

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

FILED
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OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

[REDACTED]
PETITIONER,

APPEAL NO. 14F-09245
APPEAL NO. 15F-01071

Vs.

CASE NO. [REDACTED]

FLORIDA DEPT OF CHILDREN AND FAMILIES
CIRCUIT: 15 Palm Beach
UNIT: 88623

RESPONDENT.
_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on December 11, 2014, at 9:15 a.m.

APPEARANCES

For the Petitioners: [REDACTED] pro se.

For the Respondent: Shirley Stringer, Economic Self Sufficiency Specialist

Supervisor, Department of Children and Families (DCF).

STATEMENT OF ISSUE

1. At issue is the Department's action to enroll [REDACTED] in the SSI-Related Medically Needy Program with a share of cost, as opposed to receiving full Medicaid benefits (14F-09245).

2. At issue is the Department's action to deny [REDACTED] ("petitioner's husband") application for SSI-Related Medicaid benefits on the basis that he did not meet the disability requirements of the program (15F-01071).

PRELIMINARY STATEMENT

This hearing was held to address two separate appeals for the above-captioned petitioners. For purposes of efficiency, both appeals were consolidated into one hearing.

The respondent submitted into evidence, Respondent Composite Exhibit 1. The petitioner submitted into evidence, Petitioner Composite Exhibit 1.

The record was left open for seven additional days for the petitioner to submit additional information. The petitioner requested and was granted an additional seven days, a total of fourteen days, for the record to be left open. However, no additional information was submitted within the time frame allotted.

FINDINGS OF FACT

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

I. GENERAL FACTS FOR BOTH PETITIONERS

1. The petitioners are husband and wife and reside in the same household. The petitioners filed an application for Medicaid with the Department on July 3, 2014. The application indicates the husband's adult daughter also lives in the home, see Respondent Composite Exhibit 1. The daughter is not considered a factor for eligibility in either case.

II. FACTS SPECIFIC TO [REDACTED]

2. The petitioner was recently found to be disabled by DDD (the Division of Disability Determinations).

3. For the share of cost issue, the petitioner's husband had been receiving \$2,071.43 per month in disability benefits from his former employment, not from the Social Security Administration (SSA). The petitioner testified her husband's disability benefits have since increased. The Department submitted, as part of Respondent Composite Exhibit 1, a "Medicaid Determination" printout that indicates the petitioner's total monthly unearned income as \$2,071.43.

4. In determining eligibility, the respondent subtracted the \$20 disregard from \$2,071.43 to arrive at the petitioner's countable unearned income amount of \$2,051.43. This is also considered the petitioner's total countable income. Next, the respondent subtracted the medically needy income limit (MNIL) of \$241 (for a household of two individuals) from \$2,051.43 to arrive at the estimated share of cost amount of \$1,810. This is also considered the remaining share of cost amount. On October 22, 2014, the Department issued a notice advising the petitioner of her share of cost amount.

5. Petitioner Composite Exhibit 1 consists of copies of the husband's income documents. These documents contain information the Department relied on for determining the petitioner's household income and includes a document dated October 10, 2014 that indicates the monthly income for the petitioner's husband is \$3,277.04.

6. The petitioner argued that she explored the income rules that apply to the Social Security Administration and the IRS. She indicated that she understands that the

IRS does not count disability type income and that Social Security excludes three thousand dollars of disability type income. She argued that the Department is incorrectly including her husband's income in its determination process.

7. The respondent argued that the Department has correctly included the petitioner's household income to calculate the SSI-Related Medically Needy share of cost.

III. FACTS SPECIFIC TO [REDACTED]

8. As the petitioner's husband is not sixty-five years of age and is fifty years of age, his application was forwarded to DDD for disability consideration.

9. The petitioner's husband submitted an application with the Social Security Administration in July 2014. His application was denied on October 7, 2014 with a decision code of N31. N31 means he has the capacity for substantial gainful activity, specifically customary past work. Respondent indicated a denial notice was sent to the petitioner; however, no notice describing the matter under appeal was submitted into evidence. The petitioner requested an appeal to challenge the respondent's action on October 27, 2014. Absent any evidence to the contrary, the request is treated as if timely filed.

10. At the hearing, the petitioner did not allege a new condition for her husband but asserted SSA did not review her husband's actual medical conditions. No information was submitted to corroborate this.

11. Respondent explained the Department adopted the SSA denial and is bound by that decision.

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 § 409.285, Fla. Stat. 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 petitioners.

15. Federal Regulations at 42 C.F.R. § 435.500 sets forth the requirements for determining the eligibility of both categorically and medically needy individuals. 42 C.F.R. § 435.520 states, "[t]he agency must not impose an age requirement of more than 65 years." The regulation continues at 42 C.F.R. § 435.541 to define disability as either determined by the Social Security Administration (SSA) or the Medicaid Agency.

16. For the SSI-Related Medicaid programs, an individual must be either aged, 65 or older, or determined disabled by the SSA or the Department. In accordance with the above cited regulation, the Department determined Medicaid eligibility for petitioner and approved her for SSI-Related Medically Needy Program benefits.

17. The Department follows SSI policy specified in 20 C.F.R. § 416.1100 et seq. in determining included and excluded income for SSI-Related Coverage Groups. See Fla. Admin. Code R. 65A-1.713(2).

