FILED
FEB 13 2015
OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES

STATE OF FLORIDA
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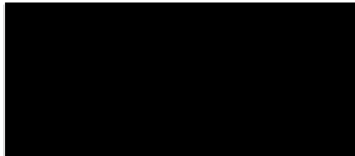


PETITIONER,

Vs.

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 11 Dade
UNIT: 66702

RESPONDENT.
_______________________________/

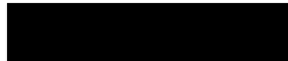
APPEAL NO. 14F-09310

CASE NO.

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on December 4, 2014, 8:30 a.m. All parties appeared telephonically from different locations.

APPEARANCES

For the Petitioner: 

For the Respondent: Fey Hepburn, ACCESS supervisor and Ada Torroella operations management consultant 1 (OMC-1).

STATEMENT OF ISSUE

At issue is the denial of full Medicaid benefits for the petitioner and enrollment in the Medically Needy Program with an estimated share of cost (SOC).

PRELIMINARY STATEMENT

By a notice dated September 2, 2014, the Department informed the petitioner that his Medically Needy Program benefit had been reviewed and there were no

changes to his benefits. The same notice indicates petitioner's child was approved for full Medicaid and that Food Assistance benefits were approved for both. On October 29, 2014, the petitioner timely requested a hearing to challenge the Department's action of enrolling him in the Medically Needy Program.

The hearing was continued from November 24, 2014 per petitioner's request.

[redacted], Housing Program Service Coordinator, appeared as a witness for the petitioner.

During the hearing, the petitioner did not provide any evidence for the undersigned to consider. The Department's evidence was marked as Respondent's Composite Exhibit 1.

The record was left open through December 11, 2014 for the petitioner to provide additional evidence for the undersigned to consider. The evidence was timely received and marked as Petitioner's Exhibit 1. The record was closed on December 11, 2014.

FINDINGS OF FACT

1. On August 11, 2014, the petitioner submitted a redetermination application to continue his Food Assistance Program (FAP) and Medicaid benefits. On his application, he reported two household members, himself (age 30), and his daughter (age 3). He reported $752 in monthly Social Security survivor benefits for his daughter. The petitioner is not employed, did not file any tax return and is not allowed any tax deductions. The state of Florida did not expand Medicaid to cover adults age 65. Petitioner applied for health coverage through the Health Insurance Marketplace, but was not eligible.

2. The respondent processed the application and, based on the information provided, approved FAP benefits for petitioner's household and full Medicaid benefits for his daughter. Petitioner was enrolled in the Medically Needy Program with a SOC.

3. The medical conditions of Family-Related Medicaid recipients are not a factor for eligibility.

4. The Department determined the daughter's eligibility for full Medicaid benefits because the household income of $752 was below the $1,744 for a child between ages 1 through 5 for a standard filing unit size of two. To determine Medicaid eligibility for the petitioner, the household income of $752 was compared to the income limit for an adult with a household size of two, $241. As the income exceeded the maximum limit, he was found ineligible for full Medicaid benefits.

5. As the petitioner was determined ineligible for full Medicaid, the respondent enrolled him in the Medically Needy (MN) Program. To determine the estimated SOC the respondent, the Medically Needy Income Level (MNIL) of $387 for a standard filing unit size of two was subtracted from the $752 gross monthly household income, resulting to the petitioner estimated SOC of $365. A Notice of Case Action was sent to the petitioner on September 2, 2014, informing him of the outcome.

6. The respondent explained that the petitioner is not eligible for full Medicaid because his household income exceeds the Family-Related Medicaid income limit for the parent of a child. She explained that the petitioner has been enrolled in the Medically Needy Program for about two years and has been successfully using its services.

7. Petitioner's witness testified that petitioner has serious medical conditions that require constant medical care. She explained that since petitioner became enrolled in the MN Program, he was not able to get a Jackson Memorial Hospital (JMH) card usually issued to low income households.

8. The petitioner did not dispute the facts presented by the respondent. He asserted that he is in poor health and needs constant medical care. Petitioner acknowledged that he understands the benefits provided by the respondent are income-based, but believes that it is not fair for his child's income to be used against him. Petitioner's primary care physician does not accept Medically Needy Medicaid. Petitioner maintains he cannot meet his share of cost on a monthly basis without going to the emergency room.

