

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

FILED

MAY 07 2015

OFFICE OF APPEAL HEARINGS  
DEPT OF CHILDREN & FAMILIES

APPEAL NO. 15F-00296

PETITIONER,

Vs.

CASE NO. [REDACTED]

FLORIDA DEPT OF CHILDREN AND FAMILIES  
CIRCUIT: 13 Hillsborough  
UNIT: 883DT

RESPONDENT.

FINAL ORDER

The undersigned convened an administrative hearing in the above-referenced matter on February 18, 2015 at 2:36 p.m. in Tampa, Florida.

APPEARANCES

For Petitioner: [REDACTED] petitioner

For Respondent: Shawnee Daniels, Senior Human Service Program Specialist

STATEMENT OF ISSUE

At issue is the respondent's action to retain the petitioner's enrollment in the Medically Needy (MN) Program with monthly share of cost (SOC) amounts of (1) \$2,759 for the months of December 2014 and January 2015; (2) \$2,653 for February 2015 and March 2015; and (3) \$2,753 for April 1, 2015 and ongoing.

**PRELIMINARY STATEMENT**

By notice dated December 19, 2014, the respondent notified petitioner that his Medically Needy share of cost (SOC) amount would increase from \$2,312 per month to \$2,759 per month for December 2014 and January 2015.

By notice dated February 12, 2015, the respondent notified petitioner that his and his wife's Medically Needy share of cost (SOC) amount is \$2,653 per month for February 2015 and March 2015.

By notice dated February 24, 2015, the respondent notified petitioner that his and his wife's Medically Needy share of cost (SOC) amount increased from \$2,653 to \$2,753 per month effective April 2015 and ongoing.

Petitioner was present and testified. Petitioner presented one witness who testified: [REDACTED] petitioner's wife. Petitioner submitted four exhibits, which were accepted into evidence and marked as Petitioner's Exhibits "1"- "4".

The respondent was represented by Shawnee Daniels with the Department of Children and Families (hereafter "DCF", "Respondent" or "Agency. Respondent submitted six exhibits, which were accepted into evidence and marked as Respondent's Exhibit "1"- "6".

The undersigned left the record open until March 18, 2015 to allow all parties to provide additional documentation. On March 5, 2015, petitioner submitted additional documentation that was entered into evidence and marked as Petitioner's Exhibits "5" and "6". On March 11, 2015, the undersigned filed the Order Sharing Information as it was unclear if the petitioner had submitted the documentation to the respondent.

Respondent submitted no additional documentation. The record closed on March 18, 2015.

**FINDINGS OF FACT**

1. On December 1, 2014, petitioner completed a recertification application for SSI-Related Medicaid benefits. The application listed petitioner and his wife as the only household members; and petitioner's Social Security Disability Insurance (SSDI) income of \$1,821.92, wife's SSDI income of \$1,035, and wife's pension income of \$447.35 as the only sources of income for the household.
2. Petitioner is seeking a reduced monthly SOC amount for both he and his wife. Petitioner's wife became eligible for SSI-Related Medically Needy Medicaid benefits effective February 2015, as she turned 65 in February 2015.
3. Petitioner's gross monthly SSDI amount is for December 2014 and ongoing is \$1,852.90. His wife's gross monthly SSDI amount is \$1,053 for December 2014 and is \$1,052.90 for January 2015 and ongoing. Petitioner's wife also receives a pension of \$447.35 (gross) per month effective December 2014. Petitioner and his wife did not dispute the amount of their Social Security and pension incomes they receive each month.
4. Petitioner receives Medicare Part A and Part B; and pays a monthly Medicare premium of \$104.90 effective December 2014. Effective January 2015, petitioner also receives supplemental health insurance for which he pays \$127.10 per month.
5. Petitioner's wife receives Medicare Part A and Part B and pays a monthly Medicare premium of \$104.90 effective February 2015. Petitioner's wife paid \$227.24 for health insurance for the month of December 2014; and paid \$335 for health

insurance for the month of January 2015. Effective February 2015 and ongoing, her only health insurance premium is the Medicare premium of \$104.90 per month.

6. Petitioner pays co-pays for prescriptions that vary monthly; pays a co-pay of \$45 for each physician visit; and pays a copayment of \$40 every two weeks for physical therapy visits. Petitioner's wife pays \$55.18 per month for therapy sessions effective December 2014.

