

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

**FILED**

**JUL 18 2014**

OFFICE OF APPEAL HEARINGS  
DEPT OF CHILDREN & FAMILIES



APPEAL NO. 14F-02989

PETITIONER,

Vs.

CASE NO. 

FLORIDA DEPARTMENT OF  
CHILDREN AND FAMILIES  
CIRCUIT: 06 Pasco  
UNIT: 88262

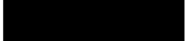
RESPONDENT.

---

**FINAL ORDER**

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on June 18, 2014 at 2:15 p.m., in Port Richey, Florida.

**APPEARANCES**

For the Petitioner:  petitioner's wife

For the Respondent: Elizabeth Thomas, economic self-sufficiency senior human services program specialist

**STATEMENT OF ISSUE**

The petitioner is appealing the respondent's denial of Medicaid, enrollment in the Medically Needy Program and the monthly share of cost.

**PRELIMINARY STATEMENT**

On March 17, 2014, the petitioner timely requested a hearing.

The petitioner presented two exhibits which was accepted into evidence and marked as Petitioner Exhibit "1" and "2", respectively. The respondent presented eight exhibits which were accepted into evidence and marked as Respondent Exhibits "1" through "8" respectively. The record was left open for the respondent to submit additional evidence. On June 23, 2014, the respondent presented 15 exhibits which were accepted into evidence and marked as Respondent Exhibits "9" through "23" respectively. On June 23, 2014, the record closed.

**FINDINGS OF FACT**

1. Social Security determined the petitioner disabled. The petitioner received Supplemental Security Income (SSI). As he was receiving SSI benefits, he was categorically eligible for SSI-Related Medicaid Program benefits. In February 2013, Social Security terminated the petitioner's SSI benefits due to his wife's income exceeding the income limit for the petitioner to be financially eligible for SSI benefits. As the petitioner was no longer eligible for SSI benefits, he was no longer categorically eligible for SSI-Related Medicaid Program benefits. The petitioner has not applied for Medicare.

2. On February 26, 2013, the petitioner applied for Medicaid Program benefits for himself. The respondent sent the petitioner a Notice of Case Action informing the petitioner he was enrolled the petitioner in a Medicaid Medically Needy Program benefits effective February 2013.

3. The Florida Medicaid Management Information System (FMMIS) indicated the petitioner's Medicaid Medically Needy Program benefits began May 2013. The respondent asserted that the petitioner would have been eligible for continued SSI-Related Medicaid Program benefits for March 2013 and April 2013.

4. On August 12, 2013, an application was filed on behalf of the petitioner. The respondent approved full Medicaid Program benefits for August 2013, and enrolled the petitioner in a Medicaid Medically Needy Program benefits effective September 2013.

5. On December 17, 2013, the respondent sent the petitioner a Notice of Eligibility Review. On January 9, 2014, the respondent sent the petitioner a Notice of Case Action informing his Medicaid Medically Needy Program benefits would terminate on January 31, 2014.

6. On February 13, 2014, the petitioner's wife reapplied for Medicaid Program benefits for the petitioner. On the application, she indicated the only household income was her earned income, and she was paid \$1,800 bi-weekly.

7. The respondent reviewed the application. As the petitioner was the only disabled individual and he did not have any children of his own under the age of 21 living in his home, the respondent considered him to be a disabled assistance group of one. The respondent used computer match information with Social Security to verify that the petitioner did not receive any Social Security benefits or SSI benefits. The respondent used the income information provided by the petitioner's wife to determine the amount of household income and the petitioner's eligibility for any category of Medicaid Program benefits. The respondent multiplied the wife's bi-monthly income of \$1,800 by two for a monthly gross household income of \$3,600. As the income limit for

full Medicaid Program benefits for a household of two was \$1,156, the respondent determined that the household's gross monthly household income of \$3,600 exceeded the eligibility limits for the petitioner to be eligible for full Medicaid Program benefits.

