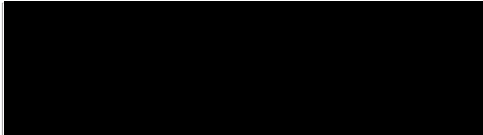


STATE OF FLORIDA  
DEPARTMENT OF CHILDREN AND FAMILIES  
OFFICE OF APPEAL HEARINGS

**FILED**

MAR 06 2015

OFFICE OF APPEAL HEARINGS  
DEPT. OF CHILDREN & FAMILIES

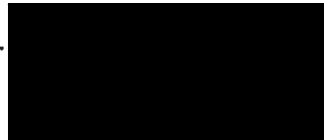


APPEAL NO. 15F-00268

PETITIONER,

Vs.

CASE NO.



FLORIDA DEPARTMENT OF  
CHILDREN AND FAMILIES  
CIRCUIT: 17 Broward  
UNIT: 88249

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on February 3, 2015 at 4:01 p.m. The hearing re-convened on February 5, 2015 at 10:02 a.m. All parties appeared telephonically from different locations.

**APPEARANCES**

For the petitioner: [REDACTED] and his ex-wife, [REDACTED]

For the respondent: Shirley Stringer, ACCESS Supervisor.

**STATEMENT OF ISSUE**

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

### **PRELIMINARY STATEMENT**

On December 12, 2014, the Department sent a Notice of Case Action (NOCA) to the petitioner informing him that he was enrolled in the MN SOC program. The petitioner timely appealed on December 15, 2014.

The petitioner presented 7 pages of evidence for the undersigned to consider, which were accepted and marked as Petitioner's Composite Exhibit "1". The Department presented 26 pages for the undersigned to consider, which were accepted and marked as Respondent's Composite Exhibit "1". The record closed after the hearing on February 5, 2015.

### **FINDINGS OF FACT**

1. On December 4, 2014, the petitioner applied for Medicaid for himself. He reported his Social Security Disability (SSDI) income of \$1742 gross. A total amount of \$174 is being recouped for an SSDI overpayment. The petitioner is not eligible for Medicare Part B until March 2015. The Department first used his gross income and updated to use his net income of \$1,568 before the hearing convened. The petitioner was enrolled into the MN program with a SOC of \$1,368 with the Department using the petitioner's net income.

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 bills to them, which would then be 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 Department calculated the SOC amount by subtracting an unearned income disregard of \$20 from the net income for a countable unearned income of \$1,548. After the Medically Needy Income Limit (MNIL) of \$180 was subtracted from the countable income, the SOC amount was determined to be \$1,368.

4. The petitioner does not agree with being enrolled into the MN program and believes he qualifies for full Medicaid with no SOC. He provided copies of his monthly bills for the Department to review. The bills he provided do not meet the SOC amount.

#### **CONCLUSIONS OF LAW**

5. 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.

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

7. 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.

8. Fla. Admin. Code § 65A-1.713 “SSI –Related Medicaid Income Eligibility

Criteria” states in relevant 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:

(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.

(4) Income Budgeting Methodologies. To determine eligibility SSI budgeting methodologies are applied except where expressly prohibited by 42 U.S.C. § 1396 (2000 Ed., Sup. IV) (incorporated by reference), or another less restrictive option is elected by the state under 42 U.S.C. § 1396a(r)(2)...

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

10. The Policy Manual at Appendix A-7, indicates 88% of the Federal Poverty limit is \$871 and the Medically Needy Income Limit (MNIL) is \$180 for a family size of one.

11. 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 MEDS-AD program (full Medicaid), the income cannot exceed 88% of the federal poverty level (\$871). The petitioner’s gross income of \$1,742 and net income of \$1,568 are both over the income for full Medicaid for the petitioner. 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. The Department subtracted the \$20 unearned income disregard and the MNIL of \$180 from the net income of \$1,568 to result in a SOC of \$1,368 per month.

12. 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)

13. The findings show that the Department enrolled petitioner in the MN Program beginning December 1, 2014. The Department counted petitioner's net monthly Social Security disability income to determine his share of cost instead of the gross amount. As the petitioner has an overpayment, the Social Security Administration (SSA) is recouping \$174 per month from his SSDI benefit. The undersigned will not rule more restrictive than the Department. The undersigned cannot conclude a more favorable outcome for the petitioner; he is not eligible for full Medicaid benefits and eligibility for a lower share of cost is not found.

**DECISION**


Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is denied, and the Department's action is affirmed.

**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 6<sup>th</sup> day of March, 2015,

in Tallahassee, Florida.

  
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Copies Furnished To: [REDACTED] Petitioner  
Office of Economic Self Sufficiency