CONCLUSIONS OF LAW

9. 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 Fla. Stat. § 409.285.

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

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

12. The Family-Related Medicaid income criteria is set forth in 42 C.F.R 435.603.

> (a) Basis, scope, and implementation. (1) This section implements section 1902(e)(14) of the Act.

> (2) Effective January 1, 2014, the agency must apply the financial methodologies set forth in this section in determining the financial eligibility of all individuals for Medicaid, except for individuals identified in paragraph (j) of this section and as provided in paragraph (a)(3) of this section.
> (d) Household income—(1) General rule. Except as provided in paragraphs (d)(2) through (d)(4) of this section, household income is the sum of the MAGI-based income, as defined in paragraph (e) of this section, of every individual included in the individual's household.

13. Federal regulation 42 C.F.R. § 435.603 Application of modified gross income (MAGI) (f) defines a Household for Medicaid:

> (3) Rules for individuals who neither file a tax return nor are claimed as a tax dependent. In the case of individuals who do not expect to file a Federal tax return and do not expect to be claimed as a tax dependent for the taxable year in which an initial determination or renewal of eligibility is being made, or who are described in paragraph (f)(2)(i), (f)(2)(ii), or (f)(2)(iii) of this section, the household consists of the individual and, if living with the individual—
> (i) The individual's spouse;
> (ii) The individual's natural, adopted and step children under the age specified in paragraph (f)(3)(iv) of this section; and
> (iii) In the case of individuals under the age specified in paragraph (f)(3)(iv) of this section, the individual's natural, adopted and step parents and natural, adoptive and step siblings under the age specified in paragraph (f)(3)(iv) of this section.
> (iv) The age specified in this paragraph is either of the following, as elected by the agency in the State plan—
> (A) Age 19; or
> (B) Age 19 or, in the case of full-time students, age 21.
> . . .
> (5) For purposes of paragraph (f)(1) of this section, if, consistent with the procedures adopted by the State in accordance with §435.956(f) of this part, a taxpayer cannot reasonably establish that another individual is a tax dependent of the taxpayer for the tax year in which Medicaid is sought, the inclusion of such individual in the household of the taxpayer is determined in accordance with paragraph (f)(3) of this section.

14. The Department's Program Policy Manual, 165-22 (The Policy Manual) at 2230.0400 Standard Filing Unit (MFAM) states:

> For tax filers, the Standard Filing Unit (SFU) is the tax filing group for the tax year in which eligibility is being determined. Eligibility is determined by

> each individual using the tax filing group's income. Individuals cannot receive Medicaid benefits under more than one coverage group, but can have their income included in more than one SFU.
> For individuals who neither file a federal tax return nor are claimed as a tax dependent (non-filers), the Standard Filing Unit consists of the individual and, if living with the individual, their spouse, their natural, adopted, and step children under age 19, or 19 and 20 if in school full-time.

15. In accordance with the above controlling authorities, the Medicaid household group is the petitioner and his child (two members). The findings show the Department determined the petitioner's eligibility with a household size of two (the petitioner and his child) for Medicaid. The undersigned concludes the Department correctly determined the petitioner's household size as two for Medicaid eligibility purposes.

16. Federal regulations at 42 C.F.R. § 435.603 Application of modified gross income (MAGI) (d) defines Household Income:

> (1) General rule. Except as provided in paragraphs (d)(2) through (d)(4) of this section, household income is the sum of the MAGI-based income, as defined in paragraph (e) of this section, of every individual included in the individual's household.
> (2) Income of children and tax dependents. (i) The MAGI-based income of an individual who is included in the household of his or her natural, adopted or step parent and is not expected to be required to file a tax return under section 6012(a)(1) of the Code for the taxable year in which eligibility for Medicaid is being determined, is not included in household income whether or not the individual files a tax return.
> (ii) The MAGI-based income of a tax dependent described in paragraph (f)(2)(i) of this section who is not expected to be required to file a tax return under section 6012(a)(1) of the Code for the taxable year in which eligibility for Medicaid is being determined is not included in the household income of the taxpayer whether or not such tax dependent files a tax return.
> (3) In the case of individuals described in paragraph (f)(2)(i) of this section, household income may, at State option, also include actually available cash support, exceeding nominal amounts, provided by the person claiming such individual as a tax dependent.
> (4) Effective January 1, 2014, in determining the eligibility of an individual using MAGI-based income, a state must subtract an amount equivalent to

5 percentage points of the Federal poverty level for the applicable family size only to determine the eligibility of an individual for medical assistance under the eligibility group with the highest income standard using MAGI-based methodologies in the applicable Title of the Act, but not to determine eligibility for a particular eligibility group.