7. Petitioner submitted paid medical bills that verified the amount that petitioner paid for his physician visits; for the cost of his prescriptions; for the cost of his physical therapy visits; and for the cost of his wife's therapy sessions.

8. On December 19, 2014, the respondent mailed petitioner a Notice of Case Action that indicated his Medically Needy Share of cost (SOC) amount was increasing to \$2,759 per month effective December 2014 and ongoing.

9. Respondent determined petitioner's SOC amount for the month of January 2015 as \$2,759.00; however, the respondent did not submit a SOC budget for January 2015.

10. Respondent determined petitioner's \$2,759 SOC amount for the month of December 2014 as follows:

|                  |   |
|------------------|---|
| \$1,852          | petitioner's SSDI income                                      |
| +\$1,053         | wife's Social Security income                                 |
| +\$447.35        | wife's pension income   |
| -\$20.00         | unearned income disregard                                     |
| -\$331.90        | medical expense deduction                                     |
| <u>-\$241.00</u> | <u>medically needy income level for household size of two</u> |
| \$2,759.00       | share of cost   |

11. On February 12, 2015, the respondent mailed petitioner a Notice of Case Action that indicated he and his wife's Medically Needy Share of cost amount was decreasing to \$2,653 per month effective February 2015 and ongoing.

12. Respondent determined petitioner SOC amount for the month of February 2015 as \$2,653.00; however, the respondent did not submit a SOC budget for February 2015.

13. Respondent determined petitioner's \$2,653 SOC amount for March 2015 as follows:

|            |   |
|------------|---|
| \$1,852    | petitioner's SSDI income                                      |
| +\$1,052   | wife's Social Security income                                 |
| +\$447.35  | wife's pension income   |
| -\$20.00   | unearned income disregard                                     |
| -\$436.80  | medical expense deduction                                     |
| -\$241.00  | <u>medically needy income level for household size of two</u> |
| \$2,653.00 | share of cost   |

14. On February 24, 2015, the respondent mailed petitioner a Notice of Case Action that indicated his Medically Needy Share of cost (SOC) amount was increasing from \$2,653 to \$2,753 per month effective April 1, 2015.

15. Respondent did not submit in evidence the SOC budgets for April 2015 and ongoing.

16. Petitioner disagreed with the respondent's calculation of his monthly SOC amount because he believed that his monthly income is less than the respondent's determination of his monthly income amount. He believed the respondent should utilize their net and not gross income when determining his household's monthly income amount.

**CONCLUSIONS OF LAW**

17. 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.
18. This proceeding is a de novo proceeding pursuant to Florida Administrative Code § 65-2.056.
19. In accordance with Fla. Admin. Code § 65-2.060 (1), the burden of proof for the determination of petitioner's SOC amount for the months of December 2014 and January 2015 was assigned to the petitioner. The change in petitioner's SOC amount effective February 2015 and ongoing was assigned to the respondent.
20. 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).
21. The Fla. Admin. Code R. 65A-1.701, Definitions, defines the eligibility criteria for SSI-Related Medicaid and states:
- SSI-related Medicaid provides medical assistance to eligible individuals who are aged, blind or disabled in accordance with Titles XVI and XIX of the Social Security Act and Chapter 409, F.S.
22. Pursuant to the above authority, petitioner is eligible for the SSI-Related Medically Needy Medicaid program as he is disabled. Petitioner's wife turned 65 in

February 2015, so she become eligible for the SSI-Related Medically Needy Medicaid program effective February 2015.

23. The Department's Program Policy Manual, 165-22, at section 2240.0604.03

Income of Spouse of Eligible Individual (MSSI, SFP) states:

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 and assets, except in circumstances where this is deemed inequitable. An aged, blind, or disabled individual who has an eligible spouse may only qualify as an eligible individual if the combined countable income and assets of the couple do not exceed the income and asset limits specified for such couples.

24. Pursuant to the above authority, petitioner's SSDI income, his wife's Social Security income, and her pension income must be included in the determination of their monthly SOC amounts.

25. The Fla. Admin. Code R. 65A-1.716(2) indicates the Medically Needy Income Level (MNIL) for a family size of two as \$241. Petitioner's and his wife's countable income exceed the MNIL for a two-person household. Since the household's total income exceeds the MNIL for a couple, then petitioner and his wife are eligible for SSI-Related Medically Needy Medicaid benefits with a monthly SOC amount.

