

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-09390

PETITIONER,

Vs.

CASE NO. [REDACTED]

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 01 Escambia
UNIT: 88630

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing telephonically in the above-referenced matter on December 11, 2014 at 1:29pm.

APPEARANCES

For the Petitioner: [REDACTED]

For the Respondent: Katherine Stevens, Supervisor

STATEMENT OF ISSUE

Petitioner is appealing the Department's action of August 21, 2014 terminating Qualified Individual 1 (QI 1) coverage due to being over income. The petitioner also disagrees with the amount of her share of cost in the Medically Needy Program.

PRELIMINARY STATEMENT

The Department submitted information prior to hearing. This was entered as Respondent Exhibit #1. The record was held open for additional information from the petitioner through December 18, 2014. The petitioner had difficulty getting information

submitted to the hearing officer. Her information was received on December 22, 2014 and entered as Petitioner Exhibit #1.

FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following findings of fact are made:

1. The petitioner was enrolled in the Medically Needy Program and received Qualified Individual 1 (QI1) coverage prior to August 2014 based only on Social Security income. Petitioner has Medicare Part B and was receiving Social Security disability benefits until November 2014 when her benefits were converted to Social Security retirement.
2. Petitioner relocated from Lake City to Pensacola in November 2013. She began receiving her public retirement (pension) in December 2013.
3. The petitioner submitted a recertification application on August 6, 2014 reflecting two sources of income: public retirement of \$553 and Social Security of \$1246.
4. The Department issued a Notice of Case Action on August 8, 2014 requesting verification of the petitioner's Public Retirement amount.
5. Because the Department did not receive verification of the pension, the Department increased the Medically Needy estimated share of cost using the pension income shown on the application and the Social Security income verified by the system.
6. The Department verified through its data exchange system the Social Security income in the amount of \$1,245.90 in 2014. Beginning January 2015, the petitioner's gross amount of Social Security income is \$1,266.90.

7. Petitioner's combined countable income exceeded the income limit of \$1313 for coverage under the Q11 program. The Department terminated that coverage effective September 2014.

8. The petitioner provided a copy of her Social Security award letter dated October 30, 2014 which shows her net Social Security income decreased for November 2014 due to the deduction of her Medicare Part B premiums for September 2014, October 2014, and November 2014. The monthly Medicare Part B premium is \$104.90.

9. The Department issued a Notice of Case Action on August 21, 2014 which informed the petitioner her Medically Needy application dated August 7, 2014 was approved with an estimated Share of Cost of \$1,599. The notice also informs of the Q11 termination due to the income exceeding the limit.

10. The petitioner's position is that she believes she should qualify for "extra help" to cover her Medicare Part B premium based on the information published by the Social Security Administration. Her resources are under \$7000. She does not receive any additional assistance and now has to pay for her out-of-pocket medical charges as they do not equal the share of cost.

CONCLUSIONS OF LAW

11. 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.

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

13. In accordance with Fla. Admin. Code § 65-2.060 (1), the burden of proof was assigned to the respondent for the termination of the QI1 program.

14. Fla. Admin. Code § 65A-1.709 "SSI-Related Medicaid Coverage" states, "SSI-Related Medicaid provides medical assistance to eligible individuals who are aged, blind or disabled in accordance with Titles XVI and XIX of the Social Security Act and Chapter 409, F.S."

15. Fla. Admin. Code § 65A-1.702 "Special Provisions" states in part: "(d) Part B Medicare Only Beneficiary (QI1). Under QI1 coverage, individuals are only entitled to payment of their Medicare Part B premium. (This is coverage for individuals who would be eligible for QMB or SLMB coverage except their income exceeds limits for those programs.)"

16. 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.

17. The above authority explains that the MEDS-AD Demonstration Waiver is limited to individuals who are not receiving Medicare. This is the full coverage Medicaid program for aged or disabled individuals. Petitioner receives Medicare and there was no evidence she is receiving institutional care services, hospice services or home and community based services. The undersigned concludes petitioner does not qualify for full coverage Medicaid as she is a Medicare recipient and not receiving one of the specified categories of assistance. Therefore, the Medically Needy Program for aged or

disabled individuals is the correct program for petitioner and the Department was correct to increase the share of cost due to an additional source of income not previously counted.

18. Fla. Admin. Code § 65A-1.710 "SSI-Related Medicaid Coverage Groups" states in relevant 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.

19. The above authority explains that the Medically Needy Program is for individuals who do not qualify for full (or categorical assistance) Medicaid due to their level of income. The undersigned concludes when an individual does not qualify for full Medicaid due to receiving Medicare, the Medically Needy program is also the appropriate coverage group.

20. Fla. Admin. Code § 65A-1.713 "SSI-Related Medicaid Income Eligibility Criteria" states in relevant 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.

...

(j) For a Qualified Individual 1 (QI1), income must be greater than 120 percent of the federal poverty level, but equal to or less than 135 percent of the federal poverty level. QI1 is eligible only for payment of the Part B Medicare premium through Medicaid.

