

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

FILED

MAR 26 2015

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES



PETITIONER,

Vs.

FLORIDA DEPT OF
CHILDREN AND FAMILIES
CIRCUIT: 09 Orange
UNIT: 55032

APPEAL NO. 14F-10478
14F-10479

CASE NO.




RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned conducted a telephonic administrative hearing in the above-referenced matter on January 22, 2015 at 3:30 p.m. The hearing was reconvened on February 19, 2015 and on February 26, 2015 at 3:00 p.m. at the location of 400 W. Robinson Street in Orlando Florida.

APPEARANCES

For hearing on January 22, 2015:

For the petitioner:  pro se

For the respondent: Nydia Galarza, ACCESS supervisor

For hearing on February 19, 2015:

For the petitioner: 

For the respondent: Rodrigue Baly, ACCESS operation management consultant

For hearing on February 26, 2015:

For the petitioner: 

For the respondent: Antonio Rodriguez, ACCESS supervisor

STATEMENT OF ISSUE

The petitioner is appealing the following:

- A. At issue was whether the respondent's action to deny petitioner full Medicaid benefits and enroll her household in the Medically Needy Program with a share of cost amount of \$3,963.00 as of August 2014 is correct.
- B. At issue is the Departments action of approving the children for Medically Needy with a share of cost as of August 2014. The petitioner is seeking full Medicaid for the children.
- C. Also at issue is the amount of Food Assistance Program (FAP) benefits approved for the application dated August 25, 2014.

PRELIMINARY STATEMENT

By notice dated September 23, 2015, the respondent informed the petitioner she was eligible for zero in August 2014, \$15 in September 2014 and \$16.00 ongoing in FAP benefits. The notice also explained the household was enrolled in the Medically Needy Program with a share of cost of \$3,963.00 as of August 2014. The petitioner is seeking full Medicaid for her children. The petitioner timely requested a hearing to challenge the respondent's action.

At the January 22, 2015 hearing, petitioner requested to appear face-to-face, as petitioner did not receive the Department's evidence. On February 19, 2015, the petitioner and undersigned appeared at the scheduled time and waited for the respondent for twenty-five minutes. Appearing at the hearing observing with the

petitioner was [REDACTED] Partial testimony was taken, until respondent arrived thirty-five minutes later. The respondent motioned to adjourn and reconvene, the respondent explained he was not familiar with the case and appeared because he was notified by the undersigned that a Department representative has not appeared for the hearing.

As the hearing proceeded, another Department representative appeared and requested to reconvene at a future date to seek legal counsel, the undersigned granted this motion to reconvene. At the reconvened hearing on February 26, 2015, no legal counsel for the respondent was present, and the hearing resumed from the point where it had been stopped at the prior hearing.

Petitioner presented evidence, which was entered and marked as Petitioner Composite 1. The respondent presented six exhibits, which were entered and marked as Respondent Exhibit "1" through "6" respectively. The record was held open until close of business on March 9, 2015 for submission of additional evidence from both parties. On March 5, 2015, additional evidence was received and marked as Respondent Exhibit "5". The record closed on March 9, 2015.

FINDINGS OF FACT

1. On August 5, 2014, the petitioner submitted an application for Medicaid Assistance. On August 25, 2014, the petitioner submitted another application for FAP and Medicaid Assistance Program benefits. On her applications, she listed herself, her husband, their two children (ages 6 and 5), and petitioner's children (ages 18, 17, and 13). She also listed rent of \$800.00, heating/ cooling cost, petitioner's self-employment income, child

support income of \$330.00 biweekly and Supplemental Security Income (SSI) of \$648.90. During the application process, petitioner reported her husband last worked on August 8, 2014. He received pay on August 8, 2014 for \$813.00 and a final paycheck on August 15, 2014 of \$138.00.

2. On September 23, 2014, the respondent sent the petitioner a Notice of Case Action informing her that she was eligible to receive zero FAP benefits for August 2014, \$15 for September 2014 and \$16.00 ongoing. The undersigned did not receive a copy on the Notice of Case action approving the household for the Medically Needy Program with a share of cost \$3,963.00.

3. On record and in each hearing, the respondent's representatives explained the income used in the initial determination of the FAP benefits could not be explained. The respondent's representatives additionally explained they could not determine how the respondent arrived to the Medically Needy share of cost amount of \$3,963.00.

4. Petitioner is seeking an explanation on how the income was budget and expenses considered in the FAP and Medicaid Assistance Program. Petitioner believes self-employment expenses were not considered in the FAP and Medicaid Program benefits budget.

