

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

**FILED**  
**APR 15 2014**  
OFFICE OF APPEAL HEARINGS  
DEPT OF CHILDREN & FAMILIES



PETITIONER,

APPEAL NO. 14F-01542  
14F-02168

Vs.

CASE NO. 

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


RESPONDENT.

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**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on March 25, 2014 at 10:15 a.m.

**APPEARANCES**

For the Petitioner:  pro se

For the Respondent: Enid Quinones, ACCESS Supervisor

**STATEMENT OF ISSUE**

Petitioner is appealing the Department's action to reduce his Food Assistance Program (FAP) benefits effective January 1, 2014. Petitioner is also appealing the Department's action to enroll him in the Medically Needy Share of Cost (SOC) Program as he is seeking full Medicaid benefits.

**PRELIMINARY STATEMENT**

By notice dated November 26, 2013, the respondent notified the petitioner that his FAP benefits were decreasing from \$34.00 to \$27.00 and his Medically Needy

Share of Cost was increasing from \$847.00 to \$848.00 effective January 1, 2014 "due to a change in social security benefit." The petitioner timely requested this administrative hearing to challenge the respondent's actions.

The petitioner did not submit any exhibits. The respondent submitted eight exhibits which were accepted into evidence and marked as Respondent Exhibits "1" through "8" respectively. The record closed on March 25, 2014.

### **FINDINGS OF FACT**

1. The petitioner's household includes the petitioner (47) only.
2. Prior to the actions under appeal, the petitioner was receiving \$34.00 FAP benefits and was enrolled in the Medically Needy Program with a SOC of \$847.00; he was certified through June 30, 2014.
3. The petitioner is disabled and receives Social Security Disability (SSDI) benefits.
4. On November 26, 2013, the respondent reduced the petitioner's FAP benefits to \$27.00 and increased his SOC to \$865.00 effective January 1, 2014 due to a change in his SSDI benefits.
5. The petitioner pays \$495.00 per month for rent. He also pays for utilities and has the ability to heat and cool his home, which entitles him to a standard utility allowance. The respondent included the petitioner's \$495.00 rent and a \$335.00 standard utility allowance in the FAP budget.
6. The petitioner pays \$21.00 every three months for Doctor co-payments. There are no other out of pocket medical expenses incurred by the petitioner.
7. The respondent calculated the petitioner's FAP budget as follows:

|  |            |
|--|------------|
| <u>SSDI income</u>                             | \$1,065.00 |
| Total household income                         | \$1,065.00 |
| <u>Standard deduction for a household of 1</u> | -\$ 152.00 |
| Adjusted income after deductions               | \$ 913.00  |
| <br>   |            |
| Rent/shelter                                   | \$ 495.00  |
| <u>Standard utility allowance</u>              | +\$ 335.00 |
| Total rent/utility costs                       | \$ 830.00  |
| <u>Shelter standard (50% adjusted income)</u>  | \$ 456.50  |
| Excess shelter deduction                       | \$ 373.50  |
| <br>   |            |
| Adjusted income                                | \$ 913.00  |
| <u>Shelter Deduction</u>                       | -\$ 373.50 |
| Adjusted income after shelter deduction        | \$ 539.50  |

8. The respondent took 30% of \$539.50 to calculate the benefit reduction of \$162.00.

The maximum FAP benefit amount for a household size of one is \$189.00. The respondent subtracted \$162.00 from \$189.00 to arrive at \$27.00 in FAP benefits.

9. The petitioner's monthly medical expenses do not exceed the \$35.00 medical deduction to be allowed as excess medical expenses in the FAP budget.

10. The income limit for an aged/disabled individual to receive full Medicaid is \$856.00.

The petitioner's income exceeds this amount; therefore, the respondent enrolled him in the Medically Needy Program. The respondent calculated his \$865.00 SOC by subtracting a \$20.00 unearned income disregard and the Medically Needy Income Level (MNIL) of \$180.00 for a household of one from his SSDI benefits (\$1,065.00 - \$20.00 - \$180.00 = \$865.00).

