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

FILED
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OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES

[redacted]

APPEAL NO. 15F-00458
15F-00686

PETITIONER,

Vs.

CASE NO. [redacted]

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 17 Broward
UNIT: 88080

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on February 16, 2015 at 11:25 a.m., at 1400 W. Commercial Boulevard, in Fort Lauderdale, Florida.

APPEARANCES

For the Petitioner: [redacted]

For the Respondent: Schiller Similien, economic self-sufficiency supervisor.

STATEMENT OF ISSUE

At issue is whether the Department issued the correct amount of Food Assistance Program benefits (FAP) to the petitioner effective January 2015. Also at issue is whether the respondent correctly denied full Medicaid benefits for petitioner's daughter and her enrollment in the Medically Needy Program with an estimated share of cost (SOC).

PRELIMINARY STATEMENT

By a Notice of Case Action dated January 6, 2015, the Department informed the petitioner that she was eligible for $79 in FAP benefits effective January 2015. Additionally, the notice informed her that full Medicaid benefits for her and her daughter would end on January 31, 2015. The petitioner timely requested a hearing to challenge the Department's actions.

During the hearing, the respondent informed the hearing officer that petitioner had been approved for $169 in FAP benefits. The respondent informed the parties that supplemental FAP benefits would be issued for January and February 2015. Petitioner acknowledged the beneficial changes and declined to follow through with her hearing for the FAP benefits level issue. Appeal number 15F-00686 will be dismissed as moot.

[redacted], petitioner's friend, appeared as a witness on petitioner's behalf.

During the hearing, the petitioner's evidence was accepted and marked as Petitioner's Composite Exhibit 1. The respondent submitted a composite exhibit, which was marked as Respondent's Composite Exhibit 1.

The record was left open for the respondent to provide additional information to the petitioner for review and the undersigned to consider. The evidence was timely received and marked as Respondent's Exhibit 2. The record was extended through February 20, 2015 for the petitioner to provide additional documents for the undersigned to consider. The evidence was timely received, entered into evidence and marked as Petitioner's Exhibit 2. The record was closed on February 20, 2015

FINDINGS OF FACT

1. Prior to the action currently under appeal, the petitioner has been receiving FAP and full Medicaid benefits for herself and her daughter. Her last month of certification was December 2014.

2. On December 4, 2014, the petitioner submitted a web application to continue her benefits. The petitioner is 50 years old and has a nineteen year-old daughter (DOB [redacted].

3. The petitioner's household is not eligible for transitional Medicaid because there is no child under 18 years of age in the home.

4. On the application, petitioner reported both her and her daughter as disabled. Petitioner's daughter was previously determined disabled by Social Security Administration (SSA). She received benefits for about a year, but was later terminated. She reapplied in 2013, but was denied because SSA determined her daughter's condition was not considered severe enough. She has not appealed this most recent denial.

5. Petitioner is gainfully employed and paid weekly. She is a tax filer and claims her daughter as her tax dependent (See Respondent's Composite Exhibit 1). She received $216 on November 25, 2014, $540 on November 21, 2014, $396 on November 14, 2014 and $432 on November 7, 2014, for a total of $1,584 (Petitioner's Composite Exhibit 1).

6. To determine eligibility for Medicaid for the petitioner's daughter, the respondent used monthly amount of $1,476. Since the amount in the budget was more beneficial to the petitioner, the undersigned accepts the respondent's calculation of $1,476 as

petitioner's monthly gross income. This amount is called the modified adjusted gross income (MAGI). The respondent counted two members in the petitioner's standard filing unit (SFU). The household income was then compared to the income limit for an adult with a household size of two, $241. As the income exceeded the maximum limit, the daughter was found ineligible for full Medicaid benefits.

7. As the petitioner's daughter was determined ineligible for full Medicaid, the respondent enrolled her in the Medically Needy Program. To determine the estimated SOC, the respondent determined the petitioner's household MAGI to be $1,486. The Medically Needy Income Level (MNIL) of $387 for a standard filing unit size of two was subtracted resulting to the petitioner estimated SOC of $1,089.

8. Respondent explained that petitioner's 19 year-old daughter is not eligible for full Medicaid due to excess income. The respondent explained that SSI-Related Medicaid eligibility was not explored for the daughter as SSA has already determined that she was not disabled.

