effective August 2010, the respondent could not determine the petitioner eligible for ICP benefits based on income. Countable income could not be further reduced because an income trust account was not established and sufficiently funded during the months at issue.

DECISION

The appeal is denied and the respondent 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 First District Court of Appeal in Tallahassee, Florida, or with the District Court of Appeal in the district where the party resides. 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.)

10F-06911

PAGE - 8

DONE and ORDERED this _____ day of _____, 2011,
in Tallahassee, Florida.

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