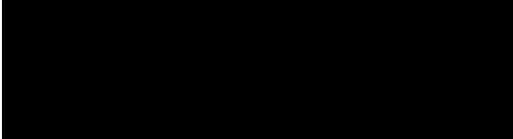


STATE OF FLORIDA  
DEPARTMENT OF CHILDREN AND FAMILIES  
OFFICE OF APPEAL HEARINGS

**FILED**

MAR 30 2015

OFFICE OF APPEAL HEARINGS  
DEPT OF CHILDREN & FAMILIES



APPEAL NO. 15F-00444

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 12, 2015 at 1:15 p.m. All parties appeared telephonically from different locations.

**APPEARANCES**

For the petitioner: 

For the respondent: Paul Daniocek, ACCESS Senior Worker.

**STATEMENT OF ISSUE**

At issue is the Department's action to deny full Medicaid benefits for the petitioner (LA) and to enroll him in the Medically Needy (MN) Program.

**PRELIMINARY STATEMENT**

On December 12, 2014, the Department sent the petitioner a Notice of Case Action (NOCA) informing him that he would be enrolled in the MN program with a SOC of \$1,297. The petitioner timely appealed on December 29, 2014.

The petitioner presented no evidence for the undersigned to consider. The Department presented two composite exhibits at the hearing; one with 21 that were accepted and marked as Respondent's Composite Exhibit "1" and the other with 24 pages that were accepted and marked as Respondent's Composite Exhibit "2". The record was left open until close of business day February 12, 2015 for the Department to submit the income limit chart for Supplemental Security Income (SSI) related Medicaid. It was received timely and marked as Respondent's Exhibit "3". The record was closed.

#### **FINDINGS OF FACT**

1. On November 10, 2014, the petitioner submitted a recertification application for Medicaid. The application included himself, his wife and their two children. He reported Social Security Disability Income (SSDI) for himself of \$1,248 and SSI income of \$208 for his wife and his two children. There is also SSI for \$721 for one of his children. The petitioner's SSDI income increased from \$1,248 to \$1,269 in January 2015.
2. The petitioner previously received SSI. It was terminated by the Social Security Administration (SSA) when he started receiving SSDI in November 2014. He was receiving full Medicaid with his SSI, but that also ended once he started to receive SSDI and now his income exceeds the limit to receive full Medicaid benefits. The petitioner does not have Medicare.
3. The income limit for full Medicaid for an individual in the SSI-Related Medicaid program is \$871 and for a couple is \$1,175. As the petitioner is over income, the Department calculated his share of cost (SOC) by subtracting an unearned income

disregard of \$20 from his total income of \$1,248 to result in a countable unearned income of \$1,228. The Department then subtracted the Medically Needy Income Limit (MNIL) of \$180 for one person to result in a SOC of \$1,048 per month. No other deductions from his income were found.

4. The petitioner believes that he should still have full Medicaid. He states that he is in need of the same benefits he had previously, as he has specialist doctors that accepted his Medicaid. The Department explained the policies and procedures for the MN SOC program and how the petitioner can use it. The petitioner still disagrees with his enrollment in the MN SOC program.

#### **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.

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 burden is upon the petitioner if an application for benefits or payments is denied. 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 R. 65A-1.710 SSI-Related Medicaid Coverage Groups at (5) Medically Needy Program, states, "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. "

9. Fla. Admin. Code R. 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)...

10. The ACCESS Florida Program Policy Manual at Appendix A-7 indicates 88% of the Federal Poverty limit for an individual is \$871 and \$1,175 for a couple and the Medically Needy Income Limit (MNIL) is \$180 for a family size of one.

11. The Medically Needy Program is for those individuals whose income or resources exceed the limits for full Medicaid benefits. The petitioner's income exceeds the limit, there enrollment in the Medically Needy Program is proper.

12. Fla. Admin. Code 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.

13. Fla. Admin. Code R. 65A-1.702 Special Provisions at (13) Determining Share of Cost, states, "The SOC is determined by deducting the Medically Needy income level from an individual's or family's income."

14. 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..."

15. The petitioner believed that the Department removed him from full Medicaid but the Department explained that this change was made as a result of the SSA's actions. The Department only determined his eligibility for Medicaid through its Programs. 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 for a couple (\$1,175). The petitioner's gross income of \$1,248 and net income of \$1,228 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 \$1,248 to result in a SOC of \$1,048 per month.

16. According to the above-cited authorities, the Department correctly denied full Medicaid benefits. All allowable deductions were given and no mathematical errors were found in the calculation of share of cost. The undersigned cannot find a more favorable outcome for the petitioner.

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

in Tallahassee, Florida.



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Office of Economic Self Sufficiency