11. The petitioner expressed concern as he needs medical care and cannot afford to pay his SOC every month.

**CONCLUSIONS OF LAW**

12. 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.
13. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code R. 65-2.056.
14. In accordance with Fla. Admin. Code R. 65-2.060(1), the burden of proof was assigned to the respondent.

**Food Assistance Program**

15. The Code of Federal Regulations 7 C.F.R. § 273.9 defines income and deductions:

...  
(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.

(iii) Standard utility allowances.

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

|              |   |
|--------------|---|
| Appendix A-1 | \$189.00 maximum FAP benefit for a household size of one                      |
|              | \$335.00 standard utility allowance   |
|              | \$152.00 standard deduction for a household size of one                       |
|              | \$478.00 maximum shelter deduction for AGs without elderly or disabled member |
|              | Uncapped maximum shelter deduction for AGs with an elderly or disabled member |

17. The authority cited sets forth income and deductions allowable in the FAP benefit determination. The respondent included the petitioner's SSDI income and all allowable deductions in the FAP calculations, in accordance with the authorities.

18. The undersigned finds that the petitioner's medical expenses do not exceed the \$35.00 per month medical deduction to be allowed in the FAP budget.

19. In careful review of the authorities and evidence, the undersigned concludes the respondent's calculation of the petitioner's FAP benefits in the amount of \$27.00 effective January 2014 was correct.

**Medically Needy Program**

20. 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. The program does not cover nursing facility care, intermediate care for the developmentally disabled services, or other long-term care services.

21. Fla. Admin. Code R. 65A-1.713 defines the income limits for SSI - Related Medicaid programs:

(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.

...

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

22. The ACCESS Florida Program Manual at 2640.0500, Share of Cost (MSSI) sets forth:

The eligibility specialist must determine eligibility for Medically Needy any time the assistance group's assets and/or income exceeds the appropriate categorical asset/income limits. The eligibility specialist determines whether the assistance group's assets are within the Medically Needy asset limits and whether the assistance group members meet the technical factors. If the Medically Needy asset limit is met and the assistance group meets all technical factors, the eligibility specialist determines the amount of countable income and computes a budget using the MNIL which is the same for both family and SSI-Related Medicaid coverage groups (refer to Appendix A-7).

If income is equal to or less than the MNIL, there is no share of cost and the individual is eligible. Medicaid is authorized for individuals who are eligible without a share of cost.

If income is greater than the MNIL, share of cost is determined for appropriate members. Appropriate members are enrolled but cannot be eligible until the share of cost is met.

23. The Code of Federal Regulations 20 C.F.R. § 416.1124 defines unearned income that is not counted in SSI – Related Medicaid programs:

...  
(C)(12) The first \$20 of any unearned income in a month other than income in the form of in-kind support and maintenance received in the household of another (see §416.1131) and income based on need. Income based on need is a benefit that uses financial need as measured by your income as a factor to determine your eligibility.

24. Fla. Admin. Code R. 65A-1.713 sets forth the Income Budgeting Methodologies for the Medically Needy Program:

...  
(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.

25. The ACCESS Florida Program Policy Manual Appendix A-9 shows the Eligibility Standards for the following relevant SSI – Related Medicaid Programs effective July 2013:

| Coverage Group                            | Income Limit |
|---|--------------|
| MEDS-AD/ICP-<br>MEDS/Individual (88% FPL) | \$856        |

26. The ACCESS Florida Program Policy Manual Appendix A-7 shows the Medically Needy Income Level (MNIL) for an individual is \$180.00.

27. The authority cited sets forth the income limits for full Medicaid as well as the rules for enrollment and budgeting methodologies for the Medically Needy Program. As the petitioner's countable unearned income of \$1,045.00 (total unearned income of \$1,065.00 per month minus the \$20.00 unearned income disregard) exceeds the income limit for full Medicaid (\$856.00), the undersigned concludes that the

respondent correctly evaluated the petitioner for the Medically Needy Program and determined his SOC to be \$865.00.

**DECISION**

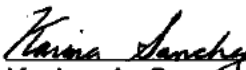
Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal concerning the FAP benefits (14F-01542) and the appeal concerning the Medically Needy Program (14F-02168) are denied.

**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 15<sup>th</sup> day of April, 2014,

in Tallahassee, Florida.

  
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