

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



APPEAL NO. 11F-00463

PETITIONER,

Vs.

CASE NO. 1333302142

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 14 Calhoun
UNIT: 88321

FILED
May 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-referenced matter on April 25, 2011 at 1:35 p.m. in Panama City Beach, Florida

APPEARANCES

For the Petitioner:  spouse

For the Respondent: Shawn Rush, senior eligibility specialist

STATEMENT OF ISSUE

The petitioner is appealing the Departments action of January 13, 2011 to establish an overpayment claim in the Medicaid Program of \$19,525.92 that occurred between May 1, 2010 and August 31, 2010.

PRELIMINARY STATEMENT

On January 13, 2011, the Department mailed the petitioner a Notice of overpayment informing him that between May 1, 2010 and August 31, 2010, he

received \$19,525.92 more in Medicaid than he was eligible to receive because he did not meet eligibility requirements. On January 19, 2011, the petitioner's wife timely requested an appeal.

Observing the hearing was petitioner's friend, [REDACTED]. The petitioner did not submit any documents into evidence.

Testifying on behalf of the Department by telephone was Candy Norman, Benefit Recovery Program supervisor. Submitted into evidence was Respondent's Exhibits 1-13.

The hearing was originally scheduled to be held on March 30, 2011 but was continued at the request of the petitioner's representative. It was rescheduled for April 19, 2011 but again continued with the consent of the petitioner.

FINDINGS OF FACT

1. Prior to the action under appeal, the petitioner (DOB January 2, 1938) received Institutional Care Program (ICP) and Medicaid benefits as a resident of a skilled nursing facility from at least April 2010.

2. The petitioner's gross income from Social Security (SSA) of \$2,100 and [REDACTED] Retirement Pension of \$657.23 totaled \$2,757.23. As the petitioner's total gross income exceeded the state's income standard of \$2,022 for an individual to receive ICP Medicaid, he was required to establish and fund an Irrevocable Medicaid Income Trust.

3. The petitioner established an Irrevocable Medicaid Income Trust naming his wife as the trustee. The purpose of the trust is to obtain Medicaid eligibility pursuant to the provisions of 42 U.S.C. § 1396p(d)(4)(B). The trust document was

executed on April 29, 2010 and the Irrevocable Medicaid Income Trust (the Trust) was funded with an initial deposit of \$735.73 on April 29, 2010. As the income remaining outside of the Trust was \$2,021.50 and within allowable income limits, the petitioner was approved for ICP and Medicaid program benefits effective April 2010.

4. The Department completes quarterly reviews of bank statements for the Irrevocable Medicaid Income Trust Accounts to establish that deposits are made each month according to the terms of the Trust document. On September 10, 2010, the Department received copies of the Trust bank statements for the months of May through August 2010. The petitioner deposited \$700 into the Trust account on May 27, 2010, \$200 on June 21, 2010 and \$500 on June 28, 2010, \$700 on July 29, 2010 and \$700 on August 30, 2010. The Department determined that the petitioner was not adequately funding the trust and that the income remaining outside of the trust exceeded the allowable income limits for the ICP and Medicaid program. A referral was made to the Benefit Recovery Program.

5. The petitioner's representative and Trustee of the Irrevocable Medicaid Income Trust argued that the nursing home helped her to set up the Trust. She was confused about how much she was to deposit into the Trust account each month. The attorney helped her to execute the Trust but the representative indicated that she was not "told much" about how the trust works such as how much money to put into the account and so forth (Respondent's Exhibit 8). The application process was submitted by the Social Work Department at the skilled nursing facility and the trustee did not discuss the petitioner's application or program requirements with the Department.

6. The trustee acknowledged that she made a mistake and did not adequately fund the income trust account. On September 27, 2010 the petitioner deposited \$800 into the Trust account and was eligible for ICP and Medicaid benefits. Subsequently the petitioner's SSA income was direct deposited into the income trust account on October 1, 2010.

7. The Department determined that the petitioner did not meet eligibility requirements for the months of May 2010 through August 2010 for the months he failed to adequately fund the Irrevocable Medicaid Income Trust. The Department determined the amount of the Medicaid overpayment claim using the actual amount of claims paid on behalf of the petitioner under the Medicaid Program of \$4,853.94 for the petitioner's nursing facility stay and \$25.81 for pharmacy in May 2010, \$4,674.81 and \$37.67 respectively in June 2010, \$4,923.38 and \$63.71 in July 2010 and \$4,923.38 and \$23.22 in August 2010. The total Medicaid payment was \$19,525.92 (Respondent Exhibit 11).