9. The petitioner did not dispute any of the facts presented by the respondent. She acknowledged her income, but argued that her daughter has various medical conditions, including asthma, that requires monthly medications. Petitioner provided a list of 7 prescriptions from Walgreen's pharmacy used by her daughter on a monthly basis, totaling $1,261.94. Petitioner contends she cannot afford them and has to borrow money from friends to make ends meet. Petitioner believes that, based on her daughter's medical conditions, she should be eligible for full Medicaid. The respondent advised the petitioner to submit her invoice to the bill-tracking unit for processing.

10. Petitioner requested that her daughter's Medicaid be continued pending a hearing decision.

CONCLUSIONS OF LAW

11. 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.

12. This proceeding is a de novo proceeding pursuant to Florida Administrative Code Rule 65-2.056.

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

14. Fla. Admin. Code R. 65A-1.713 SSI-Related Medicaid Income Eligibility Criteria states in part:

> (1) Income limits. An individual's income must be within limits established by federal or state law and the Medicaid State Plan. The income limits are as follows:
>
> (h) For Medically Needy, income must be less than or equal to the Medically Needy income standard after deduction of allowable medical expenses.
>
> (4)(c) Medically Needy. The amount by which the individual's income exceeds the Medically Needy income level, called the 'share of cost', shall be considered available for payment of medical care and services. The department computes available income for each month eligibility is requested to determine the amount of excess countable income available to meet medical costs. If countable income exceeds the Medically Needy income level the department shall deduct allowable medical expenses in chronological order, by day of service.

15. 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. The amount by which the individual's countable income exceeds the Medically Needy income level (MNIL) is called the share of cost. The MNIL for a two-person household is $387.

16. The ACCESS Program Policy Manual (The Policy Manual) at 3430.0203 addresses Notification of Case Action in the Family-Related Medicaid program (MFAM) and states:

> The payee must be informed in writing of all decisions affecting the assistance group's eligibility. This included approval or denial of an application for benefits, notification of any change in benefits or type of benefits, and/or termination of benefits.

17. The Fla. Admin. Code states in 65A-1.702 Special Provisions:

> (4) Ex Parte Process.
> (a) When a recipient's eligibility for Medicaid ends under one or more coverage groups, the department must determine their eligibility for medical assistance under any other Medicaid coverage group(s) before terminating Medicaid coverage. Both family-related Medicaid and SSI-related Medicaid eligibility are determined based on available information. If additional information is required to make an ex parte determination, it can be requested from the recipient, or, for SSI-related Medicaid eligibility, from the recipient or from the Social Security Administration.
> (b) All individuals who lose Medicaid eligibility under one or more coverage groups will continue to receive Medicaid until the ex parte redetermination process is completed. If the department determines that the individual is not eligible for Medicaid, the individual will be sent a notice to this effect which includes appeal rights. The individual may appeal the decision and, if requested by the individual within 10 days of the decision being appealed, Medicaid benefits will be continued pending resolution of the appeal.

18. In this instant case, the petitioner was sent a Notice of Case Action stating that her daughter's full Medicaid benefits would be closed and that she was placed in the Medically Needy Program with a SOC. According to the above authorities, the ex parte eligibility determination is to be completed based on available information. The

undersigned concludes that the Department, by enrolling the daughter in Medically Needy Program has satisfied the ex parte requirement.

19. The Family-Related Medicaid income criteria is set forth in 42 C.F.R 435.603. It states:

> (a) Basis, scope, and implementation. (1) This section implements section 1902(e)(14) of the Act.
> (2) Effective January 1, 2014, the agency must apply the financial methodologies set forth in this section in determining the financial eligibility of all individuals for Medicaid, except for individuals identified in paragraph (j) of this section and as provided in paragraph (a)(3) of this section.
> (d) Household income—(1) General rule. Except as provided in paragraphs (d)(2) through (d)(4) of this section, household income is the sum of the MAGI-based income, as defined in paragraph (e) of this section, of every individual included in the individual's household.