26. The Fla. Admin. Code R. 65A-1.713(4)(c) contains the following excerpt in regards to the determination of an individual's monthly SOC amount:

(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. Countable income is determined in accordance with subsection 65A-1.713(2), F.A.C.

27. The Department's Program Policy Manual, 165-22, at 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. The assistance group is income eligible (entitled to Medicaid) once income is less than or equal to the Medically Needy Income Level (MNIL) or medical bills equal the amount by which his income exceeds the MNIL. Once medical bills are equal to this surplus income, referred to as share of cost, the assistance group is eligible.

The eligibility specialist must determine eligibility for Medically Needy any time the assistance group's income exceeds the income limits for another full Medicaid Program. Refer to Appendix A-7 for the Medically Needy income limits.

28. Federal Regulations at 20 C.F.R. 416.1124(c)(12) sets forth income that is not counted in this program and states, "The first \$20 of any unearned income in a month other than...income based on need."

29. The Fla. Admin. Code R. 65A-1.702(13) sets forth the following regarding the SOC amount applicable to the SSI-Related Medicaid Medically Needy Program, "(13) Determining Share of Cost (SOC). The SOC amount is determined by deducting the Medically Needy income level from the individual's or family's income."

30. The above authorities explain how to determine petitioner and his wife's monthly SOC amount.



31. The Department's Program Policy Manual, 2640.0503 Whose Medical Expenses are used to meet SOC (SSI) states, in part:

In determining eligibility for Medicaid, the allowable medical expenses of certain individuals can be used to reduce an AG/individual's share of cost. The allowable medical expenses of any person whose income is used in determining the AG's financial eligibility can be used to meet share of cost. This includes the ineligible spouse, even if the ineligible spouse has no income or insufficient income to deem. The person does not have to be a member of the assistance group or be potentially eligible to receive Medicaid. Individuals whose income is included in more than one SFU group may have their medical expenses counted toward each group's share of cost.

32. Pursuant to the above authority, the respondent can utilize both petitioner's and his wife's medical expenses to count toward each other's SOC amount.

33. The Department's Program Policy Manual, 165-22, 2640.0506.01 Allowable Medical Expenses (MSSI) states:

Allowable medical expenses are medical expenses that are:

1. unpaid and still owed, or
2. paid during the current month, or
3. incurred and paid during the three months before the tracking month but no earlier than the three retroactive application months, and
4. not subject to third party payment.

There are two types of allowable medical expenses:

1. recognized health insurance costs, and
2. recognized medical services.

Only allowable medical expenses can be used to meet Share of Cost.

34. According to the above authorities, the respondent is able to utilize the cost of health insurance premiums and the cost of petitioner and his wife's medical expenses to meet their SOC amount.

35. The Department's Program Policy Manual, 165-22, 2640.0507.01 When to Count Allowable Medical Expenses (MSSI) states, in part:

Whether a bill is used in the share of cost determination depends on whether it is paid, unpaid, an allowable third party payment, or subject to third party payment.

An allowable medical expense cannot be counted toward the share of cost before the date of service. A hospital bill which is issued in advance of scheduled service cannot be counted toward the share of cost prior to actual receipt of the service. An exception to this policy is global prenatal bills (refer to passage 2640.0506.05). A bill that is Medicaid compensable cannot be prorated because once the individual becomes Medicaid eligible by meeting the share of cost, the bill will be paid by Medicaid. Count paid bills, payments on existing bills, and allowable third party payments during the month the payment was made. Count bills incurred and paid during the three months before the tracking month. Bills incurred and paid before the three retroactive months to an application cannot be used. . .

36. The Department's Program Policy Manual, 165-22, 2640.0507.02 Tracking

Medical Expenses (MSSI) states, in part:

Allowable medical expenses must be tracked on a monthly basis for each individual/family with a different assistance group and share of cost.

Allowable medical expenses whether paid or unpaid must be tracked in chronological order by date incurred (date of service to the individual).

