

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

**FILED**

**MAR 23 2015**

OFFICE OF APPEAL HEARINGS  
DEPT OF CHILDREN & FAMILIES

APPEAL NO. 15F-00157  
APPEAL NO. 15F-00158  
APPEAL NO. 15F-00159

PETITIONER,

Vs.

CASE NO.

FLORIDA DEPT OF CHILDREN AND FAMILIES  
CIRCUIT: 06 Pinellas  
UNIT: 88343

RESPONDENT.

**FINAL ORDER**

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on February 13, 2015 at 10:00 a.m. in Largo, Florida. One continuance was granted to the petitioner.

**APPEARANCES**

For Petitioner: [REDACTED], petitioner

For Respondent: Kathleen Kowalik, Senior Human Service Program Specialist

**STATEMENT OF ISSUE**

At issues are whether the respondent's action to (1) deny petitioner's Food Assistance (FA) benefits; (2) to deny petitioner's Qualified Medicare Beneficiary Medicaid (QI1) benefits; (3) to terminate petitioner's Qualified Medicare Beneficiary (QMB) benefits; and (4) to retain petitioner's enrollment in the Medically Needy (MN) Program with a monthly Share of Cost (SOC) amount of \$2,382 are correct.

**PRELIMINARY STATEMENT**

By notice dated November 5, 2014, the respondent notified petitioner that her Qualified Medicare Beneficiary (QMB) benefits would end effective November 30, 2014.

By notice dated January 26, 2015, the respondent notified petitioner that (1) her Food Assistance (FA) application dated January 5, 2015 is denied; (2) her Medically Needy Share of Cost (SOC) amount was increased to \$2,382 effective March 1, 2015; and (3) her QI1 application dated January 5, 2015 is denied. By notice dated February 9, 2015, the respondent notified petitioner that her Food Assistance (FA) application dated January 28, 2015 is denied.

Petitioner was present and testified. Petitioner submitted seven exhibits, which were accepted into evidence and marked Petitioner's Exhibits "1" through "7".

Respondent was represented by Kathleen Kowalik with the Department of Children and Families (hereafter "DCF", "Respondent" or "Agency"). Respondent submitted eight exhibits, which were accepted into evidence and marked Respondent's Exhibits "1" through "8".

Subsequent to the hearing, the undersigned filed the Order Requesting Documentation to Supplement Record as Petitioner's Exhibit "2" was not in the undersigned possession. On February 10, 2015, the petitioner submitted the document that was marked Petitioner's Exhibit "2" and also submitted additional documentation that was marked and entered as Petitioner's Exhibit "8". On February 19, 2015, the respondent submitted additional documentation that was marked and entered as Respondent's Exhibit "9". On February 27, 2015, the petitioner submitted two closing

statements along with tax returns from 2009 through 2012 attached to the statements.

The undersigned consider her closing arguments in the Final Order.

**FINDINGS OF FACT**

1. On November 4, 2014, the respondent reviewed petitioner's case and determined that her application dated August 26, 2014 was not e-signed and not a valid application for benefits.
2. Prior to this appeal, petitioner had a hearing on November 5, 2014, for appeals 14F-08658 and 14F-09036. The issue under appeal was whether the application for August 26, 2014 was a valid application. An order was issued on January 6, 2015 determining petitioner's August 26, 2014 application was a valid application for benefits.
3. On November 5, 2014, the respondent mailed petitioner a Notice of Case Action that indicated her Qualified Medicare Beneficiary (QMB) benefits were terminated effective November 30, 2014, as "You did not acknowledge your rights and responsibilities. You did not sign the application we received". (Respondent's Exhibit 1)
4. On January 5, 2015, petitioner completed an application for Food Assistance (FA); Family and SSI-Related Medicaid; and QI1 benefits. The application lists petitioner, her husband, and her adult son (21) from a previous relationship. The application also lists husband's self-employment income and expenses; and petitioner's income from the Social Security Administration (SSA).
5. On January 20, 2015, the petitioner submitted a letter and her "draft" 2014 tax return, which indicated husband's yearly gross self-employment income and his yearly self employment expenses. Furthermore, the letter indicated (1) that her son's was no

longer in the household; and (2) petitioner was going to submit the change to her household to the respondent.

6. On January 23, 2015, the respondent removed petitioner's son from her household as she reported change to her household. Petitioner's household now consists of only her and her husband.

7. Petitioner's monthly mortgage is \$1,050 per month and she incurs a heating and cooling expense. She has medical expenses of (1) \$104.90 per month for her Medicare Part B premium; and (2) approximately \$125 per month for prescriptions. Petitioner also pays \$40 a visit for physician appointments. She submitted no documentation verifying the cost of her prescriptions and physician appointments.

8. Respondent calculated the petitioner's monthly unearned income as \$949 and initially calculated husband's monthly self employment gross monthly income as \$6,379 (\$76,548 (husband's yearly gross self employment income) divided by 12 months).

