

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

[REDACTED]

APPEAL NO. 11F-08721

PETITIONER,

Vs.

CASE NO. 1318623031

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

FILED  
Jan 05 2012  
OFFICE OF APPEAL HEARINGS  
DEPT. OF CHILDREN AND FAMILIES

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on November 30, 2011, at 11:30 a.m., in [REDACTED], Florida.

**APPEARANCES**

For the Petitioner [REDACTED] his son.

For the Respondent: [REDACTED], Florida access specialist

**STATEMENT OF ISSUE**

The petitioner is appealing the respondent's determination of his patient responsibility of \$3,373.00 in the Institutional Care Program.

**PRELIMINARY STATEMENT**

The respondent sent the petitioner a Notice of Case Action form dated November 1, 2011, stating that his patient responsibility in the Institutional Care Program is

\$3,373.00. The petitioner timely appealed the notice. Respondent presented one exhibit, which was accepted into evidence and marked as respondent's exhibit "1". Petitioner presented one exhibit, which was accepted into evidence and marked as petitioner's exhibit "1".

### **FINDINGS OF FACT**

Based on the documentary and oral evidence presented at the hearing, and on the entire record of this proceeding, the following Findings of Fact are made:

1. The petitioner is a resident of a nursing home in [REDACTED], Florida, and his patient responsibility in the Institutional Care Program is \$3,373.00.
2. The petitioner's gross monthly income is \$2,392.00 federal employee's compensation, \$432.00 federal employee's compensation annuity, and \$584.00 from Social Security, for a total of \$3,408.00.
3. Included in the petitioner's patient responsibility budget is his total gross monthly income of \$3,408.00, minus a personal need allowance of \$35.00, for a patient responsibility of \$3,373.00. This is the amount that he must pay the nursing facility each month for his Medicaid services.
4. The petitioner objects to using the petitioner's monthly gross income in the budget to determine the patient responsibility. The respondent's position is that it is correct to use the petitioner's monthly gross income in the budget, and \$3,373.00 is the correct patient responsibility amount.

### **CONCLUSIONS OF LAW**

5. 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.

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

7. The burden of proof is assigned to the petitioner pursuant to Fla. Admin. Code § 65-2.060(1).

8. The standard of proof needed to be met for an administrative hearing is by a preponderance of the evidence, as provided by Fla. Admin. Code § 65A-2.060(1).

9. In the Institutional Care Medicaid Program, in accordance with Fla. Admin. Code § 65A-1.713:

(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. In the Institutional Care Medicaid Program, in accordance with Fla. Admin. Code § 65A-1.714:

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.

11. The respondent determined for the petitioner a patient responsibility of \$3,373.00 in the Institutional Care Program.

12. The petitioner's gross monthly income is \$2,392.00 federal employee's compensation, \$432.00 federal employee's compensation annuity, and \$584.00 from Social Security, for a total of \$3,408.00.

13. Included in the petitioner's patient responsibility budget is his total gross monthly income of \$3,408.00 minus a personal need allowance of \$35.00, for a patient responsibility of \$3,373.00.

14. The petitioner's gross monthly income was correctly included in the patient responsibility budget, and after careful consideration, it is concluded that the respondent's determination is upheld.

### **DECISION**

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

FINAL ORDER (Cont.)

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DONE and ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2012,  
in Tallahassee, Florida.

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Copies Furnished To: [REDACTED] Petitioner

10 DPOES: [REDACTED]