Inpatient hospital medical expenses are to be tracked on a day-by-day basis. An itemized bill should be requested from the hospital. . . At that point, only the non-Medicaid compensable services, if any, could be carried forward to meet a future month's share of cost. Allowable medical expenses being tracked for a specific day should be tracked using paid bills first. On the day on which an individual meets their share of cost, expenses are considered in the following order:

1. Medicare or other recognized health insurance cost;
2. bills of individuals who cannot be entitled to Medicaid, are considered next; and
3. paid bills are a final consideration.

37. Pursuant to the above authorities, medical expenses utilized to meet petitioner and his wife's SOC amount are counted in the months they are incurred. Furthermore, if petitioner and his wife wish to have any medical expenses utilized to meet their SOC amount, the medical bills must be submitted on a monthly basis.

38. The Department's Program Policy Manual, 165-22, 2640.0508 Proof of Medical Expenses (MSSI) states, in part:

The following are verification requirements for allowable medical expenses to be counted toward share of cost.

For Medicare premiums the individual's statement may be accepted (including coinsurance charges). For other health insurance premiums proof is needed of the amount and frequency of the premium. Acceptable evidence is the insurance policy, canceled check, receipt, pay stub or verbal verification from the agent.

For paid medical services bills (includes coinsurance payments) proof is needed of the date of the payment, amount of payment and an estimate of third party liability/TPP, if applicable. Acceptable evidence is the paid bill, receipt, canceled check, written statement from doctor or verbal verification from the provider. (For TPP, verbal verification is not acceptable.)

39. Pursuant to the above authorities, petitioner submitted adequate proof of their Medicare premiums and supplemental health insurance. Petitioner can only utilize his health insurance premiums as the cost of their insurance does not fluctuate each month.

40. For December 2014, the household's medical expenses should be \$332.14; for January 2015, the expenses should be \$567.00; and for February 2015 and ongoing, the expenses should be \$336.90.

41. Respondent correctly calculated petitioner and his wife's income and medical expenses in their monthly SOC amounts for month of December 2014 and for the months of February 2015 and ongoing. However, the respondent incorrectly determined petitioner and his wife's SOC amount for the month of January 2015.

42. The undersigned calculated petitioner's SOC amount for January 2015 as follows:

|                   |  |
|-------------------|--|
| \$1,852           | petitioner's SSDI income                               |
| +\$1,052          | wife's Social Security income                          |
| +\$447.35         | wife's pension income                                  |
| -\$20.00          | unearned income disregard                              |
| -\$567.00         | medical expense deduction                              |
| -\$241.00         | medically needy income level for household size of two |
| <u>\$2,523.00</u> | share of cost  |

43. In careful review of the cited authorities and evidence, the undersigned concludes the petitioner does not meet the burden of proof in establishing that for the month of December 2014, the respondent incorrectly calculated petitioner's Share of Cost Amount as \$2,759.

44. In careful review of the cited authorities and evidence, the undersigned concludes the petitioner met the burden of proof in establishing that for the month of January 2015, the respondent incorrectly calculated petitioner's Share of Coast Amount as \$2,759. For January 2015, petitioner's Share of Cost Amount should be \$2,523.

45. In careful review of the cited authorities and evidence, the undersigned concludes the respondent meets the burden of proof in establishing that for February 2015 and ongoing, the respondent correctly calculated petitioner and his wife's monthly Share of Cost amount as \$2,753.

46. Petitioner and his wife are encouraged to seek assistance for their medical needs through the Hillsborough County Social Services Program. Furthermore, if petitioner wishes to have his and his wife's incurred medical bills counted toward their monthly Share of Cost Amount, he should submit them so the respondent is able to utilize the medical bills to meet their Share of Cost Amount.

**DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, petitioner's appeal for a lower share of cost amount for December 2014 and for February 2015 and ongoing is DENIED.

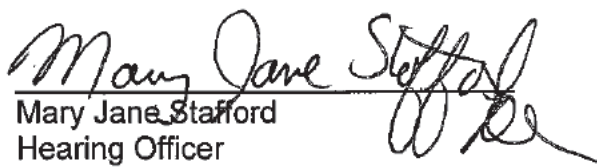
Based upon the foregoing Findings of Fact and Conclusions of Law, petitioner's appeal for a lower share of cost amount for January 2015 is GRANTED and the lower share of cost is to commence as indicated above in the Conclusions of Law.

**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 7<sup>th</sup> day of May, 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