

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

FILED

MAR 27 2015

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES



PETITIONER,

Vs.

APPEAL NO. 14F-09545

CASE NO. 

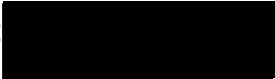
FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 17 Broward
UNIT: 88085

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on January 20, 2015 at 10:09 a.m. All parties appeared telephonically from different locations.

APPEARANCES

For the petitioner: 

For the respondent: Rosa Casado, ACCESS Supervisor.

STATEMENT OF ISSUE

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

PRELIMINARY STATEMENT

On October 2, 2014, the Department sent a Notice of Case Action (NOCA) to the petitioner informing her that she was enrolled in the MN program with a SOC of \$955 per month. The petitioner timely appealed this action on November 13, 2014.

The hearing was first scheduled on December 10, 2014. The petitioner requested a continuance for time to prepare and the hearing was rescheduled for January 20, 2015.

The petitioner presented no evidence during the hearing for the undersigned to consider. The Department presented a total of 14 pages of evidence during the hearing for the undersigned to consider, which were accepted and marked as Respondent's Composite Exhibit "1". The record was left open until close of business on February 10, 2014 for the petitioner to submit additional information. The petitioner asked for an extension until February 13, 2015 and the undersigned granted. The petitioner submitted a total of 28 pages of evidence on February 11, 2015, which were marked as Petitioner's Composite Exhibit "1". The Department submitted additional evidence on February 27, 2015, it was accepted and entered into evidence as Respondent's Composite Exhibit 2, and the record closed.

FINDINGS OF FACT

1. On November 26, 2013, the Department sent a NOCA to the petitioner informing her that her recertification application for FAP benefits and Medicaid was approved. The petitioner is contesting her current level of MN SOC amount of \$955 per month. She has a monthly Social Security Disability Income (SSDI) of \$951 and a monthly payment of \$220.84 of disability income from a private company. The petitioner has Medicare Part B and the premium is being paid through the Medicaid Special Low Income Beneficiary (SLMB) program.

2. The Department calculated the petitioner's MN SOC of \$955 by subtracting an unearned income disregard of \$20 from the total income of \$1,155.84 for an adjusted income of \$1,135.84. The Department then subtracts the Medically Needy

Income Limit (MNIL) of \$180 for one person from the adjusted income of \$1,135.84 to result in a SOC of \$955 per month. There were no other deductions the petitioner was eligible to receive.

3. The petitioner informed the Department during the hearing that she have recurring monthly medical expenses. The Department agreed to take into consideration any bills the petitioner wanted to submit and re-evaluate the SOC amount. The petitioner submitted a total of 38 pages of medical expenses.

4. The petitioner was concerned that her SOC amount was higher than her SSDI amount. The Department explained that she does not have to pay that amount, but that her medical expenses must meet or exceed that amount in a given month in order to meet her SOC, have those expenses paid, and for full Medicaid to be opened. The petitioner is still concerned that the amount is too high.

CONCLUSIONS OF LAW

5. 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.

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

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

The burden of proof, except where otherwise required by statutes, is on the party asserting the affirmative of an issue. The burden is upon the Department when the Department takes action, which would reduce or

terminate the benefits or payments being received by the recipient. The burden is upon the petitioner if an application for benefits or payments is denied. The party having the burden shall establish his/her position, by a preponderance of evidence, to the satisfaction of the hearing officer.

8. Fla. Admin. Code R. 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:

(a) For MEDS-AD Demonstration Waiver, income cannot exceed 88 percent of the federal poverty level after application of exclusions specified in subsection 65A-1.713(2), F.A.C.

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

(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)...

9. The ACCESS Florida Program Policy Manual (the Policy Manual) at Appendix A-7 indicates 88% of the Federal Poverty limit is \$871 and the Medically Needy Income Limit (MNIL) is \$180 for a family size of one.

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

11. 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. For the MEDS-AD program (full Medicaid), the income cannot exceed 88% of the federal poverty level (\$871). The petitioner's gross income of \$1,155.84 and net income of

\$1,135.84 are both over the income for full Medicaid for the petitioner. For the MN Program, income must be less than or equal to the MNIL after deduction of all allowable medical expenses. The amount by which the individual's countable income exceeds the MNIL is called the share of cost. The MNIL for an individual is \$180. The Department subtracted the \$20 unearned income disregard and the MNIL of \$180 from the net income of \$1,135.84 to result in a SOC of \$955 per month.

