

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

**FILED**

MAR 06 2015

OFFICE OF APPEAL HEARINGS  
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 14F-10675

PETITIONER,

Vs.

CASE NO. [REDACTED]

FLORIDA DEPARTMENT OF  
CHILDREN AND FAMILIES  
CIRCUIT: 15 Palm Beach  
UNIT: 88595

RESPONDENT.

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on February 2, 2015 at 10:09 a.m.

**APPEARANCES**

For the Petitioner:

For the Respondent:

[REDACTED]  
Mayra Fuentes, ACCESS supervisor

**STATEMENT OF ISSUE**

The petitioner is appealing the respondent's action to enroll her in the Medically Needy Program with a share of cost. She is seeking full Medicaid or a lower share of cost.

**PRELIMINARY STATEMENT**

At the hearing, the respondent presented one exhibit which was accepted into evidence and marked as Respondent's Composite Exhibit 1. The petitioner presented

one exhibit which was accepted into evidence and marked as Petitioner's Composite Exhibit 1. The record was closed on February 2, 2015.

### **FINDINGS OF FACT**

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

1. On October 2, 2014, the petitioner submitted a recertification application for Food Assistance Program (FAP) benefits and Medicaid benefits for herself and three children. The petitioner was approved for FAP benefits and her three children were approved full Medicaid Benefits but the petitioner was found ineligible for full Medicaid. She was enrolled for a Medically Needy Program with an estimated Share of Cost (SOC).
2. The petitioner was employed at [REDACTED] and was paid weekly. She provided her paystubs dated October 18, 2014 for \$345.60, October 11, 2014 for \$359.10, October 4, 2014 of \$303.30 and September 27, 2014 for \$343.80 as proof of her income for last four weeks (Respondent's Composite Exhibit 1).
3. The Department's calculation is as follows for December 2014. It determined the petitioner's gross monthly income by adding four of the petitioner's paychecks (\$343.80+\$303.30+\$359.10+\$345.60) and dividing by four to find the weekly average, then multiplying by a conversion factor of 4, to get the gross monthly income of \$1,351.80. It added the petitioner's daughter's Social Security benefits of \$246 to get the household's income of \$1,597.80. This amount is called modified adjusted gross income (MAGI). The Department counted four members in the petitioner's standard filing unit (SFU). The household income was then compared to the income limit for an adult with a household size of four. The maximum income to be eligible for full Medicaid was

\$464. The petitioner did not have any allowable tax deduction. As her income exceeded the maximum limit for full Medicaid benefits the 5% MAGI of \$99 was subtracted to determine if the petitioner would become eligible. She was still ineligible for full Medicaid benefits. The respondent proceeded to determine the Medically Needy SOC.

4. To determine the Medically Needy SOC for December 2014, the Department used the countable household gross as determined above of \$1,597.80. It subtracted the Medically Needy Income Level of \$585 resulting in a SOC of \$1,012.

5. The Department's calculation is as follows effective January 2015. It determined the petitioner's earned gross monthly income of \$1,351.80 as determined above. The petitioner's daughter received an increase in Social Security benefits to \$250 effective January 2015. The Department added the petitioner's earned income to her daughter Social Security benefits to get the household's MAGI of \$1,601.98. The maximum income to be eligible for full Medicaid was \$464. The petitioner did not have any allowable tax deductions. The 5% MAGI deduction of \$99 was subtracted to determine if the petitioner would become eligible. She remained ineligible for full Medicaid benefits. The Department proceeded to determine her Medically Needy SOC.

6. To determine the Medically Needy SOC, the Department used the countable household gross of \$1,601.98. It subtracted the Medically Needy Income Level of \$585 resulting in SOC of \$1,016.

7. By notice dated November 3, 2014, the respondent informed the petitioner that her Medically Needy SOC would increase from \$949 to \$1,012 as of December 1, 2014.

8. On December 11, 2014, the petitioner timely requested an administrative hearing to challenge the decision.
9. The Department explained that the Medicaid Programs have guidelines and income limitations that it must follow when determining eligibility for the Program. The income limits must be met in order to be eligible for full-coverage Medicaid.
10. The petitioner asserts that after she pays for a share of cost she would not have enough money to pay for other expenses. She cannot financially afford her 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 R. 65-2.056.
13. In accordance with Fla. Admin. Code R. 65-2.060 (1), the burden of proof is assigned to the petitioner.

#### **Eligibility for full Medicaid benefits will be addressed first:**

14. The Family-Related Medicaid income criteria is set forth in 42 C.F.R 435.603.
  - (a)(2) Effective January 1, 2014, the agency must apply the financial methodologies set forth in this section in determining the financial eligibility of all individuals for Medicaid, except for individuals identified in paragraph (j) of this section and as provided in paragraph (a)(3) of this section.
  - (d) Household income—(1) General rule. Except as provided in paragraphs (d)(2) through (d)(4) of this section, household income is the

sum of the MAGI-based income, as defined in paragraph (e) of this section, of every individual included in the individual's household.

