

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

[REDACTED]

APPEAL NO. 11F-00832

PETITIONER,

Vs.

CASE NO. 1342266170

FLORIDA DEPT OF CHILDREN AND FAMILIES
CIRCUIT: 17 Broward
UNIT: 88139

FILED
May 5, 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 March 8, 2011, at 11:34 a.m., in Fort Lauderdale, Florida.

APPEARANCES

For the Petitioner: [REDACTED].

For the Respondent: Jackie Pughsley, ACCESS, economic self-sufficiency specialist I.

STATEMENT OF ISSUE

The petitioner is appealing the Department's action to issue her \$208.68 in community spouse allowance resulting in \$1233.32 in patient responsibility amount (PR).

PRELIMINARY STATEMENT

By notice dated January 21, 2011, the respondent informed the petitioner that his application was approved for a Maintenance Need Allowance of \$208.68 resulting in a

patient responsibility amount of \$1233.32 monthly. On February 2, 2011, the petitioner timely requested a hearing to challenge the Department's action.

The petitioner's original application for ICP dated October 14, 2010 was previously denied for failing to timely provide proof of a bank account.

The petitioner was not present; his wife was present as his representative and witness. The respondent submitted documents which were entered into evidence as Respondent's Composite Exhibit 1.

FINDINGS OF FACT

1. The petitioner is 66 years old and is a resident of [REDACTED]
2. The petitioner's wife is 61 years old and resides in the community.
3. Petitioner is receiving \$1477 in monthly Social Security income.
4. The petitioner's wife is currently employed. She is paid bi-weekly and provided four current paystubs to the Department as part of documents necessary for eligibility determination.
5. The petitioner's wife re-submitted the application as instructed and provided the necessary documents to the Department.
6. The Department used the petitioner's \$1477 Social Security check and the following paystubs provided by his wife as part of the eligibility determination process:
 - August 11, 2010, \$1239.38
 - August 25, 2010, \$1295.63
 - September 22, 2010, \$1258.13
 - October 06, 2010, \$1267.50
7. The Department determines the community spousal allowance by a budgeting procedure that considers shelter and utility expenses as well as the community spouse's income. The community spouse's income consists of \$1477 monthly Social

Security. Her monthly shelter and utility expenses were \$945.84 for mortgage, \$186 for condo maintenance and about \$204.27 for utility bills. The Department included the standard utility allowance of \$340 in its budget calculation. Total shelter costs considered by the Department were 1471.84. The Minimum Monthly Maintenance Income Allowance (MMMIA) was \$1822 effective January 2010, and is based on a federal law. (Respondent Composite Exhibit, p 6)

8. Thirty percent of the MMMIA (30% x 1822) or \$547 was deducted from the community spouse's shelter costs of \$1471.84 to determine an excess shelter cost of \$924.84. The excess shelter amount was then added to the MMMIA, $\$924.84 + \$1822 = \$2746.84$ to determine the amount of income the community spouse requires to cover shelter and utility expenses. From this figure, the community spouse's own income is deducted to determine how much of the petitioner's income is needed to meet the shelter and utility expenses, $\$2746.84 - \$2530.32 = \$208.68$; this amount is the spousal allowance. (Respondent Composite Exhibit, pp 12-13)

9. In addition to the aforementioned shelter expenses, the community spouse mentioned she incurs prescription expenses and other medical bills, but did not provide any documents as evidence.

10. The petitioner's wife requested an appeal on the above-cited matter and is seeking to increase the amount of his income the community spouse is allowed to keep. It is her position that she should be allowed to keep between \$600 and \$700 of his husband's Social Security check to pay household expenses.

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 Fla. Stat § 409.285. 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. It is the petitioner's wife position that she should be allowed to keep more of his income to pay household expenses.

15. Fla. Admin. Code 65A-1.712, *SSI-Related Medicaid Resource Eligibility Criteria*, states in part:

4) Spousal Impoverishment. The Department follows 42 U.S.C. § 1396r-5 for resource allocation and income attribution and protection when an institutionalized individual, including a hospice recipient residing in a nursing facility, has a community spouse. Spousal impoverishment policies are not applied to individuals applying for, or receiving, HCBS waiver services, except for individuals in the Long-Term Care Community Diversion Program, the Assisted Living Facility waiver or the Cystic Fibrosis waiver.

(a) When an institutionalized applicant has a community spouse all countable resources owned solely or jointly by the husband and wife are considered in determining eligibility.

(b) At the time of application only those countable resources which exceed the community spouse's resource allowance are considered available to the institutionalized spouse.

(c) The community spouse resource allowance is equal to the maximum resource allocation standard allowed under 42 U.S.C. § 1396r-5 or any court-ordered support, whichever is larger.

(d) After the institutionalized spouse is determined eligible, the Department allows deductions from the eligible spouse's income for the community spouse and other family members according to 42 U.S.C. § 1396r-5 and paragraph 65A-1.716(4)(c), F.A.C.

(e) If either spouse can verify that the community spouse resource allowance provides income that does not raise the community spouse's income to the State's minimum monthly maintenance income allowance (MMMIA), the resource allowance may be revised through the fair hearing process to an amount adequate to provide such additional income as determined by the hearing officer. Effective November 1, 2007 the hearing officers must consider all of the community spouse's income and all of the institutionalized spouse's income that could be made available to a community spouse. The hearing officers will base the revised community spouse resource allowance on the amount necessary to purchase a single premium lifetime annuity that would generate a monthly payment that would bring the spouse's income up to the MMMIA (adjusted to include any excess shelter costs). The community spouse does not have to actually purchase the annuity. The community spouse will have the opportunity to present convincing evidence to the hearing officer that a single premium lifetime annuity is not a viable method of protecting the necessary resources for the community spouse's income to be raised to the State's MMMIA. If the community spouse requests that the revised allowance not be based on the earnings of a single premium lifetime annuity, the community spouse must offer an alternative method for the hearing officer's consideration that will provide for protecting the minimum amount of assets required to raise the community spouse's income to the State's MMMIA during their lifetime.