18. Federal Regulations at 20 C.F.R. § 416.1123 defines how unearned income is counted and states in relevant part:

(a) When we count unearned income. We count unearned income at the earliest of the following points: when you receive it or when it is credited to your account or set aside for your use. We determine your unearned income for each month. We describe exceptions to the rule on how we count unearned income in paragraphs (d), (e) and (f) of this section.

19. Federal Regulations at 20 C.F.R. § 416.1121 sets standards for which types of unearned income are counted and states in relevant part:

Types of unearned income.
Some types of unearned income are—

(a) Annuities, pensions, and other periodic payments. This unearned income is usually related to prior work or service. It includes, for example, private pensions, social security benefits, **disability benefits**, veterans benefits, worker's compensation, railroad retirement annuities and unemployment insurance benefits [emphasis added].

20. Federal Regulations at 20 C.F.R. § 416.1160 discusses deeming of income and states in relevant part:

What is deeming of income?

(a) General. We use the term deeming to identify the process of considering another person's income to be your own. When the deeming rules apply, it does not matter whether the income of the other person is actually available to you. We must apply these rules anyway. There are four categories of individuals whose income may be deemed to you.

(1) Ineligible spouse. If you live in the same household with your ineligible spouse, we look at your spouse's income to decide whether we must deem some of it to you. We do this because we expect your spouse to use some of his or her income to take care of some of your needs.

21. Fla. Admin. Code R. 65A-1.701, Definitions, states:

(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 or if receiving Medicare are also eligible for Medicaid covered institutional care services, hospice services or home and community based services...

22. The above authority explains that the MEDS-AD (full Medicaid for an aged or disabled person) has an income limit of 88% of the federal poverty level (\$843 individual/ \$1,138 couple) prior to January 1, 2014 and (\$856 individual/ \$1,154 couple) effective July 2014, according to the Department's ACCESS Florida Policy Manual, Appendix A-9. The petitioner's monthly household unearned income of \$2,051.43 exceeds the eligibility standard amount for full Medicaid benefits.

23. The Medically Needy Program provides coverage for individuals who meet the technical requirements for Medicaid but whose income or assets exceed the income limits.

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

The department covers all mandatory coverage groups and the following optional coverage groups:

(1) MEDS-AD Demonstration Waiver. A coverage group for aged and disabled individuals (or couples), as provided in 42 U.S.C. § 1396a(m)...(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.

25. The above authority sets forth that this coverage is for individuals who are not receiving Medicare or if receiving Medicare, are also eligible for Medicaid covered

institutional care services, hospice services or home and community based services.

The program is available for aged or disabled individuals or eligible couples who do not qualify for the MEDS-AD Program. Share of cost represents the amount of recognized medical expenses that a Medically Needy enrolled individual or family must incur each month before becoming eligible to receive Medicaid benefits. See Fla. Admin. Code R. 65A-1701.

26. Fla. Admin. Code R. 65A-1.716 (2), Income and Resource Criteria, sets forth the MNIL for a couple at \$241.

27. Federal regulations at 20 C.F.R. § 416.1124 (c)(12), Unearned income we do not count, states "the first \$20 of any unearned income in a month. ..."

28. The above authorities explain the budgeting procedure to determine the share of cost. The countable income is reduced by a standard deduction (\$20) less the MNIL for an assistance group size of two which is \$241. The Department followed this procedure and determined the petitioner's share of cost at \$1,810.

29. Based on the evidence, regulations and rules noted above, the hearing officer finds the Department has properly determined the petitioner's SSI related share of cost at \$1,810.

30. In accordance with the Federal Regulations at 42 C.F.R. § 435.541:

(a) *Determinations made by SSA.* The following rules and those under paragraph (b) of this section apply where an individual has applied for Medicaid on the basis of disability...(2) The agency may not make an independent determination of disability if SSA has made a disability determination within the time limits set forth in §435.911 on the same issue presented in the Medicaid application. A determination of eligibility for SSI payments based on disability that is made by SSA automatically confers Medicaid eligibility...(b)(i) An SSA disability determination is

binding on an agency until the determination is changed by SSA... (2) The agency must refer to SSA all applicants who allege new information or evidence affecting previous SSA determinations of ineligibility based upon disability for reconsideration or reopening of the determination (c) *Determination made by the Medicaid agency.* The agency must make a determination of disability in accordance with the requirements of this section if any of the following circumstances exist...(4) The individual applies for Medicaid as a non-cash recipient, whether or not the State has a section 1634 agreement with SSA, and...(i) Alleges a disability condition different from, or in addition to, that considered by SSA in making its determination...

31. As shown in the Findings of Fact, the Department denied the petitioner's husband's application for SSI-Related Medicaid benefit on the basis that he did not meet the disability requirements of the program. DDD adopted the Social Security Administration decision. The petitioner did not allege a new condition not previously considered by the Social Security Administration.

32. The petitioner's husband's was denied by the Social Security Administration and he has appealed that decision. As noted in the above cited Regulation, "[a]n SSA disability determination is binding on an agency until the determination is changed by SSA....The agency must refer to SSA all applicants who allege new information or evidence affecting previous SSA determinations." Thus, the petitioner's husband must continue his appeal with the Social Security Administration as their decision is binding on the Department and cannot be overturned by this hearing officer.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, both appeals are 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 petitioner is responsible for any financial obligations incurred as the Department has no funds to assist in this review.

DONE and ORDERED this 9th day of February, 2015,

in Tallahassee, Florida.

Robert Akel

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