9. Respondent initially calculated the husband's self employment expenses as follows:

Advertising: \$840 per year  
Office Expenses \$1,918 per year  
Rent/Lease Vehicles, Machines and Equipment: \$2,434 per year  
Other business property: \$257 per year  
Supplies: \$21,119 per year  
Taxes and Licenses: \$462 per year  
Other expenses: \$8281 per year  
Contract Labor \$2,062 per year  
Depreciation: \$1,337 per year  
Insurance: \$1,205 per year  
Legal and Professional Services: \$9,050 per year  
Total yearly self employment expenses: \$29,965

10. Respondent initially calculated petitioner's husband's self-employment net monthly income as \$3,882. First, the respondent divided the yearly self-employment expenses by 12 to arrive at husband's monthly self-employment expenses (\$29,965 divided by 12 = \$2,497.08). Then, the respondent subtracted \$2,497.08 from \$6,379.00 to arrive at the monthly net self-employment income amount of \$3,882 (This number is rounded up from \$3,881.92).

11. Respondent initially calculated the household's total monthly income as \$4,831 (\$949 + \$3,882).

12. Respondent initially determined petitioner was not eligible for FA benefits as her household's total countable income was over the FA gross income limit for a household of two.

13. On January 26, 2015, the respondent mailed petitioner a Notice of Case Action that indicated (1) her FA application dated January 5, 2015 is denied effective January 2015 as "Your household's income is too high to qualify for this program"; (2) her Medically Needy (MN) Share of Cost (SOC) amount will increase from \$1,512 to \$2,382 effective March 1, 2015; and (3) her QI1 application dated January 5, 2015 is denied effective January 2015 as "Your household's income is too high to qualify for this program". (Petitioner's Exhibit 3)

14. On January 28, 2015, petitioner completed an application for FA and Medicaid benefits. The application lists petitioner and her husband; and petitioner's income from the Social Security Administration (SSA). The application did not list her husband's self-employment income.

15. On January 30, 2015, the respondent mailed petitioner a Notice of Case Action that requested the following information (Petitioner's Exhibit 2):

Proof of loss of income, last pay date and all income received in the month of 01/2015 using the "Verification Of Employment/Loss of Income" form or provide a letter from your job. Proof of all gross income from the last 4 weeks using the "Verification Of Employment/Loss of Income" form or you may send in your last 4 pay stubs. Proof of loans, contributions, or gifts used to pay your expenses this month or a statement from anyone paying your household's bill. Other-please see comments below

Please provide verification of all income used to pay your expenses. If anyone is helping you pay your expenses you must have them write you a statement. Must state, how much, how often, what it is for, and if they give you money, loan you money or pay the bill directly. Signature, address, and phone # must be included."

16. During the processing of petitioner's January 28, 2015 application, the respondent redetermined petitioner was over the QI1 income standard for a household of two effective January 2015 as the respondent redetermined petitioner's total countable income to be \$2,623.34:

\$949	petitioner's Social Security income
-\$20.00	unearned income disregard
\$929	petitioner's countable unearned income
+\$3,453.67	husband's self employment income
-\$65.00	earned income disregard
<u>\$1,694.34</u>	petitioner's total countable earned income
\$1,694.34	petitioner's total countable earned income
+\$929	petitioner's countable unearned income
<u>\$2,623.34</u>	petitioner's total countable income

17. During the processing of petitioner's January 28, 2015 application, the respondent redetermined petitioner's monthly SOC amount effective December 2014 and ongoing to be \$2,382:

\$949	petitioner's Social Security income
+\$3,453.67	husband's self employment income

- \$65.00	earned income disregard
- \$20.00	unearned income disregard
- \$241.00	<u>medically needy income level for household size of two</u>
\$2,382.00	share of cost

18. During the processing of petitioner's January 28, 2015 application, the respondent redetermined petitioner was not eligible for FA benefits as her household's total income was over the FA gross income limit for a household of two.

19. On February 9, 2015, the respondent mailed petitioner a Notice of Case Action that indicated (1) her FA application dated January 28, 2015 is denied effective January 2015 as "Your household's income is too high to qualify for this program". (Petitioner's Exhibit 6)

20. Subsequent to the hearing, the respondent determined the following self-employment expenses should be counted in petitioner's FA budgets:

Advertising: \$840 per year or \$70 per month  
Office Expenses \$1,918 per year or \$159.83 per month  
Rent/Lease Vehicles, Machines and Equipment: \$2,434 per year or \$202.83 per month  
Supplies: \$21,119 per year or \$1,759.92 per month  
Taxes and Licenses: \$462 per year or \$38.50 per month  
Insurance: \$1205 per year or \$100.42 per month  
Car, Truck Vehicle Equipment Expense: \$16,208 per year or \$1,350.67 per month  
Legal and Professional Services: \$9,050 per year or \$754.16

21. Subsequent to the hearing, the respondent determined the following self-employment expenses should be counted in petitioner's Medicaid budgets:

Advertising: \$840 per year or \$70 per month  
Office Expenses \$1,918 per year or \$159.83 per month  
Rent/Lease Vehicles, Machines and Equipment: \$2,434 per year or \$202.83 per month  
Supplies: \$21,119 per year or \$1759.92 per month  
Taxes and Licenses: \$462 per year or \$38.50 per month  
Insurance: \$1,205 per year or \$100.42 per month  
Car, Truck Vehicle Equipment Expense: \$16,208 per year or \$1,350.67 per month

Legal and Professional Services: \$9,050 per year or \$754.16  
Meals away from home: \$514 per year or \$42.83 per month

22. Subsequent to the hearing, the respondent determined the following self-employment expenses should not be counted in petitioner's FA and Medicaid budgets:

Contract Labor \$2,062 per year or \$171.83 per month  
Depreciation: \$1,337 per year or \$111.42 per month  
Other business property: \$257 per year  
Other expenses: \$8,281 per year or \$690.08 per month

23. Petitioner agreed with the respondent's calculation of her husband's *gross* self-employment income as \$76,548 per year or \$6,379.50 per month; however, she does not agree with the respondent's calculation of her husband's monthly *net* self-employment income.

