

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

FILED

JUN 24 2014

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES



APPEAL NO. 14F-02749

PETITIONER,

Vs.

CASE NO.



FLORIDA DEPT OF CHILDREN AND FAMILIES
CIRCUIT: 13 Hillsborough
UNIT: 88342

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on May 15, 2014.

APPEARANCES

For the Petitioner: The petitioner himself

For the Respondent: Raymond Muraida, senior human services program specialist with the ACCESS Program

ISSUE

At issue is the respondent action of January 29, 2014 to deny payment of the Medicare Part B Premium under the "Qualified Individuals 1 (QI-1)" Medicaid Program, or any other applicable Medicare Savings Program, due to excess income.

PRELIMINARY STATEMENT

On April 2, 2014, the petitioner timely requested this appeal. Both parties appeared by phone for the hearing convened on May 15, 2014. The respondent offered and was entered the Respondent Exhibits 1 through 10. The petitioner offered and was entered two exhibits labeled the Petitioner Exhibits 1 and 2.

FINDINGS OF FACT

1. The petitioner is 51 years old with a date of birth [REDACTED] There are no other household members.
2. The petitioner currently receives Social Security Disability Income of \$1,411.90 monthly from the Social Security Administration (SSA) as his only income source; he also receives Medicare Part B.
3. On January 27, 2014, the petitioner applied for a Medicare Savings Program (MSP). On January 29, 2014, the respondent sent notice to petitioner that a MSP "Qualifying Income-1 (QI-1)" benefits had been denied on the assertion of excess income. The QI-1 program would pay the petitioner's Medicare Part B premium, if the petitioner had been determined eligible for this program. The petitioner seeks approval of one of the MSP that would pay his Medicare Part B premium.
4. The Department's budgeting method in the SSI-Related Medicaid Programs considers a standard deduction of \$20 from the gross monthly income. After the \$20 deduction, the balance of \$1,391 was left to compare to the income limit. The respondent concluded this amount to exceed the income limit for an individual under the QI-1 Program, or any other MSP that would pay the Medicare Part B premium.

5. The petitioner argues that he would be under the asserted income limit if the Medicare Part B premium amount was deducted from the counted SSA income. Further, the petitioner argues that he has to meet a \$500 yearly deductible before his doctors are paid for other incurred medical expenses. The respondent asserts that neither the Part B Medicare premium expense nor any other medical expenses are deductible in the QI-1 Program eligibility determination.

CONCLUSIONS OF LAW

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

7. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code R. 65-2.056. All information relevant to the issue is considered in this decision.

8. In accordance with Fla. Admin. Code R. 65-2.060(1), the burden of proof is assigned to the petitioner since he is an applicant for the benefits at issue.

9. The Department of Children and Families publishes administrative rules that pertain to eligibility under the Medicaid Program. The following are relevant rules that the undersigned considered in this decision.

10. Fla. Admin. Code R. 65A-1.711, SSI-Related Medicaid Non-Financial Eligibility Criteria, states in part:

To qualify for Medicaid an individual must meet the general and categorical requirements in 42 C.F.R. Part 435, subparts E and F (2007) (incorporated by reference), with the exception that individuals who are neither aged nor disabled may qualify for breast and cervical cancer

treatment...(5) To be eligible as a QMB or for the SLMB coverage the individual must be entitled to Medicare.

11. 42 C.F.R. Part 435, subpart F is the regulation that requires that an individual be either age 65 (or older) or determined disabled to receive Medicaid (and Medically Needy) when there are no minor children in family. In this case, petitioner meets the disability requirement for the Medically Needy Program. In the MSP to include QMB and SLMB, or the related QI-1 eligibility, the requirement is to be entitled to Medicare. Since the petitioner receives Medicare, the eligibility analysis proceeds as below.

12. The Respondent's Program Policy Manual 165-22 sets forth the following:

2240.0608 Individual with No Spouse/Dependents (MSSI, SFP)

When the standard filing unit (SFU) consists of an individual with no spouse and no dependents, the income and asset standards for one must be used. Only the individual's income and assets are considered. There is no deeming or allocating of income or assets. This policy applies to community as well as institutional programs.

13. The petitioner's gross SSA income of \$1,411 is used to determine his eligibility in the SSI-Related Medicaid Programs in accordance with Fla. Admin. Code R. 65A-1.713(4)(b)1. The respondent correctly considered the petitioner's SSA income as a countable income source to determine eligibility for one of the applicable programs at issue.