5. At the reconvened hearing on February 26, 2015, the respondent explained they recalculated the petitioner's income base on an employer letter petitioner submitted to the Department. The letter explained petitioner is sub-contracted by the company

██████████ she is self-employed and is paid \$100.00 per day. This is based on a six-day workweek (\$600.00 per week). The respondent multiplied the gross income of

\$600.00 by four and arrived at \$2,400.00 monthly-earned income (Respondent Exhibit 3 page 39).

6. The undersigned left the record open to allow the petitioner the opportunity to submit documentation of self-employment expenses. Petitioner did not submit said evidence to the undersigned.

7. The respondent submitted an updated report of FAP benefits issued to the petitioner. The report showed an auxiliary of \$326.00 was issued for September 2014, \$355.00 for October 2014, and \$622.00 for November 2014. It is unknown how the Department determined the auxiliary benefits; the respondent acknowledged it was a mistake to approve more FAP benefits. The respondent approved the FAP benefits for a household size of six. Petitioner's husband has not obtained a Lawful Permanent Resident (LPR) card to be considered in the FAP budget.

8. The respondent explained the Medically Needy Program with a share of cost reduced from \$3,963.00 to \$448.00 beginning August 2014. The income limit for petitioner to be eligible for full Medicaid benefits for a household size of seven is \$549.00. Petitioner's earned income of \$2,400.00 exceeds the income limit for the Medicaid Program for herself.

9. On March 5, 2015, the respondent submitted a print out showing Medicaid Program eligibility for the children beginning August 2014.

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 Fla. Stat. § 409.285.

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

12. In accordance with Fla. Admin. Code R. 65-2.060(1) the burden of proof was assigned to the petitioner as the applicant seeking an increase in the FAP benefit. The burden of proof for Medicaid Program issue was also assigned to the petitioner.

A. The issue on the denial for full-Medicaid Program benefits for the children beginning August 2014:

13. The respondent has already taken corrective action to authorize full Medicaid Program benefits for the petitioner's children effective August 2014. There is no further issue to be determined by the hearing officer in regards to the Medicaid Program benefits for said children.

B. As to the issue of the enrollment of the Medically Needy Program share of cost for the petitioner beginning August 2014:

14. According to the evidence, petitioner's earned monthly income is \$2,400.00. Petitioner also receives child support income and SSI of \$648.90 monthly. However, due to the Affordable Care Act law, child support income is not included in the Medicaid budget. It is the respondent's testimony that the petitioner's income exceeds the income limit for a household size of seven.

15. Fla. Admin. Code R. 65A-1.707 and 65A-1.716 list the Family-Related Medicaid Income and Resource Criteria. These authorities set forth full Medicaid coverage groups available for the household member.

16. Fla. Admin. Code R. 65A-1.707 Family-Related Medicaid Income and Resource Criteria states in part:

(1) Family-related Medicaid income is based on the definitions of income, resources (assets), verification and documentation requirements as follows.

(a) Income. Income is earned or non-earned cash received at periodic intervals from any source such as wages, self-employment, benefits, contributions, rental property, etc. Cash is money or its equivalent, such as a check, money order or other negotiable instrument. Total gross income includes earned and non-earned income from all sources.... For Medically Needy coverage groups, the amount by which the gross income exceeds the applicable payment standard income level is a share of cost as defined in Rule 65A-1.701, F.A.C. For the CNS criteria, refer to subsection 65A-1.716(1), F.A.C. For the payment standard income levels, refer to subsection 65A-1.716(2), F.A.C.

17. Fla. Admin. Code R. 65A-1.716 Income and Resource Criteria continues:

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

Family Size	Income Level
1	\$180
2	\$241
3	\$303
4	\$364
5	\$426
6	\$487
7	\$549

18. The authority cited sets forth the income limits for full Medicaid. The undersigned concludes petitioner's total countable gross income of \$2,400.00 exceeds the income standard for a household size of seven of \$549.00.

19. The Code of Federal Regulations at 42 C.F.R. § 435.310 discusses medically needy coverage of specified relatives:

(a) If the agency provides for the medically needy, it may provide Medicaid to specified relatives, as defined in paragraph (b) of this section, who meet the income and resource requirements of subpart I of this part.

(b) Specified relatives mean individuals who:

(1) Are listed under section 406(b)(1) of the Act and 45 CFR 233.90(c)(1)(v)(A); and

(2) Have in their care an individual who is determined to be (or would, if needy, be) dependent, as specified in §435.510...

20. Federal Regulation at 42 C.F.R. § 435.831 Income eligibility, explains

The agency must determine income eligibility of medically needy individuals in accordance with this section.

