

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

**FILED**

**FEB 09 2015**

OFFICE OF APPEAL HEARINGS  
DEPT OF CHILDREN & FAMILIES



PETITIONER,

APPEAL NO. 14F-08809

Vs.

CASE NO. 


FLORIDA DEPT OF  
CHILDREN AND FAMILIES  
CIRCUIT: 07 Volusia  
UNIT: 88328

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on November 20, 2014 at 2:15 p.m. The hearing reconvened on December 18, 2014 at 11:30 a.m.

APPEARANCES

For the Petitioner:  pro se

For the Respondent: Ernestine Bethune, Economic Self-Sufficiency Specialist II

STATEMENT OF ISSUE

Petitioner is appealing the Department's action to enroll her in the Medically Needy Program as she is seeking full Medicaid benefits.

PRELIMINARY STATEMENT

By notice dated October 14, 2014, the respondent notified the petitioner that she was enrolled in the Medically Needy Program effective September 1, 2014 with a Share

of Cost (SOC) of \$814.00. The petitioner timely requested this administrative hearing to challenge the respondent's action.

Matthew Lynn, Economic Self-Sufficiency Specialist II, appeared as an observer.

The petitioner submitted one exhibit which was accepted into evidence and marked as Petitioner Exhibit "1." The respondent submitted five exhibits, which were accepted into evidence and marked as Respondent Exhibits "1" through "5" respectively. The record was held open until December 22, 2014 for the respondent to supplement the record. The respondent timely provided the additional information, which was accepted into evidence and marked as Respondent Exhibits "6" through "8" respectively. The record closed on December 22, 2014.

#### **FINDINGS OF FACT**

1. For eligibility purposes, the petitioner's household includes the petitioner (56) only.
2. On September 29, 2014, the petitioner submitted an online application to add Medicaid benefits to her Food Assistance Program (FAP) case. The only issue under appeal is the enrollment in the Medically Needy Program instead of approval for full Medicaid.
3. The petitioner is disabled and was receiving Supplemental Security Income (SSI) benefits along with full Medicaid benefits from March 1, 2014 through September 30, 2014. On July 1, 2014, the petitioner began receiving \$1,014.00 per month in Social Security Disability Benefits (SSDI). On January 1, 2015, the petitioner's SSDI benefits increased to \$1,031.00 per month.
4. The income limit for an aged/disabled individual to receive full Medicaid is \$856.00. Effective January 2015, the income limit increased to \$871.00. The petitioner's

income exceeds these amounts; therefore, the respondent enrolled her in the Medically Needy Program. The respondent calculated her \$814.00 SOC by subtracting a \$20.00 unearned income disregard and the Medically Needy Income Level (MNIL) of \$180.00 for a household of one from her SSDI benefits ( $\$1,014.00 - \$20.00 - \$180.00 = \$814.00$ ).

5. Effective January 1, 2015, the petitioner's monthly SOC increased from \$814.00 to \$831.00. The respondent calculated her \$831.00 SOC by subtracting a \$20.00 unearned income disregard and the MNIL of \$180.00 for a household of one from her SSDI benefits ( $\$1,031.00 - \$20.00 - \$180.00 = \$831.00$ ).
6. The petitioner pays \$125.00 per month for a doctor visit and \$8.00 per month for her prescriptions, for a total of \$133.00 per month in recurring medical expenses. She asserted these monthly out of pocket medical expenses should be counted to lower her SOC.
7. The respondent concurred that if the petitioner provided verification of her monthly recurring medical expenses, these could be included to reduce her SOC.
8. Both parties agreed to reconvene to allow the petitioner time to provide this verification, and for the respondent to review her case and adjust her SOC accordingly.
9. At the reconvene hearing, the respondent explained that the petitioner's \$125.00 monthly doctor visit payment was included in her case but it did not cause a change in her SOC.

10. The respondent informed the petitioner how the Medically Needy Program works and advised her to provide her unpaid medical bills every month so they can determine if she meets her SOC.

11. The petitioner expressed concern that she will not be able to meet her SOC every month because the amount is so high. She asserted she needs full Medicaid or a lower SOC in order to get the medical care she needs.

### CONCLUSIONS OF LAW

12. 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 § 409.285, Fla. Stat.

13. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code R. 65-2.056.

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

15. Fla. Admin. Code R. 65A-1.710, SSI-Related Medicaid Coverage Groups, states in part:

...  
(5) Medically Needy Program. A Medicaid coverage group, as allowed by 42 U.S.C. §§ 1396a and 1396d, for aged, blind or disabled individuals (or couples) who do not qualify for categorical assistance due to their level of income or resources. The program does not cover nursing facility care, intermediate care for the developmentally disabled services, or other long-term care services.

16. Fla. Admin. Code R. 65A-1.713 defines the income limits for SSI - Related Medicaid programs:

(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.