24. Petitioner believed the following self-employment expenses should be counted in her FA and Medicaid budgets; however, the respondent did not include them in her FA and Medicaid budgets:

Life Insurance on husband: \$1,205 per year or \$100.42 per month  
Self-employment taxes: \$818 per year or \$68.17 per month  
Other expenses, such as insurance: \$4,983 per year or \$415.25 per month  
Office in the home: \$667 per month

25. The "other business property" was a few months of renting a storage unit to store business equipment; and "the other expenses" were insurance and communication expenses as petitioner's husband has phone for business purposes only. On the draft 2014 taxes, the cost of "the other expenses" was \$8,281; however, petitioner stated that she initially calculated the cost incorrectly and the correct amount for "the other expenses" was \$4,983.



26. Petitioner believed (1) that her husband's yearly self-employment expenses should be \$68,248; (2) her husband's yearly net income should be \$8,300 (\$76,548 - \$68,248 and (3) her husband's monthly net self employment income should be \$691.67 (\$68,248 divided by 12). Petitioner she further believed her total countable income for the household should be \$1,640.67 per month (Petitioner's SSA income + her husband's net self employment income).

### **CONCLUSIONS OF LAW**

27. 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 § 409.285, Fla. Stat.

28. This proceeding is a de novo proceeding pursuant to Florida Administrative Code § 65-2.056.

29. In accordance with Fla. Admin. Code § 65-2.060 (1), the burden of proof for the FA appeal and the determination of petitioner's SOC amount were assigned to the petitioner. The burden of proof for the termination of petitioner's QI1 benefits was assigned to the respondent.

30. The standard of proof needed to be met in an administrative hearing is a preponderance of the evidence. The preponderance of the evidence standard requires proof by "the greater weight of the evidence," (Black's Law Dictionary at 1201, 7<sup>th</sup> Ed., 1999), or evidence that "more likely than not" tends to prove a certain proposition. See Gross v. Lyons, 763 So. 2d 276, 289, n.1 (Fla. 2000).

31. Petitioner believed her office in her home should be considered a self-employment expense when calculating her husband's net self-employment income. Upon review of the respondent's Policy Manual, Transmittals, and Memos from 2005, one memo was located one Memo issued on January 6, 2005, which addressed the respondent's ability to consider petitioner's mortgage, homeowner's insurance, real estate taxes and utilities as a allowable business deduction; however, the 2005 Memo only addresses Family-Related Medicaid benefits and states, in part:

The purpose of this memorandum is to clarify family-related Medicaid policy on the treatment of self-employment expenses. . .

Statement of Question: Can we allow a portion of her mortgage expense, homeowner's insurance expense, real estate tax expense, and utilities as a deduction from her gross self-employment income? If so, how do we determine what portion to allow?

Central Office Response: A portion of the client's mortgage, homeowner's insurance, real estate taxes and utilities may be allowed as a cost of producing self-employment income to the extent they are allowable deductions to the client's taxable income as allowed by the Internal Revenue Service (IRS), and not specifically excluded by Medicaid policy. The primary source of documentation for this allowance should be the prior year's tax return.

We suggest using last year's tax statement or a statement from the client's accountant as a basis for the income and expenses to be budgeted.

32. Since the Policy Memo January 6, 2005 only addresses Family-Related Medicaid benefits, the [REDACTED] for FA and SSI-Related Medicaid [REDACTED] the "office in a home" [REDACTED] amount.

#### SSI-RELATED MEDICAID ISSUES

As the issue is calculating petitioner's husband's net self employment income in petitioner's SSI-Related Medicaid budgets (includes QI1 and Medically Needy Medicaid)

33. The Fla. Admin. Code R. 65A-1.713 defines included and excluded income for SSI-Related Medicaid Program benefits and states, in part:

(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 (2007) (incorporated by reference) et seq., including exclusionary policies regarding Veterans Administration benefits such as VA Aid and Attendance, unreimbursed Medical Expenses, and reduced VA Improved pensions, to determine what counts as income and what is excluded as income with the following exceptions:

- (a) In-kind support and maintenance is not considered in determining income eligibility.
- (b) Exclude total of irregular or infrequent earned income if it does not exceed \$30 per calendar quarter.
- (c) Exclude total of irregular or infrequent unearned income if it does not exceed \$60 per calendar quarter.
- (d) Income placed into a qualified income trust is not considered when determining if an individual meets the income standard for ICP, institutional Hospice program or HCBS.
- (e) Interest and dividends on countable assets are excluded, except when determining patient responsibility for ICP, HCBS and other institutional programs.

