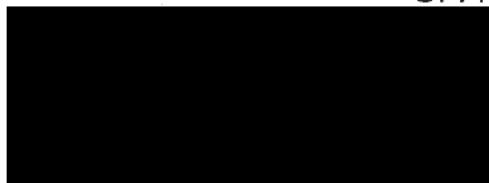


**FILED**

**AUG 04 2014**

OFFICE OF APPEAL HEARINGS  
DEPT OF CHILDREN & FAMILIES

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



PETITIONER,

Vs.

APPEAL NO. 14F-03721

CASE NO. 

FLORIDA DEPARTMENT OF  
CHILDREN AND FAMILIES  
CIRCUIT: 10 Highlands  
UNIT: 88585

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on June 19, 2014 at 8:30 a.m. All parties appeared in person at the State Office Building at 200 North Kentucky Avenue in Lakeland, Florida.

**APPEARANCES**

For the petitioner:  pro se.

For the respondent: Janice Williams, ACCESS Supervisor.

**STATEMENT OF ISSUE**

At issue is the Department's action to enroll the petitioner in the Medically Needy (MN) Program with a Share of Cost (SOC).

**PRELIMINARY STATEMENT**

A continuance was granted to the petitioner for a prior scheduled hearing in order to accommodate her request for an in-person hearing.

The petitioner submitted presented a 10-page exhibit for the undersigned to consider that were accepted into evidence and marked as Petitioner's Composite Exhibit "1". The Department presented 31 pages during the hearing that were accepted into evidence and marked as Respondent Composite Exhibit "1". The record was left open until close of business June 27, 2014 for the Department to send a new Notice of Case Action reflecting the changes they stated they would make after the conclusion of the hearing. A total of four pages were received and marked as Respondent's Composite Exhibit "2", and the record closed.

**FINDINGS OF FACT**

1. The petitioner applied for Food Assistance Program (FAP) benefits and Medicaid on March 31, 2014. A Notice of Case Action was sent to the petitioner on April 22, 2014 informing him of the approval of FAP benefits and enrollment in the MN Program with a SOC of \$944.

2. The petitioner was concerned that he would not be able to pay that amount out of pocket in order to receive Medicaid. The Department explained the MN Program and how the petitioner can meet the SOC by submitting unpaid Medicaid to them, which are then bill, tracked. Once the SOC is met through this process of bill tracking, full Medicaid is open for the remainder of that month. This process of meeting the SOC amount must occur each month for which then full Medicaid is open. The petitioner stated that he now understands this process.

3. The petitioner reported on his application a gross unearned income of \$1,144 per month from Social Security disability (SSD) benefits. There is a federal tax garnishment in effect for the petitioner, which is intercepting \$172 per month from his gross income. The Department did not take this into consideration as it states the petitioner did not report it on the application. The Department did state that they have access to verify the petitioner's SSD benefits on the data exchange DES0 screens and failed to clarify why his gross SSA amount and net amount were different. The petitioner was not eligible for any other deductions to decrease the SOC amount.

4. The Department first calculated the petitioner's SOC for May 2014 and ongoing using his gross SSD benefits. The Department then subtracted an unearned disregard of \$20 to result in a countable unearned income of \$1,124. The Medically Needy Income Limit (MNIL) for a one-person household in the MN Program is \$180. This was subtracted from the total countable income to give a SOC of \$944 per month.

5. After the hearing, the Department agreed to re-consider the SOC amount. They subtracted the garnishment of \$172 from the gross SSD award of \$1,144 for a total unearned income of \$972. An unearned income disregard of \$20 was subtracted from that figure to result in a countable unearned income of \$952. After the MNIL was subtracted from the total countable income, the SOC was calculated as \$772.

#### **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 Fla. Stat § 409.285. This order is the final administrative decision of the Department of Children and Families under Fla. Stat. § 409.285.

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

8. In accordance with Fla. Admin. Code R 65-2.060 (1), the burden of proof was assigned to the petitioner.

(1) The burden of proof, except where otherwise required by statutes, is on the party asserting the affirmative of an issue. The burden is upon the Department when the Department takes action which would reduce or terminate the benefits or payments being received by the recipient. The party having the burden shall establish his/her position, by a preponderance of evidence, to the satisfaction of the hearing officer.

9. Pursuant to 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 be responsible to pay each month before becoming eligible to receive Medicaid benefits for the remainder of the month.

10. Florida Administrative Code R. 65A-1.702 Special Provisions states in part:

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

11. Florida Administrative 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.

12. Florida Administrative Code R. 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.

(4)(c) Medically Needy. The amount by which the individual's 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.

13. The above authorities explain that an individual's income must be within the limits established by federal or state law and the Medicaid State Plan. For the MN Program, income must be less than or equal to the MNIL after deduction of all allowable medical expenses. The amount by which the individual's countable income exceeds the MNIL is called the share of cost. The MNIL for an individual is \$180.

14. Federal Regulations at 20 C.F.R. §416.1123, "How we count unearned income" states in relevant part:

(b) Amount considered as income. We may include more or less of your unearned income than you actually receive.

(1) We include more than you actually receive where another benefit payment (such as a social security insurance benefit) (see § 416.1121) has been reduced to recover a previous overpayment. You are repaying a legal obligation through the withholding of portions of your benefit amount, and the amount of the debt reduction is also part of your unearned income. Exception: We do not include more than you actually receive if you received both SSI benefits and the other benefit at the time the overpayment of the other benefit occurred and the overpaid amount was included in figuring your SSI benefit at that time.

(2) We also include more than you actually receive if amounts are withheld from unearned income because of a garnishment, or to pay a debt or other legal obligation *[sic]*, or to make any other payment such as payment of your Medicare premiums. (emphasis added)

15. The Department's Policy Manual 165-22, Section 1840.0102 Deductions from Gross Income (MSSI, SFP) reiterates the federal regulation and states:

Some deductions withheld from gross income must be included as income. Examples of these deductions include:

1. premiums for Supplemental Medical Insurance (SMI/Medicare) from a Title II (Social Security) benefit,
2. premiums for health insurance or hospitalization,
3. premiums for life insurance,
4. federal and state income taxes,
5. Social Security taxes,
6. optional deductions,
7. a garnished or seized payment,
8. guardianship fees, and
9. child support if not redirected irrevocably from the source.

16. The findings show that the Department enrolled petitioner in the MN Program beginning May 2014. The Department counted petitioner's gross monthly Social Security disability income to determine his share of cost. The undersigned will not rule more restrictive than the Department. The undersigned cannot conclude a more favorable outcome for the petitioner.

#### **DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, the 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 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 4<sup>th</sup> day of August, 2014,

in Tallahassee, Florida.



Brandy Ricklefs  
Hearing Officer  
Building 5, Room 255  
1317 Winewood Boulevard  
Tallahassee, FL 32399-0700  
Office: 850-488-1429  
Fax: 850-487-0662  
Email: Appeal\_Hearings@dcf.state.fl.us

Copies Furnished To: [REDACTED] Petitioner  
14 DPOES: Rita Collins