

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

FILED

MAR 30 2015

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES

APPEAL NO. 14F-10916
APPEAL NO. 15F-01481

PETITIONER,

Vs.

CASE NO. [REDACTED]

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 15 Palm Beach
UNIT: 88701

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on February 25, 2014 at 10:03 a.m.

APPEARANCES

For the Petitioner:

For the Respondent: Mary Triplett, ACCESS senior worker

STATEMENT OF ISSUE

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

Also at issue is the denial of her application for the Medicare Savings Program (MSP) as her income exceeded the income eligibility standard.

PRELIMINARY STATEMENT

The petitioner presented one exhibit which was accepted into evidence and marked as Petitioner's Exhibit 1. The respondent presented one composite exhibit, which was accepted, entered into evidence and marked as Respondent's Composite Exhibit 1. The record was closed.

FINDINGS OF FACT

1. On November 5, 2014, the petitioner submitted an application for Medicaid benefits and for the Medicare Savings Program (MSP).
2. The MSP consists of three Medicaid programs, which include the Qualified Medicare Beneficiary (QMB), Special Low-Income Medicare Beneficiary (SLMB), and Qualified Individual 1 (QI-1). These are limited coverage Medicaid Programs that pay the Medicare Part B premium.
3. The petitioner's household consists of only herself (age 58). She was determined disabled and is receiving Social Security Disability Income (SSDI) of \$1,367 through December 2014 and \$1,387 effective January 2015. The petitioner reported on her application that she has monthly medical expenses for prescription drugs and co-payments to doctors. She is paying for part B Medicare of \$104.90. She would like the State to pay the premium.
4. To determine eligibility for MSP, the respondent used the petitioner's gross income of \$1,387, and subtracted a \$20 standard unearned income disregard from the total gross income which resulted in a countable income of \$1,367.

5. The Department determined the petitioner was ineligible for all three of the MSP's, as the income exceeded the income standard for an individual of \$990 for QMB, \$1,187 for SLMB and \$1,335 for QI1.

6. The respondent determined the petitioner's household income exceeded the income limit for full Medicaid benefits and enrolled her in the Medically Needy Program with a share of cost (SOC).

7. On November 7, 2014, the respondent sent the petitioner a Notice of Case Action requesting proof of all gross income from the last four weeks, proof of loans, contributions, or gifts used to pay expenses this month and to complete and sign the Financial Information Release form. A deadline date of November 17, 2014 was given.

8. By notice dated December 8, 2014, the respondent notified the petitioner that her application for Medically Needy Program benefits was approved and she was enrolled with an estimated share of cost of \$1,099 for December 2014 and \$1,123 as of January 2015.

9. On December 29, 2014, the petitioner requested an administrative hearing to challenge the decision.

10. The petitioner received multiple notices between February 9, 2015 and February 10, 2015, the notices informed her she was ineligible for QI1 and that her SOC had gone down from \$1,123 to 1,082 effective March 2015.

11. The Medically Needy Program SOC for February 2015 ongoing was calculated as follows. A \$20 unearned income disregard was subtracted from the gross income of \$1,387, which resulted in countable unearned income of \$1,367. The Medically Needy Income Level for one person, \$180, was then subtracted resulting to \$1,187. The

Medicare Part B premium of \$104.90 was then subtracted, which resulted in the final SOC of \$1,082 in the SSI-Related Medically Needy Program.

12. The Department used the same methodology above for December 2014 and January 2015, substituting the gross income of \$1,363 for December 2014 and \$1,387 for January 2015. It determined the SOC of \$1,099 for December 2014 and \$1,123 for January 2015.

13. The petitioner explained that she is very ill and needs medication. She cannot afford to pay for medication and still pay for food.

CONCLUSIONS OF LAW

14. The Department of Children and Families, Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties, pursuant to Florida Statutes § 409.285. This is the final administrative decision of the Department of Children and Families under § 409.285, Fla. Stat.

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

16. In accordance with Fla. Admin. Code R. 65-2.060(1), the petitioner has the burden of proof.

The full Medicaid issue will be addressed first:

17. Fla. Admin. Code at R. 65A-1.711 (1) SSI-Related Medicaid Non Financial Eligibility Criteria, states, "For MEDS-AD Demonstration Waiver, the individual must be age 65 or older, or disabled as defined in 20 C.F.R. §416.905..."

18. Income budgeting for MEDS-AD is set forth in Fla. Admin. Code R. 65A-1.713. It states:

(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. (2) Included and Excluded Income. For all SSI-related coverage groups the department follows the SSI policy specified in 20 C.F.R. 416.1100, et seq....