34. The Department's Program Policy Manual, 165-22, section at 1840.100 Income Concepts (MSSI) states, in part:

Earned income is the receipt of wages, salary, commission, or profit from an individual's performance of work or services, or a self-employment enterprise.

Unearned income is income for which there is no performance of work or services. Unearned income may include:

1. retirement, disability payments, unemployment/workers' compensation, etc.;
2. annuities, pensions, and other regular payments;
3. alimony and support payments;
4. dividends, interest, and royalties;
5. proceeds of life insurance policies;
6. prizes and awards;
7. gifts and inheritances; and
8. SSA, SSD, and SSI.

35. Pursuant to the above authority, petitioner's monthly Social Security benefits and her husband's monthly self-employment income must be counted in petitioner's SSI-Related Medicaid budgets.

36. The Department's Program Policy Manual, 165-22, section at 2240.0604.03, Income of Spouse of Eligible Individual (MSSI, SFP) states, in part:

The policy in this section is applicable only to MEDS-AD, Medically Needy, Protected Medicaid, Working Disabled, QMB, SLMB, QI-1, OSS, and HCDA.

Each individual who is at least age 65, blind, or disabled, and whose countable income and assets do not exceed certain prescribed limits will be an eligible individual. If such an eligible individual is living in the same household with a spouse, who is neither aged, blind, nor disabled, the income and assets of the spouse (whether or not available to the individual) are considered in determining the eligible individual's income...

37. Although petitioner's husband is not disabled and not eligible for any category of SSI-Related Medicaid, his net self-employment income must be included in petitioner's SSI-Related Medicaid budgets.

38. The "Costs not Allowed" policy for self-employment income are indicated in ACCESS Program Policy Manual for the Food Assistance Program at passage 1810.0303. There is no corresponding passage "Costs not Allowed" for self-employment for SSI-Related Medicaid Programs.

39. The Department's Program Policy Manual, 165-22, section 1840.0313, Self-Employment Income (MSSI, SFP) states:

Net earned income from self-employment is the total gross income derived from all trades and businesses as computed under the Internal Revenue Code, **less deductions allowable under the code**, attributable to such trades or businesses. It includes the individual's share of ordinary net income (or loss) from partnerships even though the partnership profits have not been distributed yet.

40. The Department's Program Policy Manual, 165-22, section 2640.0418 Self-

Employment Income (MSSI, SFP) states:

Net earned income from self-employment is the total gross income derived from all trades and businesses as computed under the Internal Revenue Code, **less deductions allowable under the code**, attributable to such trades or businesses. It includes the individual's share of ordinary net income (or loss) from partnerships even though the partnership profits have not been distributed yet.

41. Respondent calculated husband's monthly net self-employment income as \$3,453.67; however, not all of husband's allowable business expenses were included in calculation of his net self-employment income.

42. Pursuant to the above authorities, husband's self-employment expenses should be \$62,673 per year as that amount includes all of the allowable deductions under the IRS code. Husband's gross yearly self-employment income is \$76,548; his yearly net self-employment income should be \$13,875 (\$76,548 - \$62,673); and his monthly net self-employment income should be \$1,156.25 (\$13,875 divided by 12).

43. For the QI1 and the Medically Needy Medicaid programs, petitioner's husband's monthly net self-employment income should be \$1,156.25.

As the issue is the respondent's denial of the State payment of the petitioner's Medicare Part B premiums effective January 2015 and ongoing

44. The Code of 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..."

45. The Code of Federal Regulations at 20 C.F.R. § 416.1112 (c)(5), Earned income we do not count, states, in part, "\$65 of earned income in a month".

46. Petitioner's total countable income for the Medicare Buy-In program should be as follows:

\$949	petitioner's Social Security income
-\$20.00	unearned income disregard
\$929	petitioner's countable unearned income
+\$1,156.25	husband's self employment income
-\$65.00	<u>earned income disregard</u>
\$1,091.25	petitioner's total countable earned income
\$1,091.25	petitioner's total countable earned income
+\$929	<u>petitioner's countable unearned income</u>
\$2,020.25	petitioner's total countable income

47. The Fla. Admin. Code R. 65A-1.713 defines income limits for SSI-Related Medicaid Program benefits:

- (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.
- (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. §1396a(r)(2)...

48. The ACCESS Florida Program Policy Manual Appendix A-9 sets forth the following Eligibility Standard for SSI-Related Medicaid benefits:

- (1) \$990 as the monthly income limit for QMB; (2) \$1,187 as the monthly income limit for SLMB; and (3) \$1,335 as the monthly income limit for QI1.

49. Although the respondent incorrectly determined petitioner's total countable income for petitioner's Medicare Buy-In benefits as \$2,623.34, pursuant to the above authorities, petitioner is still over the income standard for the Q11 program (\$1,335) effective January 1, 2015 as her total countable income should be \$2,020.25. Furthermore, since petitioner is not eligible for Medicare Buy-In benefits, then her monthly Medicare premium of \$104.90 per month may be counted as a medical expense in her FA and Medically Needy Medicaid budgets.

