

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

FILED

APR 16 2015

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES

APPEAL NO. 14F-10733

PETITIONER,

Vs.

CASE NO.

FLORIDA DEPT OF CHILDREN AND FAMILIES
CIRCUIT: 11 Dade
UNIT: 88674

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on at April 1st, 2015 at 11:00 a.m.

APPEARANCES

For the Petitioner: pro se.

For the Respondent: Elbert Martin, Supervisor for the Economic Self-Sufficiency (ESS) Program.

STATEMENT OF ISSUE

The petitioner is appealing respondent's action to enroll her in the Medically Needy program with a share of cost effective October 2014. The petitioner carries the burden of proof on this issue. The petitioner is also appealing the respondent's action to increase her share of cost effective January 2015. The respondent carries the burden of proof on this issue.

PRELIMINARY STATEMENT

The hearing was originally scheduled for January 26th, 2015. On that date, the petitioner did not phone in, but subsequently contacted the Office of Appeal Hearings and requested that the hearing be rescheduled. The hearing was rescheduled for February 11th, 2015. However, the respondent neglected to share its evidence with the petitioner; therefore, the hearing could not go forth. The hearing was rescheduled for March 16th, 2015. On that date, the respondent claimed to have issued its evidence to the petitioner on February 11th, 2015; however, the petitioner claimed non-receipt of said evidence. The respondent agreed to reissue its evidence, and the hearing was rescheduled for April 1st, 2015. On that date, the petitioner acknowledged receipt of the respondent's evidence, and the hearing went forth.

Respondent's Exhibits 1 through 12 were moved into evidence.

The petitioner did not submit any evidence for consideration. The record was held open until the close of business April 13th, 2015 to allow the petitioner to submit evidence to the respondent and the hearing officer. As of the close of business that date, no further evidence was received, and the record was closed.

By way of a Notice of Case Action dated October 27th, 2014, the respondent informed the petitioner that her application of October 21st, 2014 was approved and that she would be enrolled in the Medically Needy program effective October 2014, with an assigned share of cost of \$824.

By way of a Notice of Case Action dated December 18th, 2014, the respondent informed the petitioner that her Medically Needy share of cost would increase from \$824 to \$841 effective January 2015.

On December 16th, 2015, the petitioner filed an appeal to challenge the action of October 27th, 2014. At the hearing, the petitioner stated that she also wished to appeal the action of December 18th, 2014. Both appeals are considered to be timely filed.

FINDINGS OF FACT

1. The petitioner applied for Medicaid benefits for the first time on October 21st, 2014. As part of the application process, the respondent is required to explore and verify all factors of eligibility which include, but are not limited to, all sources of income.

2. The petitioner (35 years of age) is a disabled, single-person household.

3. At the time of application, the respondent ascertained that the petitioner was receiving Social Security Disability benefits in the undisputed amount of \$1,024. The respondent determined that this amount exceeded the income limit of \$721 for a single person and therefore, the petitioner was ineligible for "pure" Medicaid. The respondent determined, instead, that the petitioner was eligible for Medically Needy with an assigned share of cost of \$824.

4. The petitioner's Social Security Disability benefits increased effective January 2015. The respondent's position is that based on the petitioner's current income of \$1,041, the share of cost increased to \$841 effective January 2015.

5. The petitioner claimed that her Social Security benefits increased effective January 2015, but to \$1,042 and not \$1,041 as asserted by the respondent. The record was held open for one week following the hearing for verification of the correct amount, but none was received.

6. The petitioner contends that she incurs prescription expenses, out-of-pocket and unreimbursed, in excess of \$200. Additionally, needs to be periodically seen by various specialists, and these visits cost \$175-\$200 per visit. The petitioner also pays \$600 in rent, plus utilities and other monthly household expenses, and contends that she cannot afford not to be on regular Medicaid with no share of cost.

PRINCIPLES 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 § 120.80, Fla. Stat. This order is the final administrative decision of the Department of Children and Families under § 409.285, Fla. Stat.

8. This hearing was held as a de novo proceeding pursuant to Fla. Admin. Code R. 65-2.056.

9. Fla. Admin. Code R. 65A-1.701 Definitions states in part:

“(30) Share of Cost (SOC): SOC represents the amount of recognized medical expenses that a Medically Needy enrolled individual or family must incur each month before becoming eligible to receive Medicaid benefits for medical expenses incurred during the remainder of the month.”