(f) Either spouse may appeal the post-eligibility amount of the income allowance through the fair hearing process and the allowance may be adjusted by the hearing officer if the couple presents proof that exceptional circumstances resulting in significant inadequacy of the allowance to meet their needs exist. Exceptional circumstances that result in extreme financial duress include circumstances other than those taken into account in establishing maintenance standards for spouses. An example is when a community spouse incurs unavoidable expenses for medical, remedial and other support services which impact the community spouse's ability to maintain themselves in the community and in amounts that they could not be expected to be paid from amounts already recognized for maintenance and/or amounts held in resources. Effective November 1, 2007, the hearing officers must consider all of the community spouse's income and all of the institutionalized spouse's income that could be made available to a community spouse. If the expense causing exceptional circumstances is a temporary expense, the increased income allowance must be adjusted to remove the expenses when no longer needed.

(g) The institutionalized spouse shall not be determined ineligible based on a community spouse's resources if all of the following conditions are found to exist:

1. The institutionalized individual is not eligible for Medicaid institutional services because of the community spouse's resources and the

community spouse refuses to use the resources for the institutionalized spouse; and

2. The institutional spouse assigns to the State any rights to support from the community spouse by submitting the Assignment of Rights to Support, Form CF-ES 2504, PDF 10/2005 (incorporated by reference), signed by the institutionalized spouse or their representative; and

3. The institutionalized spouse would be eligible if only those resources to which they have access were counted; and

4. The institutionalized spouse has no other means to pay for the nursing home care.

16. Florida Administrative Code 65A-1.7141, SSI-Related Medicaid Post-Eligibility

Treatment of Income, states in part:

After an individual satisfies all non-financial and financial eligibility criteria for Hospice, institutional care services or Assisted Living waiver (ALW/HCBS), the department determines the amount of the individual's patient responsibility. This process is called "post eligibility treatment of income".

(1) For Hospice and institutional care services, the following deductions are applied to the individual's income to determine patient responsibility:

(a) Individuals residing in medical institutions shall have \$35 of their monthly income protected for their personal need allowance...

(d) The department applies the formula and policies in 42 U.S.C. section 1396r-5 to compute the community spouse income allowance after the institutionalized spouse is determined eligible for institutional care benefits. The standards used are found in subsection 65A-1.716(5), F.A.C. The current standard Food Stamp utility allowance is used to determine the community spouse's excess utility expenses...

(f) For ICP or institutionalized Hospice, income is protected for the month of admission and discharge, if the individual's income for that month is obligated to directly pay for their cost of food or shelter outside of the facility.

(g) Effective January 1, 2004, the department allows a deduction for the actual amount of health insurance premiums, deductibles, coinsurance charges and medical expenses, not subject to payment by a third party, incurred by a Medicaid recipient for programs involving post eligibility calculation of a patient responsibility, as authorized by the Medicaid State

Plan and in accordance with 42 CFR 435.725.

17. Florida Administrative Code 65A-1.716, Income and Resource Criteria, states in part:

(c) Spousal Impoverishment Standards...

2. State's Minimum Monthly Maintenance Income Allowance (MMMIA).

The minimum monthly income allowance the department recognizes for a community spouse is equal to 150 percent of the federal poverty level for a family of two.

3. Excess Shelter Expense Standard. The community spouse's shelter expenses must exceed 30 percent of the MMMIA to be considered excess shelter expenses to be included in the maximum income allowance: $MMMIA \times 30\% = \text{Excess Shelter Expense Standard}$. This standard changes July 1 of each year.

18. The above cited authorities set forth the rules and budgeting methodology for determining how much income the institutional spouse must pay the nursing facility as well as the spousal allowance in the ICP Medicaid Program. The petitioner's wife would like more of her husband's income to go to her, the community spouse, to pay the household expenses. The Department's representative explained that their budgeting methodology, as outlined in the Findings of Facts and in Respondent's Composite Exhibit 1, correctly reflects the budgeting methodology set forth in the above authorities in calculating the spousal allowance. However, Florida Administrative Code permits possible adjustment to this methodology and the resulting spousal allowance, if proof is presented of exceptional circumstances that result in financial duress and impact the spouse's ability to remain in the community. The petitioner argued that she has does not work overtime on a regular basis; that she has prescriptions and other medical expenses, but failed to provide any verifications. She explained that she is paying the

facility only \$500 monthly and that all she can afford. The Department's representative expressed her understanding of the wife's situation. However, she explained that she is mandated to follow the rules set forth.

19. The community spouse has her own monthly earned income of \$2530.32 plus \$1477 of the petitioner's income resulting in \$4007.32 total monthly income available to the community spouse. Her basic allowable expenses total \$1471.84; this total includes mortgage, condo maintenance a standard utility allowance. Were the asserted average actual monthly utility expense included in the budget, the spousal income of \$4007.32 exceeds the adjusted shelter and utility expenses of \$1471.84. After careful review, the undersigned finds the petitioner's wife did not meet her burden of proof in establishing that any additional funds should be diverted to her. Additionally, based on the Maintenance Need Allowance amount of \$208.68 calculated above, the patient responsibility (PR) amount of \$1233.32 monthly is also correct.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, 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.

FINAL ORDER (Cont.)

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

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