As the issue is the respondent's termination of the State payment of the petitioner's Medicare Part B premiums for the months of November 2014 and December 2014

50. As for petitioner's QMB benefits for November 2014 and December 2014, the respondent terminated her QMB benefits because she did not have a valid application dated August 26, 2014; however, pursuant to petitioner's Order 14F-08658 and 14F-09036, the previous undersigned concluded the August 26, 2014 application as a valid application for benefits. Respondent incorrectly terminated petitioner's QMB program benefits for the months of November 2014 and December 2014.

As to the issue the respondent's calculation petitioner's share of cost amount for SSI-Related Medically Needy Program benefits.

51. Pursuant to the aforementioned authorities, petitioner's Social Security Income and her husband's monthly net self-employment income of \$1,156.25 must be included in the calculation of petitioner's monthly SOC amount.

52. The income calculation for Medically Needy Program benefits is set forth in the Fla. Admin. Code R. 65A-1.713 (h), it states, "For Medically Needy, income must be less than or equal to the Medically Needy income standard after deduction of allowable medical expenses."



53. The Department's Program Policy Manual, 165-22, section 2440.0102, Medically Needy Income Limits (MSSI) states: "When the assistance group has met the technical eligibility criteria and the asset limits, it is enrolled. There is no income limit for enrollment..."

54. The methods of determining the share of cost is set forth in the Fla. Admin. Code R.65A-1.713:

(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...

55. The ACCESS Program Policy Manual as Appendix A-7 indicates that the Medically Needy Income Level (MNIL) for a household size of two is \$241.

56. The Department's Program Policy Manual, 165-22, section 2440.0321, Earned Income Disregard (MSSI, SFP), indicates a \$65 plus one half of the remaining earned income; section 2440.0322 Standard Disregard (MSSI), indicates a \$20 per month standard disregard, and section 2440.0371, Optional Deductions (MSSI, SFP), indicates a deduction for Medicare Part B premiums and health insurance premiums.

57. Petitioner is a disabled assistance group of one; however, she and her husband are a standard filing unit of two. Pursuant to the above authorities, petitioner's share of cost amount for January 2015 and ongoing should be as follows:

\$949	petitioner's Social Security income
+\$1,156.25	husband's self employment income
-\$65.00	earned income disregard
-\$20.00	unearned income disregard
-\$241.00	medically needy income level for household size of two
<u>-\$104.90</u>	<u>medical insurance premium</u>



\$1,674 monthly share of cost amount

58. Respondent incorrectly determined petitioner's monthly SOC amount as \$2,382 because her correct monthly SOC amount should be \$1,674 effective January 2015 and ongoing.

#### FOOD ASSISTANCE ISSUES

At issues is the respondent's denial of petitioner's FA benefits effective January 2015 and ongoing

59. The Code of Federal Regulations at 7 C.F.R. § 273.9 defines income for the Food Assistance Program benefits budget:

- (b) Definition of income. Household income shall mean all income from whatever source excluding only items specified in paragraph (c) of this section...
- (1) Earned income shall include: (i) All wages and salaries of an employee.
- (ii) The gross income from a self-employment enterprise, including the total gain from the sale of any capital goods or equipment related to the business, excluding the costs of doing business as provided in paragraph (c) of this section...
- (2) Unearned income shall include, but not be limited to:
  - (i) 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 Sec. 272.12; old-age, survivors, or social security benefits...
- (c)(19)...The State agency shall not exclude:
  - (i) Wages or salaries;
  - (ii) Gross income from a self-employment enterprise, including the types of income referenced in paragraph (b)(1)(ii) of this section. Determining monthly income from self-employment must be calculated in accordance with § 273.11(a)(2)...

60. The Code of Federal Regulations at 7 C.F.R. § 273.11 sets forth the calculation of self-employment income:

- (a) Self-employment income. The State agency must calculate a household's self-employment income as follows...

(2) Determining monthly income from self-employment. (i) For the period of time over which self-employment income is determined, the State agency must add all gross self-employment income (either actual or anticipated, as provided in paragraph (a)(1)(i) of this section) and capital gains (according to paragraph (a)(3) of this section), exclude the costs of producing the self-employment income (as determined in paragraph (a)(4) of this section), and divide the remaining amount of self-employment income by the number of months over which the income will be averaged. This amount is the monthly net self-employment income. The monthly net self-employment income must be added to any other earned income received by the household to determine total monthly earned income.

(3)(b) Allowable costs of producing self-employment income.

(1) Allowable costs of producing self-employment income include, but are not limited to, the identifiable costs of labor; stock; raw material; seed and fertilizer; payments on the principal of the purchase price of income-producing real estate and capital assets, equipment, machinery, and other durable goods; interest paid to purchase income-producing property; insurance premiums; and taxes paid on income-producing property.

**(2) In determining net self-employment income, the following items are not allowable costs of doing business:**

**(i) Net losses from previous periods;**

**(ii) Federal, State, and local income taxes, money set aside for retirement purposes, and other work-related personal expenses (such as transportation to and from work), as these expenses are accounted for by the 20 percent earned income deduction specified in § 273.9(d)(2);**

**(iii) Depreciation...(emphasis added)**

61. The Department's Program Policy Manual, 165-22, at section 1810.0302

Allowable Costs of Self Employment Income (FS) states:

The assistance group is required to keep a record of the expenses incurred in the production of self-employment income.