12. Fla. Admin. Code R. 65A-1.713 "SSI -Related Medicaid Income Eligibility Criteria" states in relevant part:

(4)(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. Examples of recognized medical expenses include:

1. Allowable health insurance costs such as medical premiums, other health insurance premiums, deductibles and co-insurance charges; and,
2. Allowable medical services such as the cost of public transportation to obtain allowable medical services; medical services provided or prescribed by a recognized member of the medical community; and personal care services in the home prescribed by a recognized member of the medical community.

13. The Policy Manual states at 2640.0506.01 Allowable Medical Expenses

(MSSI):

Allowable medical expenses are medical expenses that are:

1. unpaid and still owed, or
2. paid during the current month, or
3. incurred and paid during the three months before the tracking month but no earlier than the three retroactive application months, and
4. not subject to third party payment.

There are two types of allowable medical expenses:

1. recognized health insurance costs, and
2. recognized medical services.

Only allowable medical expenses can be used to meet Share of Cost.

14. The Policy Manual states in 2640.0507.01 When to Count Allowable

Medical Expenses (MSSI):

Whether a bill is used in the share of cost determination depends on whether it is paid, unpaid, an allowable third party payment, or subject to third party payment.

An allowable medical expense cannot be counted toward the share of cost before the date of service. A hospital bill which is issued in advance of scheduled service cannot be counted toward the share of cost prior to actual receipt of the service. An exception to this policy is global prenatal bills (refer to passage 2640.0506.05). A bill that is Medicaid compensable cannot be prorated because once the individual becomes Medicaid eligible by meeting the share of cost, the bill will be paid by Medicaid. Count paid bills, payments on existing bills, and allowable third party payments during the month the payment was made. Count bills incurred and paid during the three months before the tracking month. Bills incurred and paid before the three retroactive months to an application cannot be used.

If the paid bill was used in a prior month as an unpaid bill and SOC was met in that month, it cannot be used again to meet the share of cost. This includes a medical insurance premium payment made in one month for several months' coverage. The paid premium may only be counted in the month in which the payment was made.

Count unpaid bills not subject to third party payment in the month incurred or a later month, provided the expense remains unpaid and was not used to meet share of cost in a prior month. An unpaid medical expense cannot be used again once it is counted in a month when share of cost is met.

Count bills that are subject to third party payment based on information from the provider or individual. Do not adjust any share of cost calculations if the anticipated third party payment amount was incorrect. When a revised bill is received after share of cost has been met, and retracking will make a provider who has been paid ineligible to be paid, do not retrack all of the expenses.

15. The Policy Manual states in 2640.0507.02 Tracking Medical Expenses

(MSSI):

Allowable medical expenses must be tracked on a monthly basis for each individual/family with a different assistance group and share of cost. Allowable medical expenses whether paid or unpaid must be tracked in chronological order by date incurred (date of service to the individual). Inpatient hospital medical expenses are to be tracked on a day-by-day basis. An itemized bill should be requested from the hospital. If the hospital cannot or will not provide an itemized bill, it is appropriate to divide the bill by the number of days of the hospital stay. The eligibility specialist would then track on a daily basis until the individual has met the individual's share of cost. At that point, only the non-Medicaid compensable services, if any, could be carried forward to meet a future month's share of cost. Allowable medical expenses being tracked for a specific day should be tracked using paid bills first. On the day on which an individual meets their share of cost, expenses are considered in the following order:

1. Medicare or other recognized health insurance cost;
2. bills of individuals who cannot be entitled to Medicaid, are considered next; and
3. paid bills are a final consideration.

Other bills should be tracked to the advantage of the individual.

16. The undersigned concludes that the Department correctly denied full Medicaid benefits and correctly determined enrollment in the Medically Needy Program. A more favorable outcome is not found at this time with the information available at the time of the action. The petitioner submitted medical expenses post-hearing that the Department acknowledged could be taken into consideration. The above stated authority gives the criteria the Department is to use when considering medical expenses in the MN SOC program. Once the Department has considered them, notice should be

sent to the petitioner informing her of the outcome. The petitioner is encouraged to submit all of her medical bills for bill tracking.

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.

DONE and ORDERED this 27th day of March, 2015,

in Tallahassee, Florida.



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Copies Furnished To: [REDACTED] Petitioner
Office of Economic Self Sufficiency