17. The Policy Manual at 2630.0108 Budget Computation (MFAM), states:

Financial eligibility for Family-Related Medicaid is determined using the household's Modified Adjusted Gross income (MAGI). The MAGI is the household's adjusted gross income as calculated by the Internal Revenue Service plus any foreign earned income and interest income exempt from tax.
In computing the assistance group's eligibility, the general formula is:
Step 1 - (Gross Unearned + Gross Earned) = (Total Gross Income).
Step 2 - Deduct any allowable income tax deductions (lines 23-35 from 1040). Deduct any allowable deductions for financial aid or self-employment to obtain the Modified Adjusted Gross Income.
Step 3 - Deduct the appropriate standard disregard. This will give the countable net income.
Step 4 - Compare the total countable net income to the coverage group's income standard.
If less than or equal to the income standard* for the program category, STOP, the individual is eligible. If greater than the income standard for the program category, continue to Step 5.
Step 5 - Apply a MAGI deduction (5% of the FPL based on SFU size).
If the 5% disregard would make the individual eligible, include the disregard. Otherwise the individual is ineligible for Medicaid.
Individuals determined ineligible for Medicaid will be enrolled in Medically Needy and referred, as appropriate, to Florida KidCare and/or the Federally Facilitated Marketplace (FFM).

18. The Policy Manual, Appendix A-7 indicates that for the Adult Income Limit of $241 and a Standard Disregard of $146 for Family-Related Medicaid Program with a family size of two ($387).

19. In accordance with the above controlling authorities, the undersigned reviewed the Medicaid eligibility for the petitioner. Step 1: The total income counted in the budget is $752. Step 2: There are no deductions provided as there was no tax return. Step 3: The total income of $752 less the standard disregard of $146 is $606. Step 4:

The balance of $606 is greater than the income limit of $241 for the petitioner to receive full Medicaid. Step 5: With no MAGI disregard, the countable balance remains $606. This amount was greater than the income limit of $241. The undersigned concludes the petitioner is ineligible for Medicaid. The undersigned further concludes Medically Needy eligibility must be explored for the petitioner.

20. The Policy Manual at passage 2630.0502 Enrollment (MFAM) sets forth:

> If an individual meets the Medically Needy Program's technical eligibility criteria, he is enrolled into the program. There is no income limit for enrollment. The individual is only eligible (entitled to Medicaid) when he has allowable medical bills that exceed the SOC.
> The income for an enrolled assistance group need not be verified. Instead, an estimated SOC is calculated for the assistance group. If after bill tracking, it appears the assistance group has met his "estimated" SOC, the unverified income must be verified before the Medicaid can be authorized. An individual is eligible from the day their SOC is met through the end of the month.

21. The Policy Manual at passage 2630.0500 Share of Cost (MFAM) states:

> The Share of Cost (SOC) refers to the amount of medical bills which an individual enrolled in the Medically Needy Program must incur in any given month before Medicaid coverage may be authorized.
> Eligibility must be determined for Medically Needy any time the assistance group meets all technical factors but the income exceeds the appropriate income limit for Medicaid.
> To calculate the share of cost, compare the countable net income to the Medically Needy Income Level based on the size of the standard filing unit. The difference is the assistance group's share of cost.

22. Effective January 2014, Appendix A-7 indicates that for a household of two, the MNIL is $387.

23. To determine the SOC the respondent determined the petitioner's household monthly to be $752. The Medically Needy Income Level of $387 for a standard filing unit size of two was subtracted resulting to the petitioner's estimated SOC of $365.

24. The hearing officer found that no exception to this calculation. It is concluded that a more favorable share of cost could not be determined. Eligibility for full Medicaid was not found.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is denied. The respondent's action is upheld.

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 13th day of February, 2015,

in Tallahassee, Florida.

Roosevelt Reveil
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