Examples of allowable costs of producing self-employment income are:

1. identifiable costs of labor (salaries, employer's share of Social Security, **insurance**, etc.);
2. stock, raw materials, seed and fertilizer, and feed for livestock;
3. rent and cost of building maintenance;
4. business telephone costs;
5. costs of operating a motor vehicle when required in connection with the operation of the business;

6. the principal and ~~interest paid on loans~~ to purchase income producing real estate and capital assets, equipment, machinery, and other durable goods;
7. insurance premiums and taxes paid on income producing property;
8. cost of meals and equipment for children for whom child care is provided in the home; and
9. travel and lodging, **but not meals**, away from home. (emphasis added)

62. The Department's Program Policy Manual, 165-22, at section 1810.0303

Costs not Allowed (FS) states, in part:

The following expenses are not allowed as a cost of producing self-employment income:

1. net losses from previous periods,
2. federal, state and local income taxes, money set aside for retirement purposes and other work related personal expenses (such as transportation to and from work) for any SFU member, as these expenses are accounted for by the 20% earned income adjustment, and
3. depreciation. . .

63. Pursuant to the above authority, some of petitioner's self-employment expenses may be included in the calculation of her husband's net self employment income.

Respondent included the following self-employment expenses: Advertising, Office Expenses, Rent or Leasing of Vehicles, Supplies, Taxes and Licenses, Insurance, Car/Truck expenses, and Legal and Professional Services. Respondent was correct not to include depreciation in the calculation of husband's self-employment expenses.

64. However, pursuant to the above authorities, the respondent should not have included any taxes in husband's self-employment expenses and should have included the cost of contract labor or salaries (\$2,062 per year or \$171.83 per month), rent/lease of other business property (\$237 per year or \$19.75 per month), and "the other

expenses", such as the cost of a business phone (\$4,983 per year or \$415.25 per month).

65. For FA benefits, the respondent incorrectly determined husband's self-employment expenses as \$53,236 per year or \$4,436.33 per month. For FA benefits, husband's self-employment expenses should be \$59,522 per year or \$4,960.17 per month.

66. The Department's Program Policy Manual, 165-22, at section 2610.0402.05 Determining Net Self-Employment Income (FS) states, in part:

To determine net income from self-employment:

Step 1 - Add all gross self-employment income, including capital gains.

Step 2 - Subtract from the gross self-employment income the cost of producing the self-employment income (allowable business expenses). Refer to Chapter 1800.

Step 3 - Divide the above amount by the number of months over which the income will be averaged. . .

67. Pursuant to the above authority, the respondent subtracts petitioner's gross self-employment income from his allowable business expenses then divides the amount by the number of months the income will be averaged. Petitioner's monthly net self-employment income should be \$1,418.83. ( $\$76,548 - \$59,522 = \$17,026$  divided by 12 (because the amounts are yearly) = \$1,418.83)

68. The Code of Federal Regulations at 7 C.F.R. § 273.9 defines the income standards for Food Assistance Program benefits:

(a) Income eligibility standards...Households which do not contain an elderly or disabled member shall meet both the net income eligibility standards and the gross income eligibility standards for the Food Stamp Program...The net and gross income eligibility standards shall be based on the Federal income poverty levels established as provided in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2))...

(3) The income eligibility limits, as described in this paragraph, are revised each October 1 to reflect the annual adjustment to the Federal income poverty guidelines...

(4) The monthly gross and net income eligibility standards for all areas will be prescribed in tables posted on the FNS web site, at [www.fns.usda.gov/fsp...](http://www.fns.usda.gov/fsp...)

69. Pursuant to the above authority, petitioner's gross social security benefits and the husband's monthly net self-employment income should be counted in petitioner's FA budgets.

70. The ACCESS Florida Program Policy Manual Appendix A-1 sets forth the following Eligibility Standard for Food Assistance benefits:

(1) \$2,622 as the monthly gross income limit for a household of two; (2) \$1,311 as the monthly net income limit for a household of two; (3) \$357.00 maximum FA benefit for a household size of two; (2) \$337.00 standard utility allowance; (3) \$155.00 standard deduction for a household size of two; (4) an uncapped maximum shelter deduction for AGs with elderly or disabled members; and (5) \$16 per month for the minimum allotment for one or two member household. . .

71. Since petitioner's monthly household income must include her SSA income and her husband's net self employment income, then the household's countable net income should be \$2,367.83 ( $\$949 + \$1,418.83 = \$2,367.83$ ), which is under the monthly gross income limit for a household of two (\$2,622).

72. The Code of Federal Regulations 7 C.F.R. § 273.9 define deductions and states, in part:

(d) Income deductions. Deductions shall be allowed only for the following household expenses. . .

(1) *Standard deduction*—(i) *48 States, District of Columbia, Alaska, Hawaii, and the Virgin Islands.* Effective October 1, 2002, in the 48 States and the District of Columbia, Alaska, Hawaii, and the Virgin Islands, the standard deduction for household sizes one through six shall be equal to 8.31 percent of the monthly net income eligibility standard for each

household size established under paragraph (a)(2) of this section rounded up to the nearest whole dollar.