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 respondent.

11. Fla. Admin. Code 65A-1.713, SSI-Related Medicaid Income Eligibility

Criteria, states in relevant 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 paragraph 65A-1.702(14)(a), F.A.C.

12. The Department's program policy manual, 165-22 at Appendix A-9 and Transmittal Number I-08-12-0025 dated December 10, 2008 sets forth the ICP income limit, effective January 2009 and states in relevant part, "Federal Poverty Level Changes ICP/HCBS/Hospice Individual (3 X FBR) INCOME LIMIT \$2,022..."

13. The Department's Program Policy Manual 165-22, Section 1840.0110 states in relevant part:

To qualify, an individual's gross income cannot exceed 300 percent of the SSI federal benefit rate... 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...

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)

The Economic Self-Sufficiency Specialist must advise the individual that they cannot qualify for Medicaid institutional care services or HCBS for any month in which their income is not placed in an executed income trust account in the same month in which the income is received. (This may require the individual to begin funding an executed income trust account prior to its official approval by the District Legal Counsel.)

The trustee of the qualified income trust must provide quarterly statements identifying the deposits made to the trust each month...

14. Fla. Admin. Code 65A-1.900, **Overpayment and Benefits**

Recovery, states in relevant part:

The purpose of this section is to define the administrative policies applicable to the establishment and recovery of overpayment in the public assistance programs... (2) Persons Responsible for Repayment of Overpayment.. (c) Medicaid overpayments shall be recovered as required in Section 414.41 F.S... (3) Monthly repayment Amounts... (c) Monthly repayment amounts of all Medicaid overpayments shall be determined with those persons responsible for repayment based on factors relating to the amount of the claim, the persons' financial situation and the period over which the claim will be liquidated.

15. Florida Statutes 414.41, **Recovery of payments made due to mistake or**

fraud, states in relevant part:

(1) Whenever it becomes apparent that any person or provider has received any public assistance under this chapter to which she or he is not entitled, through either simple mistake or fraud on the part of the department or on the part of the recipient or participant, the department shall take all necessary steps to recover the overpayment....

16. The Department's Program Policy Manual 165-22, Section 3630.0300,

3630.0301 and 3630.0302 defines types of overpayment:

An overpayment exists when an individual receives benefits in an amount greater than the amount the individual was eligible to receive.

An overpayment may be the result of:

1. agency error
2. client error, or inadvertent household error (IHE)...

Agency error occurs when an incorrect benefit is received by or paid on behalf of an individual due to an error made on the part of the agency.

Agency error overpayment can occur as a result of:

1. a misapplication of policy,
2. a calculator error,
3. computer processing error..
4. failure to take prompt action on available information...

Inadvertent assistance group error, also known as client error, is an overpayment cause by a misunderstanding or an unintended error on the part of the assistance group or individual...

17. According to the above authorities, the individual may establish an Irrevocable Medicaid Income Trust and must deposit sufficient income into the trust each month so that income outside of the trust is equal to or below the allowed limit.

18. The Findings of Fact show that the petitioner failed to adequately fund an Irrevocable Medicaid Income Trust as a condition of eligibility for Institutional Care Program and Medicaid benefits from at least May 2010 through August 2010. According to the above authorities, 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. In this case, because the Trust was underfunded for May through August 2010, the petitioner exceeded the income limit and was ineligible for ICP Medicaid.

19. Based on the evidence, testimony and the above authorities, the hearing Officer concludes that the Department was correct in the determination of overpayment for Institutional Care Program Medicaid benefits for May through August 2010. According to the above authorities, whenever it becomes apparent that any person or provider has received any benefits under this chapter to which he is not entitled, either through simple mistake or fraud, the Department shall take all necessary steps to

recover the overpayment. Therefore, the undersigned concludes the Department's action to establish the claim is a correct action.

DECISION

Based upon the foregoing Findings of Fact and Conclusion of Law, the appeal is denied and the Department's 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.

Linda Garton
Hearing Officer
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Copies Furnished To: [REDACTED], Petitioner
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[REDACTED]