...
(b) Determining countable income. The agency must deduct the following amounts from income to determine the individual's countable income.

...
(c) Eligibility based on countable income. If countable income determined under paragraph (b) of this section is equal to or less than the applicable income standard under §435.814, the individual or family is eligible for Medicaid...

21. The above authority explains Medically Needy provides coverage for individuals who do not qualify for full Medicaid due to income.

22. The ACCESS Florida Program Policy Manual Appendix A-7, Family-Related Medicaid Income Limits chart sets forth the \$882.00 MNIL for a household size of seven.

23. The calculation to determine the share of cost is the following:

\$2,400.00	Petitioner's earnings
<u>-\$882.00</u>	<u>medically needy income level for standard filing unit of seven</u>
\$1,518.00	share of cost ¹

¹ This calculation is for September 2014 and ongoing. The August 2014 calculation would be different due to petitioner's husband's earned income.

24. It is unknown how the Department arrived at the new share of cost amount of \$448.00 beginning August 2014. It is concluded that the respondent's actions to enroll the petitioner in the Medically Needy Program is correct. The respondent determined a share of cost of \$448 effective August 2014, there is no better outcome the hearing officer can find in the share of cost amount.

C. As to the issue of the denial for Food Assistance benefits for August 2014 and the amount of Food Assistance Program benefits effective September 2014.

25. The Code of Federal Regulations at 7 C.F.R. § 273.9 define income and deductions for the Food Assistance Program benefits budget:

(b) Definition of income. Household income shall mean all income from whatever source.

(2) Unearned income shall include, but not be limited to...

(ii) Annuities; pensions; retirement, veteran's, or disability benefits; worker's or unemployment compensation including any amounts deducted to repay claims for intentional program violations as provided in §272.12; old-age, survivors, or social security benefits...

(d) Income deductions. Deductions shall be allowed only for the following household expenses:

(1) Standard deduction...

(3) Excess medical deduction. That portion of medical expenses in excess of \$35 per month, excluding special diets, incurred by any household member who is elderly or disabled as defined in §271.2...

(6) Shelter costs...

(ii) Excess shelter deduction. Monthly shelter expenses in excess of 50 percent of the household's income after all other deductions in paragraphs (d)(1) through (d)(5) of this section have been allowed. If the household does not contain an elderly or disabled member, as defined in §271.2 of this chapter, the shelter deduction cannot exceed the maximum shelter deduction limit established for the area... Only the following expenses are allowable shelter expenses:

(A) Continuing charges for the shelter occupied by the household, including rent, mortgage, condo and association fees, or other continuing

FINAL ORDER (Cont.)

14F-10478

14F-10479

PAGE - 10

charges leading to the ownership of the shelter such as loan repayments for the purchase of a mobile home, including interest on such payments.

(B) Property taxes, State and local assessments, and insurance on the structure itself, but not separate costs for insuring furniture or personal belongings.

(C) The cost of fuel for heating; cooling (i.e., the operation of air conditioning systems or room air conditioners); electricity or fuel used for purposes other than heating or cooling; water; sewerage; well installation and maintenance; septic tank system installation and maintenance; garbage and trash collection; all service fees required to provide service for one telephone, including, but not limited to, basic service fees, wire maintenance fees, subscriber line charges, relay center surcharges, 911 fees, and taxes; and fees charged by the utility provider for initial installation of the utility. One-time deposits cannot be included...

(iii) Standard utility allowances. (A) With FNS approval, a State agency may develop the following standard utility allowances (standards) to be used in place of actual costs in determining a household's excess shelter deduction...

26. The income in the FAP budget for August 2014 is as follows :

\$2,400.00	petitioner's earnings
\$158.50	husband CC final pay in August \$813.00 and \$138.00 total \$951.00
(note: husband's income must be divided by the number of members in the FAP budget- \$951.00 divided by 6 members = \$158.50)	
\$660.00	child support income
\$648.90	SSI amount for child SC
\$3,867.40	Total countable income

The correct calculation for the FAP benefits in August 25, 2014 is as follows:

FOOD ASSISTANCE BUDGET WORKSHEET

1. Name: [REDACTED] Case #: [REDACTED] Seq.: FS Month(s): August 2014

2a. Gross Monthly Earned Income	\$ 2,400.00
If needed, specify source(s) of earned income	husband income pro-rated
	+ \$ <u>158.50</u>
	+ \$ _____
b. Total Earned Income	= \$ 2,558.50

3a. Gross Monthly Unearned Income	\$	660.00
If needed, specify	+	\$ 648.90
source(s) of	+	\$
unearned		
b. Total Unearned Income	= \$	1,308.90