(2) Included and Excluded Income. For all SSI-related coverage groups the department follows the SSI policy specified in 20 C.F.R. 416.1100

(2007) (incorporated by reference) et seq.,

...
(4) Income Budgeting Methodologies. To determine eligibility SSI budgeting methodologies are applied except where expressly prohibited by 42 U.S.C. § 1396 (2000 Ed., Sup. IV) (incorporated by reference), or another less restrictive option is elected by the state under 42 U.S.C. § 1396a(r)(2) (2000 Ed., Sup. IV) (incorporated by reference).
...

(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. If countable income exceeds the Medically Needy income level the department shall deduct allowable medical expenses in chronological order, by day of service. Countable income is determined in accordance with subsection 65A-1.713(2), F.A.C. To be deducted the expenses must be unpaid, or if paid, must have been paid in the month for which eligibility is being determined or incurred and paid during the three previous calendar months to the month for which eligibility is being determined but no earlier than the three retroactive application months. The paid expense may not have been previously deducted from countable income during a period of eligibility. Medical expenses reimbursed by a state or local government not funded in full by federal funds, excluding Medicaid program payments, are allowable deductions. Any other expenses reimbursable by a third party are not allowable deductions.

21. The Department's Program Policy Manual (165-22) Appendix A-9 "Eligibility Standards for SSI-Related Programs" effective July 2014 lists the following Income Limits for an individual: Q11 \$1,313.

22. The Department's Program Policy Manual (165-22) Appendix A-9 "Eligibility Standards for SSI-Related Programs" effective January 2015 lists the following Income Limits for an individual: Q11 \$1,335.

23. Federal Regulations at 20 C.F.R. § 416.121 "Types of Unearned Income" states in relevant part: "(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, veteran's benefits, worker's compensation, railroad retirement annuities and unemployment insurance benefits."

24. 20 C.F.R. § 416.1124 (c)(12), "Unearned income we do not count" states in part, "The first \$20 of any unearned income in a month..."

25. Fla. Admin. Code § 65A-1.716 "Income and Resource Criteria" states in part, "(2) Medicaid income and payment eligibility standards and Medically Needy income levels are by family size as follows: ... Family Size 1...Monthly Income Level \$180."

26. The findings show the petitioner's countable income exceeds the income limit to receive QI1 for 2014 and 2015. Therefore, the undersigned concluded the Department's action to terminate the QI1 coverage was correct as the QI1 program has the highest income limit of the three Medicare Savings Programs.

27. According to the above authorities, the Medically Needy Share of Cost is calculated by subtracting the \$20 unearned disregard and the Medically Needy Income Limit (MNIL) of \$180 for an individual from the petitioner's gross income of \$1,779 to reach a \$1,599 share of cost for 2014. The share of cost can be further reduced by deducting the petitioner's Medicare Part B premium of \$104.90 for a remaining share of cost of \$1,494 (as she is no longer eligible for the program that pays the Medicare Part B premium for her).

28. According to the above authorities, the Medically Needy share of cost will increase when the income increases such as the Cost of Living increases in the Social Security programs. The 2015 share of cost is slightly higher based on the 2015 income increases. Again, the Medicare Part B premium is to be deducted from the share of

cost before determining if any medical bills can meet the share of cost. Petitioner will need to submit any medical bills that Medicare does not cover to the Department to determine if the monthly share of cost can be met.

29. Petitioner is encouraged to contact the Social Security Administration to determine if she qualifies for any additional assistance with her Medicare Part D costs. The Low Income Subsidy Program is now referred to as "Extra Help With Medicare Prescription Drug Plan Costs." The Department published TRANSMITTAL NO.: P-05-07-0019 which states in relevant part:

BACKGROUND

The Medicare Prescription Drug, Improvement and Modernization Act (MMA) of 2003 created a prescription drug benefit called Part D that will be available starting January 1, 2006. Enrollment in Part D is voluntary and is available to all Medicare beneficiaries. The MMA also created a Low Income Subsidy (LIS) Program to help individuals with limited income and assets cover a portion of the costs associated with the new Medicare Part D benefit.

30. The Department publishes questions and answers to situations not covered in its policy manual for statewide direction. The following September 21, 2007 question and answer is applicable in this case for guidance in bill tracking and meeting the share of cost in the Medically Needy Program:

Question: Are Medicare Part D costs an allowable medical expense for the Medically Needy Program? Answer: Medicare Part D costs that are not covered by a third party are an allowable expense for Medically Needy bill tracking purposes. It is essential to promptly track Medicare Part D expenses. Medicare recipients enrolled in the Medically Needy Program who meet their share of cost are Medicaid eligible and will automatically qualify for Extra Help With Medicare Prescription Drug Plan Costs (previously known as the Low Income Subsidy (LIS)).

DECISION

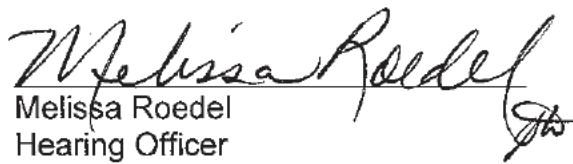
Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is denied as petitioner no longer qualifies for the Q11 program. The appeal is denied in that petitioner remains in the Medically Needy Program with a share of cost; if the Department has not added in petitioner's Medicare Part B premium which can further reduce the share of cost, it is to do so and notify petitioner of the remaining share of cost.

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 2nd day of February, 2015,

in Tallahassee, Florida.


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