(2) *Earned income deduction.* Twenty percent of gross earned income as defined in paragraph (b)(1) of this section. Earnings excluded in paragraph (c) of this section shall not be included in gross earned income for purposes of computing the earned income deduction, except that the State agency must count any earnings used to pay child support that were excluded from the household's income in accordance with the child support exclusion in paragraph (c)(17) of this section.

(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. Spouses or other persons receiving benefits as a dependent of the SSI or disability and blindness recipient are not eligible to receive this deduction but persons receiving emergency SSI benefits based on presumptive eligibility are eligible for this deduction. . .

(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.* (A) With FNS approval, a State agency may develop the following standard utility allowances (standards) to be used in place of actual costs in determining a household's excess shelter deduction: an individual standard for each type of utility expense; a standard utility allowance for all utilities that includes heating or cooling costs (HCSUA). . .

73. The Department's Program Policy Manual, 165-22, section 2410.03555 states the allowable medical expenses that can be included in a FA budget. Types of allowable medical expenses include medical care; hospitalization or outpatient treatment; prescription drugs and various other medical expenses. Pursuant to the above authority, petitioner's various medical bills can be considered as allowable medical expenses for the FA program.



74. Pursuant to the above authorities, petitioner's shelter costs, utility costs, and her medical expenses can be counted in her FA budget.

75. The Code of Federal Regulations 7 C.F.R. § 273.2 explain the verification process of medical expenses and states, in part:

(f) Verification. Verification is the use of documentation or a contact with a third party to confirm the accuracy of statements or information. The State agency must give households at least 10 days to provide required verification. Paragraph (i)(4) of this section contains verification procedures for expedited service cases.

(1) Mandatory verification. State agencies shall verify the following information prior to certification for households initially applying:

(iv) Medical expenses. The amount of any medical expenses (including the amount of reimbursements) deductible under § 273.9(d)(3) shall be verified prior to initial certification. Verification of other factors, such as the allowability of services provided or the eligibility of the person incurring the cost, shall be required if questionable. . . .

76. The Department's Program Policy Manual, 165-22, section 2410.362

Verification of Medical Expenses (FS) states:

The amount of any medical expense shall be verified prior to certification provided the expense would actually result in a disregard. If a portion of the expense is reimbursable, the amount to be reimbursed must be verified before the non-reimbursable portion can be allowed. If verification will delay eligibility, the assistance group (AG) shall be advised that its allotment may be determined without allowing the expense. Verification requiring contact with the AG will occur only at initial certification and recertification of eligibility unless the AG requests a change in medical expenses by providing information as to new or changed (newly reported) medical expenses.

77. Pursuant to the above authorities, petitioner is required to provide verification of her reoccurring medical expenses prior to the bills being considered in the determination of her monthly FA benefit amount. Petitioner has not submitted the documentation that verifies her monthly prescriptions and physician visit amounts. The

only medical expense that can be included in her FA budget is her \$104.90 monthly Medicare Part B premium if the petitioner is not eligible for QI1 benefits. Once the petitioner submits the verification of her monthly medical expenses, then the expenses can be counted in her FA budget.

78. Petitioner's FA budget for February and ongoing should be:

<b>Expenses/Income</b>	<b>Dollar Amount</b>
Net Self Employment Income	\$1418.83
20% Exclusion for Earned Income	-\$ 283.77
<b>Total Earned Income</b>	<b>\$1135.06</b>
Social Security income	+\$ 949.00
<b>Total household income</b>	<b>\$2084.06</b>
Standard deduction for a household of 2	-\$ 155.00
<b>Total Net Income</b>	<b>\$ 1929.06</b>
Excess Medical Expenses	-\$ 69.90
<b>Adjusted income after deductions</b>	<b>\$1859.16</b>
Medical Expense	\$ 104.90
Medical Deduction	-\$ 35.00
<b>Excess Medical Expenses</b>	<b>\$ 69.90</b>
Rent/shelter	\$ 1050.00
Standard utility allowance	+\$ 337.00
<b>Total rent/utility costs</b>	<b>\$ 1387.00</b>
Shelter standard (50% adjusted income)	-\$ 929.58
<b>Excess shelter deduction</b>	<b>\$ 457.42</b>
Adjusted income	\$1859.16
Excess Shelter Deduction	-\$ 457.42
<b>Adjusted income after shelter deduction</b>	<b>\$1401.75</b>

79. Respondent took 30% of \$1401.75 to calculate the benefit reduction of \$421.00, which exceeds the maximum FA benefit amount of \$357.00.

80. Policy transmittal numbered C-13-10-0007 dated October 11, 2013, shows in pertinent part that:



...all one and two member assistance groups (AGs) are eligible for the minimum monthly food assistance benefit allotment, which is 8% of the maximum allotment for a one person household.... The AG is eligible for the minimum monthly food assistance benefit allotment if the assistance group meets all regular eligibility requirements and....the AG has income less than or equal to the 200% gross income limit or the AG contains an elderly or disabled member and does not pass the 200% gross income test but does have income less than or equal to the 100% of the net income limit...