4. Total Monthly Gross Income: Tot. Earned(2b) \$ 2,558.50 + Tot. Unearned(3b) \$ 1,308.90 = \$ 3,867.40

(Compare to) Maximum Gross Income Standard: \$ 5,330.00 (for HH Size of) 6

Result: The Assistance Group has ☒ Passed ☐ Failed the Food Assistance Gross Income Test

5.	a. <i>Total Earned Income</i> (2b)	\$ 2,558.50
	b. 20% Exclusion	— 511.70
	c. Subtotal	= 2,046.80
	d. <i>Total Unearned Income</i> (3b)	+ 1,308.90
	e. Total Income	= 3,355.70
	f. Standard Deduction	— 221.00
	g. Total income	= 3,134.70
	h. Homeless Income Deduction	— 0.00
	i. Total Net Income	= 3,134.70
7.	a. <i>Excess Medical Expenses</i> (6c)	— 0.00
	b. Total	= 3,134.70
	c. Dependent Care	— 0.00
	d. Net income	= 3,134.70
	e. Child Support Paid	— 0.00
	f. <i>Adjusted Net Income</i>	= 3,134.70

8. Adjusted Net income (7f)	\$ 3,134.70
X .50 = Shelter Standard	\$ 1,567.35

10. a. Adjusted Net income (7f)	\$ 3,134.70
b. Excess Shelter Deduction (9g)	— 0.00
c. FA Adjusted Net Income	= 3,134.70

6. Medical Expenses: (qualified recipients only)

a. Total Medical \$ 0.00

b. Minus Medical Standard _____

c. *Excess Medical Expenses* = 0.00

Explanation of "capped/uncapped" excess shelter deduction

9. Shelter Expenses:

a. Mortgage/Rent \$ 800.00

b. Insurance/Taxes + _____

c. Utilities (SUA/BUA/Phone)	+	<u>337.00</u>
------------------------------	---	---------------

d. Other: _____ + _____

e. Total Shelter = 1.137.00

f. Shelter Standard (from 8)	- 1.567.35
------------------------------	------------

g. *Excess Shelter Deduction* = 0.00

Calculate allowable excess shelter deduction

11. Compare FA Adj. Net Income (10c) \$ 3,134.70 to Maximum Net Income Std. \$ 2,665.00 for HH Size 6

Result: The Assistance Group has ☐ Passed ☒ Failed the Food Assistance Net Income Test

27. The Department's Policy Manual section 2610.0140 explains noncitizens who do not qualify for food stamps must be included income in the FAP budget "Technically ineligible individuals may not participate in the Food Stamp Program". A technically ineligible individual is one who:

1. fails to meet the SSN requirements;
2. fails due to being an ineligible noncitizen; (emphasis added)
3. fails due to serving a child support sanction; or
4. fails due to not meeting ABAWD requirements.

FINAL ORDER (Cont.)

14F-10478

14F-10479

PAGE - 12

The technically ineligible individual may not be included in the household when food stamp benefits are determined. Treat the income, assets and expenses of technically ineligible individuals as follows:

1. Prorate the income of the ineligible individual and count all but the ineligible member's share toward the eligibility of the remaining household members for individuals who fail to meet SSN requirements, are ineligible noncitizens,...
3. The 20% earned income deduction is allowed;

28. Changes occurred in the household's income and expenses in September 2014, the correct calculation for the FAP benefits is as follows:



FOOD ASSISTANCE BUDGET WORKSHEET

1. Name: [REDACTED] Case #: [REDACTED] Seq.: FS Month(s): 9/2014-10/14

2a. Gross Monthly Earned Income	\$ 2,400.00	3a. Gross Monthly Unearned Income	\$ 660.00
If needed, specify source(s) of earned income	+ \$	If needed, specify source(s) of unearned income	+ \$
b. Total Earned Income	= \$ 2,400.00	b. Total Unearned Income	= \$ 1,303.23

4. Total Monthly Gross Income: Tot. Earned(2b) \$ 2,400.00 + Tot. Unearned(3b) \$ 1,303.23 = \$ 3,703.23

(Compare to) Maximum Gross Income Standard: \$ (for HH Size of)

Result: The Assistance Group has ☐ Passed ☐ Failed the Food Assistance Gross Income Test

