

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



APPEAL NO. 11F-01174

PETITIONER,

Vs.

CASE NO. 1248888359

FLORIDA DEPT OF
CHILDREN AND FAMILIES
CIRCUIT: 09 Osceola
UNIT: 88299

FILED
May 9, 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 at 11:04 a.m. on March 14, 2011.

APPEARANCES

For the Petitioner: [REDACTED] pro se

For the Respondent: Reginald Schofield, ACCESS supervisor

STATEMENT OF ISSUE

At issue is the inclusion of irrevocable trust money in the Institutional Care Program (ICP) patient responsibility.

PRELIMINARY STATEMENT

Petitioner is appealing the Department's action of October 29, 2010 approving ICP with \$794.08 monthly patient responsibility to [REDACTED] Health Care Center.

Testifying on behalf of the petitioner were [REDACTED], petitioner's mother, [REDACTED] Care Center, social worker and [REDACTED], [REDACTED] Care Center, business office manager.

FINDINGS OF FACT

1. On July 23, 2010 the petitioner was admitted into [REDACTED] Center, [REDACTED] Florida.
2. On October 29, 2010 the Department sent the petitioner a notice of case action notifying her ICP had been approved. The notice informed the petitioner effective August 2010 her patient responsibility to [REDACTED] Care Center was \$794.08 monthly (Respondent Exhibit 1).
3. Respondent Exhibit 1, page 6, shows a letter from [REDACTED] National Association (irrevocable trust administrator) dated August 10, 2010, stating during the last 12 months the petitioner received \$767.24 in income generated by the trust and \$2,233.80 annual fixed principal. The letter states the income amount results from a percentage that fluctuates year to year. The irrevocable trust was established on December 31, 1979.
4. The Department calculated the petitioner's ICP patient responsibility to [REDACTED] Health Care Center as follows:

\$186.15	\$2,233.80 divided by 12 months
\$ 63.93	\$767.24 divided by 12 months

\$579.00	social security disability
\$829.08	total monthly income
- \$35.00	minus personal needs allowance
\$794.08	patient responsibility

5. The Department was unaware of the frequency the petitioner received the \$2,233.80 and \$767.24 or if she received the money in one-time amounts when they approved ICP. Therefore, the Department's representative was willing to recalculate the patient responsibility to count the irrevocable trust money when received in one-time amounts instead of monthly, if that would help the petitioner. The Department's representative explained the irrevocable trust money had to be counted as income, either monthly or in one-time amounts.

6. The petitioner explained receiving the \$2,233.80 in a one-time amount in November and the \$767.24 quarterly.

7. The petitioner explained spending the \$2,233.80 helping her son and his family because their house burned down and to move her belongings out of the apartment she previously rented. She further explained spending the quarterly money on shoes for herself and miscellaneous items.

8. The petitioner stated that when she lived in New Hampshire she was allowed to spend her irrevocable trust money as she wanted as long as she provided proof on how the money was spent. She argued that the law in New Hampshire is the same law as in Florida.

9. The petitioner argued \$2,000 of the money she receives from the irrevocable trust should not be counted because she is allowed \$2,000 maximum in assets.

10. The Department's representative explained the irrevocable trust money is income not an asset. The representative quoted from the Department's policy manual, passage 164.0576.03, Trusts Set Up by Others; "Cash paid directly from the trust to the individual is unearned income" (Respondent Exhibit 1).

11. [REDACTED] the petitioner's mother testified that the irrevocable trust was established for her daughter to help her financially. [REDACTED] stated she cannot financially help her daughter pay [REDACTED].

12. On January 13, 2011 [REDACTED] sent the petitioner a letter notifying her of \$1,151 balance and requested payment within five days (Petitioner Exhibit 1). Statement of account from [REDACTED] Center dated February 28, 2011 shows \$2,185.16 owed by the petitioner (Petitioner Exhibit 1).

13. [REDACTED] social worker, testified the possibility of a facility discharge transfer notice issued to the petitioner if the balance owed is not paid.

14. The petitioner argued that she cannot pay [REDACTED] because she does not have the money. She further argued her \$794.08, patient responsibility, is more money than she receives from her irrevocable trust and can't understand how she is expected to pay.

15. The petitioner questioned the amount of money Medicaid paid [REDACTED]

[REDACTED]

17. [REDACTED] business office manager testified that in March 2011, Medicaid paid the facility \$5,128.83 on her behalf and the petitioner's responsibility was \$794.08.

CONCLUSIONS OF LAW

18. 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.

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

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

21. Fla. Admin. Code § 65A-1.702(15) in part states:

(15) Trusts...

(b) Funds transferred into a trust or other similar device established other than by a will prior to October 1, 1993 by the individual, a spouse or a legal representative are available resources if the trust is revocable or the trustee has any discretion over the distribution of the principal...

Any disbursements which can be made from the trust to the individual or to someone else on the individual's behalf shall be considered available income to the individual. Any language which limits the authority of a trustee to distribute funds from a trust if such distribution would disqualify an individual from participation in government programs, including Medicaid, shall be disregarded.

22. The above authority states any disbursements made from the trust to the individual shall be considered available income to the individual. Findings of Facts show the irrevocable trust was established on December 31, 1979.

23. Consistent with Fla. Admin. Code § 65A-1.702(15) Trusts, the Department's

ACCESS Florida Program Policy Manual 165-22 section 1640.0576.03 states:

Trusts Set Up By Others (MSSI, SFP)

For trusts that are established by someone other than the individual, the individual's spouse or representative, the trust must be evaluated according to these SSI policies:

1. If the individual does not have authority to revoke or direct use of the trust, it is not considered an asset to him. Conversely, if the individual has the authority to revoke or direct use of the trust, the corpus of the trust is considered an asset to him.
2. Cash paid directly from the trust to the individual is unearned income.
3. Disbursements made by the trustee directly to a third party are not considered income to the individual.

The above policies also apply to trusts established by a will, regardless of the relationship of the now deceased grantor to the individual.

24. The Department's representative was willing to work with the petitioner on recalculating the irrevocable trust income from monthly to at time of receipt.

25. The petitioner believes that \$2,000 of the irrevocable trust money should not be counted because of the \$2000 asset limit. She also believes New Hampshire law and Florida are the same and since New Hampshire did not count her irrevocable trust money as income Florida also should not. However, she presented no authority that supports her position.

26. The Findings of Fact show the money the petitioner receives from the irrevocable trust is available disposable income and she spends the money as she wishes.

27. Based on the cited authority and Findings of Fact, the undersigned concludes the Department was correct in including the irrevocable trust money as income in determination of the petitioner's patient responsibility to [REDACTED] Center.

DECISION

Based upon the foregoing Findings of Fact and Conclusions 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.

Priscilla Peterson
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