81. The Department's Program Policy Manual, 165-22, section 2610.0106.02

Minimum Benefits (FS) states in part, "Recurring months: Issue a minimum of eight percent of the maximum benefit for a one-person assistance group to one or two person assistance groups who meet the net income test or are categorically eligible."

82. Pursuant to the above authorities, a two-person household, which passes the gross income test or has an elderly or disabled member, is entitled to receive a minimum FA benefit amount that equals to eight percent of the maximum amount for a one person household. Petitioner is a disabled and lives in a two-person household.

Therefore, she is eligible to receive the monthly minimum FA benefit amount of \$16.

These standard amounts are shown in the Department's Program Policy Manual, 165-22, Appendix A-3.1 and A-2.

83. The Code of Federal Regulations 7 C.F.R. §273.10(a) explains the effective date of FA benefits during an application process and states, in part:

(ii) A household's benefit level for the initial months of certification shall be based on the day of the month it applies for benefits and the household shall receive benefits from the date of application to the end of the month unless the applicant household consists of residents of a public institution. For households which apply for SSI prior to their release from a public institution in accordance with §273.1(e)(2), the benefit level for the initial month of certification shall be based on the date of the month the household is released from the institution and the household shall receive

benefits from the date of the household's release from the institution to the end of the month. . .

(iii) To determine the amount of the prorated allotment, the State agency shall use either the appropriate Food Stamp Allotment Proration Table provided by FNS or whichever of the following formulae is appropriate:

(A) For State agencies which use a standard 30-day calendar or fiscal month the formula is as follows, keeping in mind that the date of application for someone applying on the 31st of a month is the 30th:

full month's benefits x (31-date of application) =allotment  
30

(C) If after using the appropriate formula the result ends in 1 through 99 cents, the State agency shall round the product down to the nearest lower whole dollar. If the computation results in an allotment of less than \$10, then no issuance shall be made for the initial month. . .

84. Pursuant to the above authorities, petitioner's FA benefits for January 2015 should begin on January 5, 2015. Since she applied on the 5th of the month, her FA benefits for January 2015 must be prorated to the date of application. Furthermore, if the formula ends in any cent amount, the cents are drop to the lower whole dollar amount.

85. The formula above describes how to determine a prorated FA benefit amount.  $(\$16 \times \frac{31-5}{30} = \$16 \times \frac{24}{30}$  or  $(.8) \$16 \times .867 = \$13.87$ ). The cents are dropped, so petitioner's FA benefit amount for January 2015 is \$13.00.

86. The Department's Program Policy Manual, 165-22, section 2610.0300 explains that if petitioner's initial month of FA benefits are less than \$10, then the respondent shall not issue any benefits; however, since petitioner's initial FA benefits are \$13, then for January 2015, the petitioner is eligible for FA benefits in the amount of \$13 and for

February 2015 and ongoing, the petitioner is eligible for FA benefits in the amount of \$16 per month.

87. In careful review of the cited authorities and evidence, the undersigned concludes the petitioner meets the burden of proof in establishing that the respondent incorrectly (1) denied her Food Assistance benefits effective January 2015 and ongoing; and (2) calculated her monthly share of cost amount for her Medically Needy SSI-Related Medicaid benefits effective January 2015 and ongoing. Petitioner's correct share of cost amount effective January 2015 and ongoing is \$1,674 and petitioner's correct Food Assistance benefit amounts should be \$13 for January 2015; and \$16 per month for February 2015 and ongoing.

88. In careful review of the cited authorities and evidence, the undersigned concludes the respondent does not meet the burden of proof in establishing that petitioner's QMB benefits were correctly terminated for the months of November 2014 and December 2015; however, the respondent meets the burden of proof in establishing that petitioner's QI1 benefits were correctly denied effective January 2015.

89. Petitioner is encouraged to seek assistance for his medical needs through the Pinellas County Social Services Program. Petitioner should forward all of her medical bills to the respondent so that the respondent can determine if she meets her share of cost amount.

#### **DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, the food assistance appeal is GRANTED; the QI1 appeal for January 2015 and ongoing; is DENIED; however, the QMB appeal for the months of November 2014 and December

2014 is GRANTED; and the appeal for a lower share of cost amount for January 2015 and ongoing is GRANTED. The lower share of cost is to commence as indicated above in the Conclusions of Law.

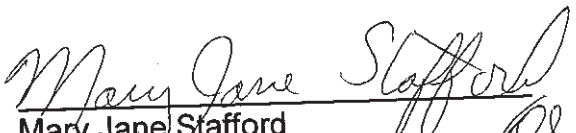
**ANY FOOD STAMP BENEFITS DUE APPELLANT PURSUANT TO THIS ORDER MUST BE AVAILABLE WITHIN (10) TEN DAYS OF THIS DECISION OR WITHIN (60) SIXTY DAYS OF THE REQUEST FOR THE HEARING. ANY BENEFITS DUE WILL BE OFFSET BY PRIOR UNPAID OVERISSUANCES.**

**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 23<sup>rd</sup> day of March, 2015,

in Tallahassee, Florida.

  
Mary Jane Stafford  
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  
Office of Economic Self Sufficiency