(2) Income of children *and* tax dependents. (i) The MAGI-based income of an individual who is included in the household of his or her natural, adopted or step parent and is not expected to be required to file a tax return under section 6012(a)(1) of the Code for the taxable year in which eligibility for Medicaid is being determined, is not included in household income whether or not the individual files a tax return.

(ii) The MAGI-based income of a tax dependent described in paragraph (f)(2)(i) of this section who is not expected to be required to file a tax return under section 6012(a)(1) of the Code for the taxable year in which eligibility for Medicaid is being determined is not included in the household income of the taxpayer whether or not such tax dependent files a tax return. (i) If the household income of an individual determined in accordance with this section results in financial ineligibility for Medicaid and the household income of such individual determined in accordance with 26 CFR 1.36B-1(e) is below 100 percent FPL, Medicaid financial eligibility will be determined in accordance with 26 CFR 1.36B-1(e)...

(3) In the case of individuals described in paragraph (f)(2)(i) of this section, household income may, at State option, also include actually available cash support, exceeding nominal amounts, provided by the person claiming such individual as a tax dependent.

(4) Effective January 1, 2014, in determining the eligibility of an individual using MAGI-based income, a state must subtract an amount equivalent to 5 percentage points of the Federal poverty level for the applicable family size only to determine the eligibility of an individual for medical assistance under the eligibility group with the highest income standard using MAGI-based methodologies in the applicable Title of the Act, but not to determine eligibility for a particular eligibility group.

(e) *MAGI-based income*. For the purposes of this section, MAGI-based income means income calculated using the same financial methodologies used to determine modified adjusted gross income as defined in section 36B(d)(2)(B) of the Code,

(f) *Household*—(1) Basic rule for taxpayers not claimed as a tax dependent. In the case of an individual who expects to file a tax return for the taxable year in which an initial determination or renewal of eligibility is being made, and who does not expect to be claimed as a tax dependent by another taxpayer, the household consists of the taxpayer and, subject to paragraph (f)(5) of this section, all persons whom such individual expects to claim as a tax dependent....

(2) Basic rule for individuals claimed as a tax dependent. In the case of an individual who expects to be claimed as a tax dependent by another taxpayer for the taxable year in which an initial determination or renewal of eligibility is being made, the household is the household of the taxpayer claiming such individual as a tax dependent... (3) Rules for individuals who

neither file a tax return nor are claimed as a tax dependent. In the case of individuals who do not expect to file a Federal tax return and do not expect to be claimed as a tax dependent for the taxable year in which an initial determination or renewal of eligibility is being made, or who are described in paragraph (f)(2)(i), (f)(2)(ii), or (f)(2)(iii) of this section, the household consists of the individual and, if living with the individual—

(i) The individual's spouse;

(ii) The individual's natural, adopted and step children under the age specified in paragraph (f)(3)(iv) of this section...

15. The ACCESS Florida Program Policy Manual (The Policy Manual), 165-22, at

2430.0700 Income Conversion (MFAM) states:

Most income is received more often than monthly; that is; it is received weekly, biweekly, or semimonthly. Since eligibility and benefit amounts are issued based on a calendar month, income received other than monthly is to be converted to a monthly amount.

The following conversion factors based on the frequency of pay are used:

Weekly income (once a week): Multiply by 4.

Biweekly income (every two weeks): Multiply by 2.

Semimonthly income (twice a month): Multiply by 2.

16. The Policy Manual at 2230.0400 standard filing unit (MFAM) states

For tax filers, the Standard Filing Unit (SFU) is the tax filing group for the tax year in which eligibility is being determined. Eligibility is determined by each individual using the tax filing group's income. Individuals cannot receive Medicaid benefits under more than one coverage group, but can have their income included in more than one SFU.

For individuals who neither file a federal tax return nor are claimed as a tax dependent (non-filers), the Standard Filing Unit consists of the individual and, if living with the individual, their spouse, their natural, adopted, and step children under age 19, or 19 and 20 if in school full-time.

17. The above policy explains that Medicaid in the family-track is determined by how the family files federal taxes. The family's eligibility is determined by grouping certain individuals together and counting those members' income which is called the Standard Filing Unit or SFU. Eligibility is determined by each individual using the tax filing group's income. According to the above policy, for

non-filers, the parents and child under age 19 are counted in the SFU. The Department correctly determined the petitioner's household size of four.

