

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

[REDACTED]

APPEAL NO. 11F-8098

PETITIONER,

Vs.

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES

[REDACTED]

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on January 13th, 2012 at 8:37 a.m., in [REDACTED] Florida,

APPEARANCES

For the Petitioner: [REDACTED], the petitioner's son and representative.

For the Respondent: [REDACTED], Esquire, [REDACTED]
[REDACTED] for the Florida Department of Children and Families.

STATEMENT OF ISSUE

The petitioner is appealing the respondent's intention to seek and establish a Medicaid overpayment claim.

PRELIMINARY STATEMENT

The petitioner was present at the hearing but did not testify. Present, but not testifying was [REDACTED] the petitioner's daughter-in-law; [REDACTED] the petitioner's sister-in-law; and [REDACTED] the petitioner's wife.

Appearing as a witness for the respondent and testifying was [REDACTED], economic self-sufficiency specialist and custodian of record for the Benefit Recovery Program.

The hearing was originally scheduled for November 18th, 2011. On November 17th, 2011, the petitioner requested a continuance, which was granted. The hearing was rescheduled and convened as indicated above.

By way of a Notice of Overissuance dated August 1st, 2011, the respondent informed the petitioner that it had established a Medicaid overpayment claim, due to a client error, in the amount of \$26,377.67 for the period of July 2010 through November 2011. On the record, the respondent reclassified this overpayment as an agency error for reasons that are explained further herein.

By separate Notice of Overpayment, also dated August 1st, 2011, the respondent informed the petitioner that it had established a Medicaid overpayment claim, due to an agency error, in the amount of \$16,338.86, for the period of December 2010 through May 2011.

On October 13th, 2011, the petitioner timely filed an appeal to challenge these actions.

Prior to the hearing, the petitioner provided various documents, including a Petition for Relief for the petitioner and a Memorandum of Law in support thereof. At the hearing, these documents were entered as Petitioner's Composite Exhibit 1.

The respondent submitted into evidence Respondent's Exhibits 1 through 12 to support the actions taken by the Benefit Recovery Program.

FINDINGS OF FACT

1. The petitioner has been a recipient of Institutional Care Program (ICP) Medicaid benefits since at least June 2010.

2. The respondent explained that both overpayment claims were due to the fact that income received by the petitioner from the Teachers Retirement System, was not considered in determining his eligibility for ICP benefits. The respondent explained that inclusion of the income caused the petitioner's total income to exceed the income limit for one person.

3. The respondent explained that the overpayment of \$26,377.67, originally classified as a client error was due to the fact that on his application of July 23rd, 2010, the petitioner did not report the above-mentioned income. However, upon thorough review, the respondent discovered that although the income was omitted from the application, the petitioner had provided verification of the income for the case record during the application process. Therefore, the respondent concluded that the agency was made aware of this income, and accordingly, amended its records to reflect this overpayment as an agency error.

4. The petitioner applied for ICP Medicaid benefits on July 23rd, 2010. At the time of application, he was a resident of [REDACTED] where as of

June 23rd, 2010, he had been receiving long-term care services.

5. At the time of application, the petitioner's income was a Social Security check in the monthly amount of \$1,212.00, and a Teacher's Retirement pension in the monthly amount of \$1,030.05. The total income of \$2,245.05 exceeded the monthly income standard, which at that time was set at \$2,202.

6. The respondent explained that because the petitioner's monthly income exceeded the income limit, the petitioner should not have been deemed eligible to receive ICP Medicaid benefits unless a qualified income trust (QIT) was established for him, funded each month, and approved by the Department's Circuit Legal Counsel.

7. The respondent explained that because the petitioner's Teacher's Retirement pension was, by agency error, excluded from the budgeting process, the petitioner was erroneously found to be within the income limit. Therefore, the petitioner was approved for ICP Medicaid benefits and the issue of needing to establish a QIT did not arise.

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 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-1.701, "Definitions", states in part:

(26) Qualified Income Trust: A trust established on or after October 1, 1993, for the benefit of an individual whose income exceeds the ICP income standard and who needs institutional care or HCBS. The trust must consist of only the individual's pension, Social Security and other income. The trust must be irrevocable and provide that upon the death of that individual the State shall receive all amounts remaining in the trust up to an amount equal to the total amount of medical assistance paid on behalf of that individual pursuant to the state's Title XIX state plan.

12. Fla. Admin. Code 65A-1.702(15) "Trusts" in part states:

(a) The department applies trust provisions set forth in 42 U.S.C. § 1396p(d).

(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. Such funds are a transfer of a resource or income, if the trust is irrevocable and the trustee does not have discretion over distribution of the corpus or the client is not the beneficiary. No penalty can be imposed when the transfer occurs beyond the 36-month look back period. 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.

(c) Funds transferred into a trust, other than a trust specified in 42 U.S.C. § 1396p(d)(4), by a person or entity specified in 42 U.S.C. § 1396p(d)(2) on or after October 1, 1993 shall be considered available resources or income to the individual in accordance with 42 U.S.C. § 1396p(d)(3) if there are any circumstances under which disbursement of funds from the trust could be made to the individual or to someone else for the benefit of the individual. If no disbursement can be made to the individual or to someone else on behalf of the individual, the establishment of the trust shall be considered a transfer of resources or income.

13. Fla. Admin. Code 65A-1.713 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.

14. 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....

15. The petitioner's representative asserts that during both the period of overpayment and the present time, the petitioner's factors of eligibility, including his monthly income, did not change. He feels that since the petitioner would have been partially eligible during the period of overpayment, the petitioner should only be obligated to repay a portion of the overpayment, and not the entire amount.

16. After reviewing the testimony and evidence, the hearing officer finds that had the respondent correctly included income from the petitioner's Teacher's Retirement Pension during the application process of July 23rd, 2010, the respondent would have determined that the petitioner's total income exceeded the limit of \$2,022 for a one-person household. The petitioner would have then been required to establish a Qualified Income Trust, to be funded on a monthly basis as described above, in order to fully, as opposed to partially, meet the eligibility requirements. Because there was no QIT established in order to obtain possible eligibility for ICP benefits, the hearing officer concludes that an overpayment in the ICP Medicaid program, due to an agency error as

described above, has occurred. The regulations state that the Department shall take the necessary steps to recover the payments, irrespective of who committed the error. Therefore, the hearing officer affirms the respondent's action to establish both claims.

DECISION

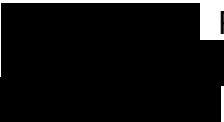
Based upon the foregoing Findings of Fact and Conclusions of Law, this appeal is DENIED.

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 _____, 2012,
in Tallahassee, Florida.

Justin Enfinger
Hearing Officer
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