

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

APPEAL NO. 14F-09368

PETITIONER,

Vs.

CASE NO. [REDACTED]

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 04 Duval
UNIT: 88373

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on December 19, 2014 at 11:45 a.m.

APPEARANCES

For the Petitioner: The petitioner was not present and was represented by [REDACTED] friend to the petitioner.

For the Respondent: Viola Dickinson, Economic Self-Sufficiency Specialist II for the Department of Children and Families.

STATEMENT OF ISSUE

At issue is the Department's action on August 5, 2014 to terminate the petitioner's full-coverage Medicaid effective August 31, 2014 and enroll her in the Medically Needy program with an estimated monthly share of cost.

PRELIMINARY STATEMENT

The record was held open until 5:00 p.m. on December 22, 2014 to allow the respondent to submit additional evidence. Evidence was submitted and entered as the Respondent Exhibit 3.

FINDINGS OF FACT

1. Prior to the action under appeal, the petitioner (age 61) was receiving full-coverage Medicaid through the MMS program.

2. On July 11, 2014, the petitioner completed a web-based application for recertification of her Food Assistance Program and Medicaid benefits. The petitioner also applied for the State Medicare/Medicaid buy-in program to pay for her Medicare Part B premium as she is enrolled in Medicare Part A and Part B.

3. The petitioner was approved for the Qualified Medicare Beneficiary Medicaid (QMB) program effective in August 2014. The petitioner's full-coverage Medicaid was terminated.

4. The petitioner's Social Security income in the amount of \$780 was included in the SSI-Related Medicaid budget effective January 2015. The Social Security income was reduced by the \$20 unearned income disregard. The petitioner's income was further reduced by the \$180 medically needy income limit for one person to arrive at a monthly share of cost in the amount of \$580. The petitioner's monthly Social Security amount for the year 2014 was \$767. Therefore, her share of cost for the months prior to the application was \$567 after the deduction of the applicable allowances.

5. Petitioner's representative argues that the petitioner did not receive notification of the termination of Sunshine Health plan but acknowledges receipt of notification of the termination of her full-coverage Medicaid. The petitioner's representative would like for the petitioner to receive full-coverage Medicaid, as the Sunshine Health plan allowed her to receive dental benefits and a monthly \$25 allowance.

6. The Department explained that Sunshine Health is one of the health care providers offered through the Medicaid program administered by the Agency for Health Care Administration (AHCA). The Department further explained that once the petitioner's full-coverage Medicaid was terminated, coverage provided by Sunshine Health was automatically terminated; notification of termination of coverage provided under the Sunshine Health plan was not sent.

7. The Department explained that the petitioner's income is under the Medicaid income limit in the amount of \$856 but because the petitioner is now receiving Medicare, she is no longer eligible for full-coverage Medicaid (MEDS-AD).

8. The petitioner's representative questioned if the petitioner may voluntarily withdraw from the Medicare program. She did not know that losing the dental benefits and \$25 monthly allowance would be a consequence for applying for the QMB program. The petitioner is not receiving any community based services and is not in a nursing facility.

9. The Department explained that an individual is required to apply for benefits to which he or she is potentially eligible.

CONCLUSIONS OF LAW

10. 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.

11. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code § 65-2.056.

12. In accordance with Fla. Admin. Code § 65-2.060 (1), the burden of proof was assigned to the respondent.

13. Federal Regulations at 42 C.F.R. 435.608 and Fla. Admin. Code 65A-1.702 requires a Medicaid applicant to apply for any annuities, pensions, retirement and disability benefits (Medicare) to which they are entitled as a condition of eligibility. The exception is if the applicant can show good cause for not doing so. The Department's Program Policy Manual, 165-22, section 1440.1400 "Requirement to File for Other Benefits (MSSI, SFP)" also states:

Individuals must apply for and diligently pursue to conclusion an application for all other benefits for which they may be eligible as a condition of eligibility. Need cannot be established nor eligibility determined upon failure to do so. Benefits that must be applied for include, but are not limited to:

...
11. Medicare Part A, Part B and Part D.

Individuals applying for Medicaid on the basis of age (65 or older) or disability must apply for Medicare if the state will pay the Medicare premium, deductible or co-insurance.

14. Fla. Admin. Code 65A-1.701, Definitions, states in part:

(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.** (emphasis added)

(30) Share of Cost (SOC): SOC 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 for medical expenses incurred during the remainder of the month.

15. The above authority explains that the MEDS-AD Medicaid coverage (full Medicaid) is only for individuals who do not receive Medicare. The exception is if a Medicare recipient also receives Medicaid covered institutional care services, hospice services or home and community based services. Petitioner does not fit into this exception. The Department next computed petitioner's share of cost in the Medically Needy Program.

16. Fla. Admin. Code section 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.

17. 20 C.F.R. §416.1124 (c)(12) sets forth the income deduction of \$20 for all adult-related (or SSI-related) Medicaid coverage groups.

18. Fla. Admin. Code 65A-1.713 "SSI-Related Medicaid Income Eligibility

Criteria" states in part, "(2) (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."

19. The Medically Needy income levels are set forth in the Fla. Admin. Code at 65A-1.716 :

(1) The monthly federal poverty level figures based on the size of the filing unit...

(2) Medicaid income and payment eligibility standards and Medically Needy income levels are by family size as follows...

Size...1 Level \$180...

20. Based on the findings and the above controlling authorities, the undersigned concludes the Department's action to terminate full coverage Medicaid under the MEDS program for the aged and disabled was correct. Petitioner has Medicare and does not meet the specifics to receive full coverage Medicaid as a Medicare recipient and therefore, no longer qualifies for full Medicaid.

21. Due to ineligibility for full-coverage Medicaid, the petitioner was enrolled in a Medically Needy Program with a share of cost. According to the above authorities, the share of cost is gross monthly income less a standard \$20 deduction and then the Medically Needy Income Level (MNIL) for one. The gross monthly household unearned income of \$767, less the \$20 standard deduction and the MNIL of \$180, equals a share of cost of \$567.

22. The undersigned concludes that the respondent's action to enroll the petitioner in the Medically Needy Program and to determine the amount of the monthly share of cost as \$567 was a correct action. Any medical bills not covered by Medicare

or QMB Medicaid will need to be submitted to the Department to determine when the share of cost is met.

DECISION

Based upon the foregoing Findings of Fact and Conclusions 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 6th day of February, 2015,

in Tallahassee, Florida.



Paula Ali
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Copies Furnished To: [REDACTED] Petitioner
Office of Economic Self Sufficiency
Margaret Urbanek