8. The respondent determined that the petitioner was eligible for enrollment in the Medicaid Medically Needy Program. As an individual can be enrolled in the Medicaid Medically Needy Program based on an estimated share of cost based on reported income, the respondent used the information provided by the petitioner's wife on the application to determine the petitioner's estimated share of cost. Using the monthly gross household income of \$3,600, the respondent determined after a \$20 disregard, a \$65 earned income deduction, a 50% remaining earned income deduction, and a \$241 Medically Needy Income Level (MNIL) deduction, the estimated monthly share of cost would be \$1,516. On March 17, 2014, the respondent sent the petitioner a Notice of Case Action. The notice informed the petitioner that he was enrolled in a Medicaid Medically Needy Program effective March 2014.

9. The petitioner's wife reported to the respondent that her income fluctuated. She submitted her paystubs. The respondent used the gross income from the last two bi-weekly pays. Using the same deductions, the respondent determined the petitioner's share of cost would be \$1,447 effective June 2014.

10. The petitioner's wife asserted as follows. The petitioner has been disabled since 1994. All she wants is medical coverage for the petitioner. He needs to see a psychologist and his primary care doctor. His medication is about \$1,000 a month. She cannot afford to pay for all his medical expenses and her expenses on what she earns. At the hearing, she submitted her bi-weekly paystubs with a gross income of \$1,873.71

for February 12, 2014, \$1,879.57 for February 26, 2014, and \$1,783.04 for March 12, 2014.

11. The total of last two biweekly pays would be a monthly gross household income of \$3,662.61.

12. The respondent suggested that the petitioner apply for Medicare, as he has been determined disabled more than two years ago.

### **CONCLUSIONS OF LAW**

13. 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.

14. This proceeding is a de novo proceeding pursuant to Fl. Admin. Code R. 65-2.056.

15. In accordance with Fl. Admin. Code R. 65-2.060(1), the burden of proof was assigned to the respondent.

16. The full disability-related Medicaid category under the MEDS-AD is described in the Florida Administrative Code Rule at 65A-1.701

(20) MEDS-AD Demonstration Waiver: Medicaid coverage group for aged or disabled individuals who meet all SSI-related Medicaid non-financial eligibility criteria, whose resources do not exceed the limit in the Medically Needy Program, whose income is at or below 88 percent of the federal poverty level and are not receiving Medicare...

17. Income budgeting for MEDS-AD is set forth in Fla. Admin. Code R. 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:

(a) For MEDS-AD Demonstration Waiver, income cannot exceed 88 percent of the federal poverty level after application of exclusions specified in subsection 65A-1.713(2), F.A.C.

(2) Included and Excluded Income. For all SSI-related coverage groups the department follows the SSI policy specified in 20 C.F.R. 416.1100, et seq...

(4) Income Budgeting Methodologies. To determine eligibility SSI budgeting methodologies are applied except where expressly prohibited by 42 U.S.C. §1396, or another less restrictive option is elected by the state under 42 U.S.C. §1396a(r)(2)...

18. The Fla. Admin. Code R. 65A-1.716, Income and Resource Criteria, sets forth:

(1) The monthly federal poverty level figures based on the size of the filing unit are as follows...size one...\$843...size two...\$1,138...

(2) Medicaid income and payment eligibility standards and Medically Needy income levels are by family size as follows...Family Size...2...Monthly Income Level...\$241...

19. The ACCESS Program Policy Manual at passage 2240.0610, Couple/One Requests Medicaid (MSSI), sets forth:

If an individual is living with their spouse and only one is requesting or receiving Medicaid (or the spouse does not meet the technical criteria for the program), the income and assets must be deemed from the spouse who is not requesting assistance (or who does not meet the technical criteria). If there is not enough income to be deemed, the income standard for one is used. If there is enough income to deem, the individual must first pass the individual test for one. If they pass the individual income test, they must also pass the couple standard using deemed income from the spouse.