10. 65A-1.702 Special Provisions states in part:

"(13) Determining Share of Cost (SOC). The SOC is determined by deducting the Medically Needy income level from the individual's or family's income."

11. 65A-1.710 SSI-Related Medicaid Coverage Groups states in part:

(5) Medically Needy Program. A Medicaid coverage group, as allowed by 42 U.S.C. §§ 1396a and 1396d, for aged, blind or disabled individuals (or couples) who do not qualify for categorical assistance due to their level of income or resources. The program does not cover nursing facility care, intermediate care for the developmentally disabled services, or other long-term care services.

12. 65A-1.713 SSI-Related Medicaid Income Eligibility Criteria states in 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:

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

(3) When Income Is Considered Available for Budgeting. The department counts income when it is received, when it is credited to the individual's account, or when it is set aside for their use, whichever is earlier.

(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.

ANALYSIS

The hearing officer will first address eligibility for Medicaid and the assigned Share of Cost of \$824 from October 2014 through December 2014.

13. As established in the Findings of Fact, the petitioner's Social Security Disability benefits at the time of her application in October 2014 were in the undisputed monthly amount of \$1,024. According to the Department's Integrated Public Assistance Policy Manual, Appendix A-9, the income limit for a disabled individual effective July 2014 was \$721. As the petitioner's income exceeds this amount, the hearing officer concludes that the petitioner was not eligible for regular Medicaid with no Share of Cost.

14. Following the above guidelines, the hearing officer will consider the petitioner's Social Security income of \$1,024 less the unearned income disregard of \$20, for a net income figure of \$1,004. From this amount, the Medically Needy Income Level (MNIL) for one person of \$180 is subtracting, yielding a Share of Cost of \$824. As this is the Share of Cost determined by the respondent, the hearing officer affirms this determination.

The hearing officer will now address the increased Share of Cost of \$841 effective January 2015.

15. The respondent reported that the petitioner's Social Security benefits increased to \$1,041. However, the petitioner contended that her Social Security benefits

increased to \$1,042, not \$1,041. Although the burden of proof on this issue belonged to the respondent, neither party submitted evidence of either amount. Notably, neither the petitioner nor the respondent disputes the fact that the petitioner's benefits increased, and the petitioner is reporting the higher amount.

16. According to the Department's Integrated Public Assistance Policy Manual Appendix A-9, the income limit for a disabled individual effective January 2015 increased to \$733. As no verification of the correct amount of the petitioner's Social Security benefits was received, the hearing officer will consider the amount of \$1,041 (the lower of the two.) This amount exceeds the income limit of \$733; therefore, the hearing officer concludes that the petitioner is ineligible for regular Medicaid with no Share of Cost.

17. As explained above, the hearing officer did not receive verification of the petitioner's increased Social Security benefits effective January 2015. However, the existence of an increase is not disputed. Therefore, the hearing officer will consider the amount of \$1,041 as reported by the respondent since it is the lower of the two amounts in dispute. From this amount, the unearned income deduction of \$20 is subtracted, leaving an adjusted income figure of \$1,021. From this amount, the MNIL of \$180 is subtracted, yielding a Share of Cost of \$841. This is the Share of Cost that was determined by the respondent.

18. As explained in the Findings of Fact, the petitioner asserts that she must incur out-of-pocket medical expenses in addition to her monthly household expenses, none of which the respondent takes into account in determining her eligibility for Medicaid. The hearing officer reviewed the regulations and finds nothing to support

allowing these expenses when determining eligibility for Medicaid. Therefore, the hearing officer concludes that the denial of regular Medicaid benefits and enrollment in the Medically Needy program were correct.

DECISION

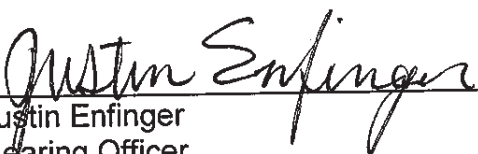
Based on the foregoing Findings of Fact and Principles of Law, this appeal is DENIED.

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 indigence to waive those fees. The Department has no funds to assist in this review, and any financial obligations incurred will be the petitioner's responsibility.

DONE and ORDERED this 16th day of April, 2015,

in Tallahassee, Florida.


Justin Enfinger
Hearing Officer
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Copies Furnished To: [REDACTED] Petitioner
Office of Economic Self Sufficiency

FINAL ORDER (Cont.)
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