

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

FILED

APR 09 2014

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES



APPEAL NO. 14F-00925

PETITIONER,

Vs.

CASE NO. 

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 17 Broward
UNIT: 88083

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned telephonically convened an administrative hearing in the above-referenced matter at 9:00 a.m. on March 5, 2014.

APPEARANCES

For the Petitioner:  pro se

For the Respondent: Debbie Ellis, ESSSII Senior Worker Access

STATEMENT OF ISSUE

At issue is the Department's action to enroll petitioner in the Medically Needy Program with a Share of Cost (SOC).

PRELIMINARY STATEMENT

By notice dated December 31, 2013, the respondent notified petitioner he was enrolled in the Medically Needy Program with an estimated \$1261 SOC, effective

December 2013 and \$1282 effective January 2014 and ongoing. Petitioner timely requested a hearing to challenge the Medically Needy Share of Cost amount.

Susan Dixon, of the Office of Appeal Hearings, appeared as an observer. Petitioner submitted nine exhibits into evidence, entered as Petitioner Exhibits "1" through "9". Respondent submitted four exhibits during the hearing, entered as Respondent Exhibits "1" through "4". The record was left open until March 14, 2014. The respondent submitted an additional three exhibits entered as Exhibits "5" through "7".

FINDINGS OF FACT

1. The petitioner submitted an application for SSI-related Medicaid on November 25, 2013.
2. The petitioner is 47 years old. As part of the eligibility determination process for Medicaid benefits, the Department must consider the petitioner's income.
3. The notice of case action was issued on December 31, 2013 stating the petitioner was enrolled in the Medically Needy Program with a SOC of \$1261.
4. The petitioner receives a monthly Social Security Disability (SSDI) check of \$1461 for November and December 2013 and \$1482 for January and ongoing 2014. This income began October 2012. The Department takes the gross income and subtracts an allowable \$20 unearned disregard. From the remainder, the Department then subtracts the \$180 Medically Needy income level (MNIL) for an individual. The balance of \$1261 is the share of cost for November and December 2013 and \$1282 for January 2014 and ongoing.

5. Respondent determined petitioner was not eligible for full Medicaid because his gross income of \$1,461 SSDI in November and December 2013 and \$1482 in January 2014 exceeds the \$843 Medicaid income limit.

6. Petitioner does not dispute the amount of income included in the Department's budget. However, the petitioner states that \$216 is being deducted from his Social Security income due to an IRS levy. Petitioner also has a deduction due to court-ordered restitution.

7. The petitioner believes the share of cost amount is too high.

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 § 409.285, Fla. Stat. This order is the final administrative decision of the Department of Children and Families under Fla. Stat. § 409.285.

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

10. The burden of proof is assigned to the petitioner in accordance with Fla. Admin. Code R. 65-2.060 (1).

11. The Department publishes Medicaid income limits for the SSI-related programs annually based on the Federal Poverty Levels in its Policy Program Manual, 165-22, Appendix A-9. The 2014 income limit for full Medicaid for an elderly or disabled individual is shown in this publication as \$856. The Department's Manual at section 2440.0322 states, "A \$20 per month standard disregard applies to any type (earned or

unearned) of income other than income which is provided on the basis of need.”

Section 2640.0126 also explains that the income deduction is applied before comparing the remaining income to the income limit for a SSI-related Medicaid program.

Therefore, the undersigned concludes an aged or disabled individual would have to have countable income equal to or below \$856 to achieve eligibility for full Medicaid.

12. Fla. Admin. Code 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.”

13. The above authority explains that the Medically Needy Program is a coverage group for aged, blind or disabled individuals who do not qualify for full Medicaid due to the level of income or resources. Petitioner’s income exceeds the limit for full Medicaid. Therefore, the undersigned concludes the Department correctly enrolled petitioner in the Medically Needy Program.

14. Fla. Admin. Code 65A-1.701 Definitions states in part, “(30) Share of Cost (SOC): SOC represents the amount of recognized medical expenses that a Medically Needy enrolled individual or family must be responsible to pay each month before becoming eligible to receive Medicaid benefits for the remainder of the month.”

15. Fla. Admin. Code 65A-1.702 Special Provisions states in part, “(13) Determining Share of Cost. The SOC is determined by deducting the Medically Needy income level from an individual’s or family’s income.”

16. Fla. Admin. Code 65A-1.713 SSI-Related Medicaid Income Eligibility Criteria states in part:

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

(4)(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. If countable income exceeds the Medically Needy income level the department shall deduct allowable medical expenses in chronological order, by day of service.

17. The above authorities explain that an individual's income must be within the limits established by federal or state law and the Medicaid State Plan. The amount by which the individual's countable income exceeds the Medically Needy income level (MNIL) is called the share of cost. The MNIL for an individual is \$180.

18. Federal Regulations at 20 C.F.R. §416.1123, "How we count unearned income" states in relevant part:

(b) Amount considered as income. We may include more or less of your unearned income than you actually receive.

(1) We include more than you actually receive where another benefit payment (such as a social security insurance benefit) (see § 416.1121) has been reduced to recover a previous overpayment. You are repaying a legal obligation through the withholding of portions of your benefit amount, and the amount of the debt reduction is also part of your unearned income. Exception: We do not include more than you actually receive if you received both SSI benefits and the other benefit at the time

the overpayment of the other benefit occurred and the overpaid amount was included in figuring your SSI benefit at that time.

Example: Joe, an SSI beneficiary, is also entitled to social security insurance benefits in the amount of \$200 per month. However, because of a prior overpayment of his social security insurance benefits, \$20 per month is being withheld to recover the overpayment. In figuring the amount of his SSI benefits, the full monthly social security insurance benefit of \$200 is included in Joe's unearned income. However, if Joe was receiving both benefits when the overpayment of the social security insurance benefit occurred and we then included the overpaid amount as income, we will compute his SSI benefit on the basis of receiving \$180 as a social security insurance benefit. This is because we recognize that we computed his SSI benefit on the basis of the higher amount when he was overpaid.

(2) We also include more than you actually receive if amounts are withheld from unearned income because of a garnishment, or to pay a debt or other legal obligation [sic], or to make any other payment such as payment of your Medicare premiums. (emphasis added)

19. The Department's Policy Manual 165-22, Section 1840.0102 Deductions from Gross Income (MSSI, SFP) reiterates the federal regulation and states:

Some deductions withheld from gross income must be included as income. Examples of these deductions include:

1. premiums for Supplemental Medical Insurance (SMI/Medicare) from a Title II (Social Security) benefit,
2. premiums for health insurance or hospitalization,
3. premiums for life insurance,
4. federal and state income taxes,
5. Social Security taxes,
6. optional deductions,
7. a garnished or seized payment,
8. guardianship fees, and
9. child support if not redirected irrevocably from the source.

20. The findings show that the Department enrolled petitioner in the MN Program beginning November 2013. The Department counted petitioner's gross monthly Social Security income to determine the share of cost. Petitioner has two deductions withheld from his Social Security benefit amount. According to the above

controlling authorities, the Department was correct to count the gross amount of income (before the income was garnished for the IRS tax levy repayment or the court restitution was withheld) for this Medicaid eligibility determination. The undersigned can find no more favorable outcome for petitioner in the Medically Needy Program.

DECISION

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

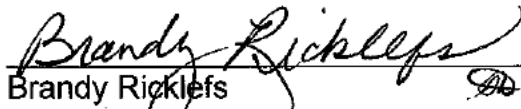
FINAL ORDER (Cont.)

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DONE and ORDERED this 9th day of April, 2014,

in Tallahassee, Florida.



Brandy Ricklefs

Hearing Officer

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