

FILED

MAR 31 2015

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

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DEPT OF CHILDREN & FAMILIES



APPEAL NO. 14F-09434

PETITIONER,

Vs.

CASE NO. 

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 02 Leon
UNIT: 88113

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on February 18, 2015 at 10:09 a.m.

APPEARANCES

For the Petitioner: Lauchlin Waldoch, Esq.

For the Respondent: Camille Larson, assistant regional counsel

STATEMENT OF ISSUE

Whether the Department improperly denied the petitioner's request for a reduction in his Institutional Care Program (ICP) Medicaid patient responsibility due to unpaid nursing home expenses incurred prior to the three months preceding the month of application.

PRELIMINARY STATEMENT

The Florida Department of Children and Families (Department or DCF or respondent) determines eligibility for Family-Related and SSI-Related Medicaid programs.

The petitioner filed a request for hearing on October 29, 2014. The petitioner alleged that the Department did not act on multiple requests that his unpaid nursing home bill be used to reduce the patient responsibility that he owes to his nursing home.

A Notice of Hearing dated November 24, 2014 scheduled this matter for hearing on December 16, 2014.

On December 15, 2014, the parties filed a joint Motion for Continuance on the basis that additional preparation time was needed prior to convening the hearing. The motion was granted.

The parties filed their Joint Stipulation on December 16, 2014. Portions of the Joint Stipulation have been incorporated in this Final Order.

The final hearing was convened on February 18, 2015. Neither party submitted exhibits or called any witnesses to testify. Present as observers for the petitioner were [REDACTED] and [REDACTED] public benefits specialist. Present as observers for the Department were Michael Lee, regional counsel and Julie Mount, supervisor.

The parties filed Memorandums of Law which were taken into consideration during the development of this decision.

FINDINGS OF FACT

1. The petitioner has been a resident at [REDACTED] [REDACTED] (the facility) since March 2013. Before moving into the facility, the petitioner lived in the family home with his wife. The wife continues to live in the family home.

2. The petitioner filed an application for ICP Medicaid benefits (Medicaid that pays nursing home expenses) on July 30, 2014. The petitioner requested retroactive Medicaid coverage back to April 1, 2014.

3. The petitioner had an outstanding nursing home bill of \$68,942.92 at the time of application.

4. On August 28, 2014, the Department approved ICP benefits for the petitioner beginning July 1, 2014. On September 4, 2014, the Department approved retroactive ICP coverage for April 2014 – June 2014, the three months preceding the month of application. The Department's approval notices did not address the petitioner's remaining (older) nursing home expenses.

5. ICP Medicaid recipients are required to contribute to the cost of their nursing home care by submitting their gross income, minus certain deductions, to the nursing home. The patient contribution is referred to as the Patient Responsibility Amount (PRA). Federal Law includes a deduction for certain medical expenses when determining the PRA.

6. The petitioner requested, throughout the months of September and October 2014, via letter and email that the Department allow a deduction for his unpaid nursing home expenses incurred prior to April 2014. On October 22, 2014, the Department issued a Notice of Case Action indicating no change in the petitioner's PRA. The Department did not allow any additional medical deductions.

7. The petitioner filed a request for hearing on October 29, 2014. The petitioner argued that the Department's failure to decrease his PRA to account for outstanding uncovered skilled nursing facility costs (prior to the three months preceding the month of application) is incorrect under federal and state statutory and administrative law.

8. The petitioner argued that "[t]he federal Medicaid Act requires states to deduct an institutionalized Medicaid beneficiary's incurred medical expenses in determining the amount of his or her contribution to the cost of care..." Federal law states that medical expense deductions are subject to reasonable limits; however, the three month limitation imposed by the Department is not set forth in any federal or state law. The petitioner alleged that the Department is utilizing an un-adopted rule.

9. The Department argued that its controlling authorities limit consideration of unpaid nursing home bills to those bills incurred in the three months preceding the month of application. The Centers for Medicare and Medicaid Services approved the Medicaid State Plan concerning PRA and Post-Eligibility Treatment of income, including the three month medical expense deduction limit, on May 9, 2013. The effective date of the approval was December 13, 2012.

10. The Department asserted that it correctly applied Federal and State law in the instant case: "In this case, the petitioner's application was received in July 2014 and therefore only those [unpaid nursing home] expenses incurred between April 2014 and July 2014, and thereafter can be considered by the Department."

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 petitioner.

14. Fla. Admin. Code § 65A-1.713, sets forth the SSI-Related Medicaid Income and budgeting criteria, and states in part: "(1)(d) For ICP, gross income cannot exceed 300 percent of the SSI federal benefit rate after consideration of allowable deductions set forth in subsection 65A-1.713(2)..."

15. Fla. Admin. Code § 65A-1.713(2) includes a deduction for unreimbursed medical expenses.

16. Federal Regulations at 42 C.F.R. § 435.832 include a deduction for unreimbursed medical expenses. Federal Law does not include a specific time frame

for limitations on expenses; the State is allowed to place reasonable limits on its consideration of such expenses.

17. The Department's public assistance policy manual addresses uncovered medical expenses in the SSI-Related Medicaid Program in passage 2640.0125.01:

When an individual incurs medical expenses that are not Medicaid compensable and not subject to payment by a third party, the cost of these uncovered medical expenses must be deducted from the individual's income when determining his patient responsibility. To be deducted, the medical expense only needs to be incurred, not necessarily paid.

...

Expenses for services received prior to the first month of Medicaid eligibility can only be used in the initial projection if the service was incurred in the three months prior to the month of application and only if the service is anticipated to recur.

18. On February 8, 2013, the Department's Chief of Program Policy issued Transmittal No.: P-13-02-0002. The transmittal explains that, when determining the amount of ICP patient responsibility, unpaid bills from a nursing facility can be deducted from income and, potentially, reduce the the patient's monthly responsibility. In order to be included as a medical expense, the bill must be incurred no earlier than the three months preceing the month of application.

19. The authorities cited above explain ICP Medicaid income, expense and budgeting criteria. The Department's policy manual and transmittals contain statements of general applicability and interprets or prescribes law or policy. Department policy includes a medical expense deduction for unpaid nursing home bills incurred no earlier

than three months preceding the month of application.

20. In the instant case, petitioner applied for ICP Medicaid in July 2014. The Department allowed a medical expense deduction for unpaid nursing home bills incurred April 2014 and later. The Department argued that it acted in accordance with its controlling legal authorities.

21. The petitioner argued that the Department's three month limit regarding consideration of unpaid nursing home expenses is not set forth in Federal or State law and the Department acted on an un-adopted law.

22. Department policy manuals and transmittals must be recognized because they interpret or prescribe Department policy. The Department's interpretation of its laws is given great weight. In the cases where a law can be interpreted in more than one way or offers options, the Department's manual and transmittals stand as the official interpretations.

23. Federal Law allows the State to place reasonable limitations on the amount of medical expenses considered. The Department has imposed a three month limitation. There is no evidence that this limitation expressly violates or contradicts a higher authority.

24. After carefully reviewing the evidence and controlling legal authorities, the undersigned concluded that the Department acted in accordance with its existing regulations and policies.

25. The petitioner argued that the Department acted on unpromulgated law. Challenges to rules, including assertions that a department policy violates s. 120.54 F.S. are conducted in accordance with s. 120.56 F.S. by an administrative law judge from the Division of Administrative Hearings. This forum does not have jurisdiction to conclude that Department policy violates s. 120.54(1)(a) F.S.

DECISION

The appeal is denied. The Department's decision 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 31st day of March, 2015,

in Tallahassee, Florida.



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