14. The Fla. Admin. Code R. 65A-1.713(1) establishes income limits for various SSI-Related Medicaid programs. The income limits are set as a percentage of the federal poverty level for the MSP at issue (QMB, SLMB and QI-1). The percentages are set forth below:

SSI-Related Medicaid Income Eligibility Criteria.

(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:

(b) For QMB, income must be less than or equal to the federal poverty 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 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.

15. The QI-1 program has the highest income level of the three programs that pay the Medicare Part B premiums, up to 135% of the poverty level. The next highest SLMB Program has an income limit up to 120% of poverty level. The QMB program has the lowest income level, up to 100% of poverty level. These limits typically increase annually. The Department's Program Policy Manual, 165-22, at Appendix A-9 interprets the maximum amount for QI-1 eligibility for a single person to be \$1,293 monthly effective April 2013, and \$1,313 effective April 2014. The SLMB and QMB individual income limits are both lower than the QI-1 eligibility limit. The petitioner must meet the income eligibility limit for an individual for one of these programs to be eligible to have his Medicare Part B premium paid for by Medicaid. The analysis continues to review the Department's conclusion that petitioner fails the income limit.

16. Federal Regulations at 20 C.F.R. 416.1124(c)(12) sets forth income that is not counted in all SSI-related Medicaid programs and states, "The first \$20 of any unearned income in a month other than...income based on need." This \$20 standard disregard is

also reflected in the respondent's program policy manual, 165-22, at section 2440.0322.

The subtraction of this \$20 disregard leaves a \$1,391 balance in countable income to compare to the appropriate QMB, SLMB, or QI-1 individual income eligibility limits.

17. The respondent's program policy manual at section 2440.0300 sets forth income disregards to include:

2440.0300 INCOME DISREGARDS (MSSI, SFP)

This section presents policy on the following:

1. earned income disregard,
2. standard disregard,
3. student earned income,
4. work expenses of the blind,
5. ordinary and necessary expenses,
6. optional deduction, and
7. unearned income overpayment.

18. The respondent's program policy manual at section 2440.0370 sets forth what is defined as ordinary and necessary expenses:

2440.0370 Ordinary and Necessary Expenses (MSSI, SFP)

Ordinary and necessary expenses which are deducted from the amount of unearned gross income are excluded. These are expenses incurred in obtaining income as the fees and costs necessary to establish entitlement or gain access to income. For example, attorney fees and medical examination fees connected with the filing of a lawsuit after an accident may be deducted from the settlement amount received.

While the need for a legal guardian may be established, the payment of guardian fees is not directly linked to the individual's entitlement to payment. Therefore, guardian fees are not considered as ordinary and/or necessary expenses.

Proof of having incurred the expense (for example, a bill, canceled check or money order) is required.

19. The petitioner argues that the inclusion of his Medicare Part B premium cost as a deduction would place his countable income below the limit for QI-1 eligibility.

Neither the Medicare Part B premium cost nor medical expenses are listed as a defined and deductible "ordinary and necessary" expense set forth in section 2440.0370 of the

respondent's program policy manual. Further, section 2440.0371 of this same manual shows that the amount of the Part B Medicare premium must be included in the unearned income counted, as follows:

2440.0371 Optional Deductions (MSSI, SFP)

There are deductions, which are withheld at the source from an individual's income that must be included in the amount of unearned income counted. Examples of optional deductions include:

1. premium for Part B Medicare from a Social Security benefit,
2. premiums for health insurance or life insurance, and
3. federal and state income taxes.

20. The undersigned concludes that the only applicable deduction from petitioner's income before comparing to the income limit for the QMB, SLMB or QI-1 is the \$20 deduction. When petitioner's countable income of \$1,411 is compared to the QI-1 income limit for an individual of \$1,293, or \$1,313 effective April 2014, petitioner fails to meet the income limit. Therefore, the undersigned concludes the Department's action to deny Medicaid coverage for petitioner's Medicare Part B premium expense was correct.

DECISION

This appeal is denied as petitioner is not eligible for any of the Medicare Savings Programs (MSP) that pay for the Medicare Part B premium.

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

department has no funds to assist in this review, and any financial obligations incurred will be the petitioner's responsibility.

DONE and ORDERED this 29th day of June, 2014,

in Tallahassee, Florida.



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