

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

FILED

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DEPT OF CHILDREN & FAMILIES

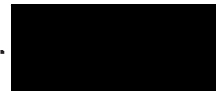


PETITIONER,

APPEAL NO. 14F-10452

Vs.

CASE NO.



FLORIDA DEPT OF
CHILDREN AND FAMILIES
CIRCUIT: 18 Brevard
UNIT: 55207

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned telephonically convened an administrative hearing in the above-referenced matter at 9:30 a.m. on July 11, 2015.

APPEARANCES

For the Petitioner:



pro se

For the Respondent:

Jill Dike, ACCESS supervisor

STATEMENT OF ISSUE

At issue is respondent's action to deny petitioner Medicaid Qualifying Individual 1 (QI1) benefits.

PRELIMINARY STATEMENT

By notice dated December 2, 2014 respondent notified petitioner QI1 benefits were denied due to income. Petitioner timely requested a hearing to challenge the denial.

Petitioner submitted one exhibit into evidence, entered as Petitioner Exhibit "1". Respondent submitted five exhibits into evidence, entered as Respondent Exhibits "1" through "5". The record was closed on February 11, 2015.

FINDINGS OF FACT

1. Petitioner submitted a Buy-In application on November 21, 2014. The application lists income from the Veterans Administration (VA) and Social Security Administration (SSA).
2. QI1 is a Medicaid program that pays for Medicare Part B premium. To be eligible for QI1, applicants cannot exceed the QI1 income standard. The QI1 income standard for an individual was \$1,313 in November 2014 and \$1,335 effective January 2015.
3. As part of the eligibility process, respondent verified petitioner received \$1,201 Social Security and \$822.15 from the VA in November and December 2014. Petitioner's Social Security increased to \$1,222 in January 2015. Respondent determined petitioner's QI1 eligibility as follows:

NOVEMBER AND DECEMBER 2014

\$1,201.00	petitioner's Social Security
\$ 822.15	petitioner's VA
\$2,023.15	total income
-\$ 20.00	unearned income disregard
\$2,003.15	total countable income

JANUARY 2015

\$1,222.00	petitioner's Social Security
\$ 822.15	petitioner's VA
\$2,044.15	total income
-\$ 20.00	unearned income disregard
\$2,024.15	total countable income

4. Petitioner's November and December income (\$2,003.15) exceeds the \$1,313 QI1 individual income standard in 2014. Petitioner's January 2015 income (\$2,024.15) also exceeds the \$1,335 QI1 individual income standard in 2015.
5. Petitioner argued that he is a World War II veteran and his VA money should not be counted as income because it is "service connected disability" which is "invisible money". Petitioner submitted a document from the Internal Revenue Service which states, "Veteran Benefits Assistance is not deemed taxable income."
6. On December 2, 2014 respondent mailed petitioner a Notice of Case Action notifying he was denied QI1, "Reason: Your household's income is too high to qualify for this program."

CONCLUSIONS OF LAW

7. 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.
8. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code R. 65-2.056.
9. In accordance with Fla. Admin. Code R. 65-2.060 (1), the burden of proof was assigned to the petitioner.
10. Federal regulation at 20 C.F.R. § 416.1121 define different types of unearned income as follows:

Some types of unearned income are—

- (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, **veterans benefits...** (emphasis added)

11. ACCESS Florida Program Policy Manual at 1840.0900 BENEFITS (MSSI, SFP)

defines some types of unearned income;

Section 1840.0900 (inclusive) discusses types of benefits payable to individuals and their treatment as unearned income, including benefits such as:

1. Social Security payments;
2. private benefit income such as annuities, pensions, retirement, or disability (other than SSA);
3. **veterans payments;** (emphasis added)
4. Agent Orange benefits;
5. workers' compensation;
6. railroad retirement;
7. unemployment benefits;
8. striker support;
9. severance pay; or
10. death benefits.

12. The above cited authority and Department's policy manual define unearned income as Social Security benefits and veteran benefits/payments.

13. Petitioner argued that his VA money should not be counted as income because it is "service connected disability" which is "invisible money".

14. Fla. Admin. Code R. 65A-1.702 Medicaid Special Provisions, in relevant part states:

(12) Limits of Coverage...

(d) Part B Medicare Only Beneficiary (QI1). Under QI1 coverage, individuals are only entitled to payment of their Medicare Part B premium...

15. Fla. Admin. Code R. 65A-1.713 addresses the "SSI-Related Medicaid Income

Eligibility Criteria" stating:

(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...

(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...

16. The above authority explains to be eligible for 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".

17. ACCESS Florida Program Policy Manual, Appendix A-9, identifies the federal poverty level for a QI1 individual participant at \$1,313 effective July 2014 and \$1,335 effective January 2015.

18. Federal regulation at 20 C.F.R. § 416.1124(c)(12) establishes a \$20 disregard for "the first \$20 of any unearned income in a month". Respondent deducted \$20 from petitioner's November 2014 and December 2014 income (\$2,023.15) to arrive at \$2,003.15 countable income. Respondent also deducted \$20 from petitioner's January 2015 income (\$2,044.15) to arrive at \$2,024.15 countable income.

19. In careful review of the cited authorities and evidence, the undersigned concludes respondent followed rule in including petitioner's VA income in the QI1 eligibility determination; and denying petitioner QI1 benefits due to exceeding the standard income limit for an individual.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is denied and respondent's action 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 4th day of March, 2015,

in Tallahassee, Florida.

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