18. The Policy Manual at Appendix A-7 indicates that for a household size four, a parent income limit is \$364.

Family-Related Medicaid Income Limits

Family Size 4... parents...\$364... MNIL \*\*see note below...99...MAGI Disregard (5% of 100% FPL) The 5% MAGI disregard is used in a budget only if it makes a "failing" individual "pass" a full coverage Medicaid group.

19. The Policy Manual at 2630.0108 Budget Computation (MFAM) sets forth the budgeting process and states:

Financial eligibility for Family-Related Medicaid is determined using the household's Modified Adjusted Gross income (MAGI). The MAGI is the household's adjusted gross income as calculated by the Internal Revenue Service plus any foreign earned income and interest income exempt from tax.

In computing the assistance group's eligibility, the general formula is:

Step 1 - (Gross Unearned + Gross Earned) = (Total Gross Income).

Step 2 - Deduct any allowable income tax deductions (lines 23-35 from 1040). Deduct any allowable deductions for financial aid or self-employment to obtain the Modified Adjusted Gross Income.

Step 3 - Deduct the appropriate standard disregard. This will give the countable net income.

Step 4 - Compare the total countable net income to the coverage group's income standard.

If less than or equal to the income standard\* for the program category, STOP, the individual is eligible. If greater than the income standard for the program category, continue to Step 5.

Step 5 - Apply a MAGI deduction (5% of the FPL based on SFU size).

If the 5% disregard would make the individual eligible, include the disregard. Otherwise the individual is ineligible for Medicaid.

Individuals determined ineligible for Medicaid will be enrolled in Medically Needy and referred, as appropriate, to Florida KidCare and/or the Federally Facilitated Marketplace (FFM).

20. The total gross income for the SFU (or household) is \$1,601.98. To determine if the petitioner meets the income limit for full Medicaid, the only deductions considered

are the tax deductions (none were listed) and the 5% of the Federal Poverty Level or \$99 for a family of four (as shown in the above policy citation). The undersigned concludes the petitioner's net countable income exceeds the income limit of \$364 for petitioner's eligibility for full Medicaid.

**Medically Needy Program benefits will now be addressed:**

21. The Policy Manual at 2630.0502 Enrollment (MFAM) sets forth:

If an individual meets the Medically Needy Program's technical eligibility criteria, he is enrolled into the program. There is no income limit for enrollment. The individual is only eligible (entitled to Medicaid) when he has allowable medical bills that exceed the SOC.

The income for an enrolled assistance group need not be verified. Instead, an estimated SOC is calculated for the assistance group. If after bill tracking, it appears the assistance group has met his "estimated" SOC, the unverified income must be verified before the Medicaid can be authorized. An individual is eligible from the day their SOC is met through the end of the month.

22. If the household exceeds the income limit in one program, policy requires that eligibility be determined for all other available Medicaid programs.

23. The Medically Needy Income Level (MNIL) appears in the Policy Manual at Appendix A-7. Effective April 2014, the MNIL for a household size four is \$585.

24. The Policy Manual at 2630.0500 Share of Cost (MFAM) states:

The Share of Cost (SOC) refers to the amount of medical bills which an individual enrolled in the Medically Needy Program must incur in any given month before Medicaid coverage may be authorized.

Eligibility must be determined for Medically Needy any time the assistance group meets all technical factors but the income exceeds the appropriate income limit for Medicaid.

To calculate the share of cost, compare the countable net income to the Medically Needy Income Level based on the size of the standard filing unit. The difference is the assistance group's share of cost.

25. Fla. Admin. Code R. 65A-1.707 sets forth the income and resource criteria for Medically Needy coverage. "For Medically Needy coverage groups, the amount by which the gross income exceeds the applicable payment standard income level is a share of cost..."

26. The above policy instructs to determine the SOC in the Medically Needy Program by subtracting the MNIL for the family size from the countable income and the difference is the SOC. According to the above-cited passages, the budget would begin with the gross income of \$1,601.98 and subtract only the tax allowed deductions and the MNIL for four of \$585. This leaves the SOC at \$1,016 effective January 2015.

27. The petitioner's monthly gross income was \$1,601.98. According to the above cite, the petitioner was over the income limit of \$364 for full Medicaid benefits.

28. The SOC of \$1,016 was determined by using the household's countable income of \$1,601 minus the MNIL of \$585.

29. In careful review of the cited authorities and evidence, the undersigned concludes the enrollment in the Medically Needy Program with a SOC is appropriate. The findings show that the petitioner's income was over the income standard for full Medicaid benefits. The controlling legal authorities do not allow for a more favorable outcome.

### **DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is denied. 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 6<sup>th</sup> day of March, 2015,

in Tallahassee, Florida.

  
Christiana Gopaul-Narine

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Copies Furnished To: [REDACTED] Petitioner  
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