20. The maximum income for MEDS-AD is 88 percent of the federal poverty level. The ACCESS Program Policy Manual as Appendix A-9 indicated that 88 percent of the poverty level for an assistance group of one was \$843 and increased to \$856

effective January 2014. For an assistance group of two, 88 percent of the poverty level was \$1,138 in April 2013, and increased to \$1,156 effective January 2014.

21. The hearing officer did consider the petitioner's wife's testimony that petitioner is disabled, he needs medical attention, and she does not have the funds to pay his medical bills. The petitioner did pass the individual test for a disabled household of one. The petitioner must also pass the couple income test. The rule indicates that full Medicaid Program benefits are based on monthly gross household income. Based on the February 13, 2014 application, the household's monthly gross income of \$3,662.61 exceeds the income limits for a couple of \$1,156 for the petitioner to be eligible for full Medicaid Program. A review of the rules and regulations did not find any exception to meeting the income limits for the Program. It is concluded that the respondent's action to deny the petitioner full Medicaid Program benefits was within the rules of the Program.

22. The petitioner is eligible for enrollment in a Medicaid Medically Needy Program with a share of cost. The income calculation for Medically Needy Program benefits is set forth in the Fl. Admin. Code R. 65A-1.713: "(h) For Medically Needy, income must be less than or equal to the Medically Needy income standard after deduction of allowable medical expenses."

23. The ACCESS Program Policy Manual at passage 2440.0102, Medically Needy Income Limits (MSSI) states:

When the assistance group has met the technical eligibility criteria and the asset limits, it is enrolled. There is no income limit for enrollment. The assistance group is income eligible (entitled to Medicaid) once income is less than or equal to the Medically Needy Income Level (MNIL) or medical bills equal the amount by which his income exceeds the MNIL. Once

medical bills are equal to this surplus income, referred to as share of cost, the assistance group is eligible.

The eligibility specialist must determine eligibility for Medically Needy any time the assistance group's income exceeds the income limits for another full Medicaid Program...

24. The methods of determining the share of cost is set forth in the Fla. Admin.

Code R. 65A-1.713:

(c) Medically Needy. The amount by which the individual's income exceeds the Medically Needy income level, called the "share of cost", shall be considered available for payment of medical care and services. The department computes available income for each month eligibility is requested to determine the amount of excess countable income available to meet medical costs...

25. Federal Regulations at 20 C.F.R. § 416.1124 (c) (12), Unearned Income we do not count, states in part, "The first \$20 of any unearned income in a month..."

26. The determination of the share of cost is the gross income, less the Medically Needy Income Level of \$241, a \$20 standard deduction, a \$65 unearned income, one-half of the remaining balance, and any medical insurance deduction. The petitioner did not indicate that he was paying any medical insurance. A review of the rules and regulations did not find any exception to this formula. It is concluded that the petitioner's estimated share of cost was \$1,516 a month effective February 2014 and was \$1,447 a month effective April 2014. It is concluded that the respondent's actions to enroll the petitioner in a Medicaid Medically Needy Program and determine an estimated share of cost were within the rules of the Program.

### **DECISION**

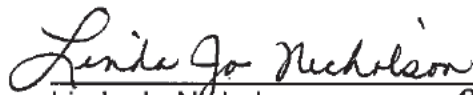
Based upon the foregoing Findings of Fact and Conclusion of Law, the appeal is denied.



**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 petitioner is responsible for any financial obligations incurred as the Department has no funds to assist in this review.

DONE and ORDERED this 18<sup>th</sup> day of July, 2014,  
in Tallahassee, Florida.

  
\_\_\_\_\_  
Linda Jo Nicholson *mr*

Hearing Officer  
Building 5, Room 255  
1317 Winewood Boulevard  
Tallahassee, FL 32399-0700  
Office: 850-488-1429  
Fax: 850-487-0662  
Email: Appeal\_Hearings@dcf.state.fl.us

Copies Furnished To: [REDACTED] Petitioner  
Ben F. Shirley, Jr., Suncoast Region