(4) Income Budgeting Methodologies. To determine eligibility SSI budgeting methodologies are applied except where expressly prohibited by 42 U.S.C. §1396, or another less restrictive option is elected by the state under 42 U.S.C. §1396(2000 Ed., Sup. IV)...

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

20. The ACCESS Program Policy Manual at Appendix A-9 identifies 88 % of the federal poverty level for SSI-Related Medicaid under the MEDS-AD Program at \$856 for one individual effective July 2014 and \$871 effective January 2015. The petitioner's total countable income prior to January 2015 of \$1,343 (after \$20 disregard) exceeds the income standard for full MEDS-AD as listed above. Effective January 2015, the total countable income of \$1,367 (after \$20 disregard) also exceeds the income standard for full MEDS-AD as listed above. The respondent's action to deny full Medicaid Program benefits for the petitioner was within the rules and regulation of the Program.

21. A review of the rules and regulations did not find any exception to meeting the income limits for the Program.

The Medically Needy SOC issue will now be addressed:

22. Fla. Admin. Code R. 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.

23. The above authority explains that the Medically Needy Program is a coverage group for aged, blind or disabled individuals who do not qualify for full Medicaid due to their level of income.

24. Fla. Admin. Code R. 65A-1.701 (30) defines Share of Cost (SOC) as:

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.

25. Fla. Admin. Code R. 65A-1.702 (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.

26. The methods of determining the share of cost for Medically Needy Program benefits is set forth in the Fla. Admin. Code R. 65A-1.713. It states:

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

(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 cost...

27. Fla. Admin. Code R. 65A-1.716 (2), Income and Resource Criteria, states, "Medicaid income and payment eligibility standards and Medically Needy income levels are by family size as follows: Size 1 Level \$180."

level after application of exclusions specified in subsection 65A-1.713(2), F.A.C.

(g) For SLMB, income must be greater than 100 percent of the federal poverty level but equal to or less than 120 percent of the federal poverty level.

(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.

31. The above authority explains an individual must have income that is within the income limits established by the federal and state law as well as the Medicaid State plan. The Medicare Buy-in Programs under Medicaid are: QMB, SLMB and QI1. An individual may qualify for the QMB Program if her income is less than or equal to the federal poverty level after applying exclusions to the income. The SLMB Program requires income to be greater than 100% of the federal poverty level but equal to or less than 120% of the federal poverty level. An individual must have income greater than 120% of the poverty level but equal to or less than 135% of the federal poverty level to be eligible for QI1. It only covers payment of the Part B Medicare premium through Medicaid.

32. The Policy Manual at 2440.0322 Standard Disregard (MSSI) states in part:

This policy applies to MEDS-AD, MN, QMB, SLMB, QI-1, Working Disabled, Protected Medicaid and EMA. A \$20 per month standard disregard applies to any type (earned or unearned) of income other than income which is provided on the basis of need. The amount of the disregard is not increased for a couple, regardless of whether one or both individuals have income.

33. The above authority states that for the QI1 Program, a \$20 per month standard disregard is allowed to reduce the amount in unearned income in determining eligibility for the program.

34. The Policy Manual at Appendix A-9 sets forth the income standards for an individual effective July 2014 as \$973 for the QMB Program, \$1,167 for the SLMB Program, and \$1,313 for the QI1 Program. Effective January 2015, the income standards is \$990 for QMB, \$1,187 for SLMB and \$1,335 for QI1.

35. The petitioner's countable income is \$1,367. Therefore, the undersigned concludes the Department correctly denied QI1 Program benefits, as eligibility is not found for any of the Programs that would assist with payment of her Medicare Part B premium.

36. The undersigned concludes the respondent's action to deny full Medicaid benefits and to enroll the petitioner in the Medically Needy Program is within the rules of the Program.

37. The petitioner can present her medical expenses to the Department to have her bills tracked.

DECISION

Based upon the Findings of Fact and Conclusions of Law, the appeal for full Medicaid is denied in part as the respondent correctly denied full Medicaid benefits and the Department correctly enrolled the petitioner in the Medically Needy Program. It is granted in part, in that a lower share of cost is concluded for December 2014 and January 2015.

The appeal for regarding the denial of MSP benefits is denied and the Department's action is upheld.

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 30th day of March, 2015,

in Tallahassee, Florida.

Christiana Gopaul-Narine

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Copies Furnished To: [REDACTED] Petitioner
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