(h) For Medically Needy, income must be less than or equal to the Medically Needy income standard after deduction of allowable medical expenses.

17. The ACCESS Florida Program Manual at 2640.0500, Share of Cost (MSSI) sets forth:

The eligibility specialist must determine eligibility for Medically Needy any time the assistance group's assets and/or income exceeds the appropriate categorical asset/income limits. The eligibility specialist determines whether the assistance group's assets are within the Medically Needy asset limits and whether the assistance group members meet the technical factors. If the Medically Needy asset limit is met and the assistance group meets all technical factors, the eligibility specialist determines the amount of countable income and computes a budget using the MNIL which is the same for both family and SSI-Related Medicaid coverage groups (refer to Appendix A-7).

If income is equal to or less than the MNIL, there is no share of cost and the individual is eligible. Medicaid is authorized for individuals who are eligible without a share of cost.

If income is greater than the MNIL, share of cost is determined for appropriate members. Appropriate members are enrolled but cannot be eligible until the share of cost is met.

18. The Code of Federal Regulations 20 C.F.R. § 416.1124 defines unearned income that is not counted in SSI – Related Medicaid programs:

(C)(12) The first \$20 of any unearned income in a month other than income in the form of in-kind support and maintenance received in the household of another (see §416.1131) and income based on need. Income based on need is a benefit that uses financial need as measured by your income as a factor to determine your eligibility.

19. The Code of Federal Regulations 42 C.F.R. § 436.831 outlines Medically Needy

income eligibility and how to determine countable income as follows:

The agency must determine income eligibility of medically needy individuals in accordance with this section.

...  
(b) Determining countable income. The agency must, to determine countable income, deduct amounts that would be deducted in determining eligibility under the State's approved plan for OAA, AFDC, AB, APTD, or AABD.

(c) Eligibility based on countable income. If countable income determined under paragraph (b) of this section is equal to or less than the applicable income standard under § 436.814, the individual is eligible for Medicaid.

(d) **Deduction of incurred medical expenses. If countable income exceeds the income standard, the agency must deduct from income medical expenses incurred by the individual...that are not subject to payment by a third party.** [emphasis added]

(e) Determination of deductible incurred expenses: Subject to the provisions of paragraph (g) of this section, in determining incurred medical expenses to be deducted from income, the agency must include the following:

...  
(1) Expenses for Medicare and other health insurance premiums...

(2) **Expenses incurred by the individual...for necessary medical and remedial services that are recognized under State law but not included in the plan;** [emphasis added]

20. Fla. Admin. Code R. 65A-1.713 sets forth the Income Budgeting Methodologies for the Medically Needy Program:

...  
(C) Medically Needy. The amount by which the individual's countable 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.

21. The ACCESS Florida Program Policy Manual Appendix A-9 shows the Eligibility Standards for the following relevant SSI – Related Medicaid Programs:

Coverage Group	Income Limit
MEDS-AD/ICP- MEDS/Individual (88% FPL)	\$856 \$871 (effective January 2015)

22. The SSI-Related Programs – Financial Eligibility Standards show the Medically Needy Income Level (MNIL) for an individual is \$180.00.

23. The authority cited sets forth the income limits for full Medicaid as well as the rules for enrollment and budgeting methodologies for the Medically Needy Program. As the petitioner's countable unearned income of \$1,011.00 (total unearned income of \$1,031.00 per month minus the \$20.00 unearned income disregard) exceeds the income limit for full Medicaid (\$871.00), the respondent correctly evaluated the petitioner for the Medically Needy Program. However, according to the above cited authorities any medical expenses incurred by the individual must be deducted from the countable income to determine the SOC. The undersigned finds that the petitioner's \$125.00 recurring medical expense must be deducted from her current \$831.00 SOC to leave her with a remaining SOC of \$706.00 (\$831.00 - \$125.00). The petitioner has no health insurance premium to further reduce her SOC.

24. After careful review of the evidence and controlling legal authorities, the undersigned concludes the respondent incorrectly calculated the petitioner's SOC amount by not deducting her recurring medical expenses. The Department is ordered to deduct the petitioner's \$125.00 monthly medical expense from her countable income and reduce her SOC to \$706.00.

**DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is partially denied and partially granted as follows:

The appeal concerning the respondent's action to deny the petitioner for full Medicaid benefits is denied.

The appeal concerning the petitioner's SOC amount is granted and the Department is ordered to take corrective action as specified in the Conclusions of Law.

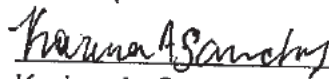


**NOTICE OF RIGHT TO APPEAL**

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 2<sup>nd</sup> day of February, 2015,

in Tallahassee, Florida.



Karina A. Sanchez

Hearing Officer

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