5. a. Total Earned Income (2b)	\$ 2,400.00
b. 20% Exclusion	- 480.00
c. Subtotal	= 1,920.00
d. Total Unearned Income (3b)	+ 1,303.23
e. Total Income	= 3,223.23
f. Standard Deduction	- 221.00
g. Total income	= 3,002.23
h. Homeless Income Deduction	- 0.00
i. Total Net Income	= 3,002.23
7. a. Excess Medical Expenses (6c)	- 0.00
b. Total	= 3,002.23
c. Dependent Care	- 0.00
d. Net Income	= 3,002.23
e. Child Support Paid	- 0.00
f. Adjusted Net Income	= 3,002.23

8. Adjusted Net Income (7f)	\$ 3,002.23
X .50 = Shelter Standard	\$ 1,501.12

10. a. Adjusted Net Income (7f)	\$ 3,002.23
b. Excess Shelter Deduction (9g)	- 0.00
c. FA Adjusted Net Income	= 3,002.23

6. Medical Expenses: (qualified recipients only)

	\$
	\$
	\$
	\$
	\$
a. Total Medical	\$ 0.00
b. Minus Medical Standard	-
c. Excess Medical Expenses	= 0.00

Explanation of "capped/uncapped" excess shelter deduction

9. Shelter Expenses:

a. Mortgage/Rent	\$ 975.00
b. Insurance/Taxes	+
c. Utilities (SUA/BUA/Phone)	+ 337.00
d. Other:	+
e. Total Shelter	= 1,312.00
f. Shelter Standard (from 8)	- 1,501.12
g. Excess Shelter Deduction	= 0.00

Calculate allowable excess shelter deduction

11. Compare FA Adj. Net Income (10c) \$ 3,002.23 to Maximum Net Income Std. \$ 2,665.00 for HH Size 6

Result: The Assistance Group has ☐ Passed ☒ Failed the Food Assistance Net Income Test

12. a. FA Adjusted Net income (10c)	\$ 3,002.23
	X 30%

b. Benefit Reduction (round up)	= 901
---------------------------------	-------

13. a. Maximum Allotment	\$ 925
--------------------------	--------

b. Benefit Reduction (12b)	- 901
----------------------------	-------

Click Here c. Monthly Allotment	= 24
---------------------------------	------

14. For Calculation of Restored Benefits:

a. Corrected Allotment	\$
b. Actual Allotment Issued	-
c. Restored Benefit Amount	= 0

15. For Calculation of Overissuance

a. Actual Allotment Issued	\$
----------------------------	----

29. The income and expenses (rent from \$800.00 to \$975.00 as of September 2014)

budget in September 2014:

\$2,400.00	petitioner's earnings
\$660.00	child support income
\$643.23	SSI amount, on September 2014, SS started to recoup \$5.67
\$3,703.23	Total countable income

30. Federal Regulations at 7 C.F.R. § 273.10 (c) (i) defines anticipated Income.

(3) Income averaging. (i) Income may be averaged in accordance with methods established by the State agency to be applied Statewide for categories of households. When averaging income, the State agency shall use the household's anticipation of monthly income fluctuations over the certification period. An average must be recalculated at recertification and in response to changes in income, in accordance with §273.12(c), and the State agency shall inform the household of the amount of income used to calculate the allotment. Conversion of income received weekly or biweekly in accordance with paragraph (c)(2) of this section does not constitute averaging.

31. The ACCESS Florida Program Policy Manual sets forth the following:

Appendix A-1	\$925.00 maximum FAP benefit for a household size of six
	\$337 maximum standard utility allowance
	\$221.00 standard deduction for a household size of six + members
	\$490.00 maximum shelter deduction for AGs without elderly or disabled member
	Uncapped maximum shelter deduction for AGs with an elderly or disabled member

32. After recalculation and adding the earned and unearned income in the budget determination there is no indication that the petitioner was eligible for any other deductions from her income, the undersigned concludes it could not find a more favorable outcome. Auxiliary benefits were issued in September, October and November 2014. Eligibility for additional FAP benefits is not found.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is found as follows.

A. Regarding the issue on the denial of full Medicaid Program benefits for the children effective August 2014. The respondent has already taken corrective action to authorize full Medicaid Program benefits effective August 2014. There is no further issue to be determined by the hearing officer for the Medicaid Program benefits for the children. Therefore, this issue is denied as moot.

B. As to the issue of full Medicaid Program benefits and enrollment into the Medically Needy with share of cost for the petitioner, this issue is denied.

C. As to the issue on the amount for the Food Assistance Program benefits, this 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 26th day of March, 2015,

in Tallahassee, Florida.

Cassandra Perez *mk*
Cassandra Perez
Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
Office: 850-488-1429
Fax: 850-487-0662
Email: Appeal_Hearings@dcf.state.fl.us

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