20. Federal regulation 42 C.F.R. § 435.603 Application of modified gross income (MAGI) states:

> (f) Household—(1) Basic rule for taxpayers not claimed as a tax dependent. In the case of an individual who expects to file a tax return for the taxable year in which an initial determination or renewal of eligibility is being made, and who does not expect to be claimed as a tax dependent by another taxpayer, the household consists of the taxpayer and, subject to paragraph (f)(5) of this section, all persons whom such individual expects to claim as a tax dependent.
> ...
> (3) Rules for individuals who neither file a tax return nor are claimed as a tax dependent. In the case of individuals who do not expect to file a Federal tax return and do not expect to be claimed as a tax dependent for the taxable year in which an initial determination or renewal of eligibility is being made, or who are described in paragraph (f)(2)(i), (f)(2)(ii), or (f)(2)(iii) of this section, the household consists of the individual and, if living with the individual—
> (i) The individual's spouse;
> (ii) The individual's natural, adopted and step children under the age specified in paragraph (f)(3)(iv) of this section; and
> (iii) In the case of individuals under the age specified in paragraph (f)(3)(iv) of this section, the individual's natural, adopted and step parents and natural, adoptive and step siblings under the age specified in paragraph (f)(3)(iv) of this section.

(iv) The age specified in this paragraph is either of the following, as elected by the agency in the State plan—
(A) Age 19; or
(B) Age 19 or, in the case of full-time students, age 21.
...
(5) For purposes of paragraph (f)(1) of this section, if, consistent with the procedures adopted by the State in accordance with §435.956(f) of this part, a taxpayer cannot reasonably establish that another individual is a tax dependent of the taxpayer for the tax year in which Medicaid is sought, the inclusion of such individual in the household of the taxpayer is determined in accordance with paragraph (f)(3) of this section.

21. The Policy Manual at 2230.0400 Standard Filing Unit (MFAM) states:

For tax filers, the Standard Filing Unit (SFU) is the tax filing group for the tax year in which eligibility is being determined. Eligibility is determined by each individual using the tax filing group's income. Individuals cannot receive Medicaid benefits under more than one coverage group, but can have their income included in more than one SFU.
For individuals who neither file a federal tax return nor are claimed as a tax dependent (non-filers), the Standard Filing Unit consists of the individual and, if living with the individual, their spouse, their natural, adopted, and step children under age 19, or 19 and 20 if in school full-time.

22. In accordance with the above controlling authorities, the Medicaid household group is the daughter and the petitioner. The findings show the Department determined the daughter's eligibility with a household size of two for Medicaid. The undersigned concludes the Department correctly determined the household size as two for Family-Related Medicaid coverage group.

23. The Policy Manual at 1830.0200 addresses Earned Income (MFAM), it states:

Earned income includes all gross (before taxes or other deductions) wages and salaries including income derived from the sale of blood or plasma, tips from performance of work, wages deferred that are beyond the individual's control, Federal Work Study and National and Community Services Trust Act living allowances through the Peace Corp, VISTA, Americorps, Foster Grandparent Program, Service Corps of Retired Executives and other volunteer programs. Wages are included as income at the time they are received rather than when earned.

Wages are considered earned income even when withheld at the request of the employee or provided as an income advance on income expected to be earned at a future date.

24. The Policy Manual at 2630.0108 Budget Computation (MFAM) states:

Financial eligibility for Family-Related Medicaid is determined using the household's Modified Adjusted Gross income (MAGI). The MAGI is the household's adjusted gross income as calculated by the Internal Revenue Service plus any foreign earned income and interest income exempt from tax.
In computing the assistance group's eligibility, the general formula is:
Step 1 - (Gross Unearned + Gross Earned) = (Total Gross Income).
Step 2 - Deduct any allowable income tax deductions (lines 23-35 from 1040). Deduct any allowable deductions for financial aid or self-employment to obtain the Modified Adjusted Gross Income.
Step 3 - Deduct the appropriate standard disregard. This will give the countable net income.
Step 4 - Compare the total countable net income to the coverage group's income standard.
If less than or equal to the income standard* for the program category, STOP, the individual is eligible. If greater than the income standard for the program category, continue to Step 5.
Step 5 - Apply a MAGI deduction (5% of the FPL based on SFU size).
If the 5% disregard would make the individual eligible, include the disregard. Otherwise the individual is ineligible for Medicaid.
Individuals determined ineligible for Medicaid will be enrolled in Medically Needy and referred, as appropriate, to Florida KidCare and/or the Federally Facilitated Marketplace (FFM).

25. The Policy Manual at Appendix A-7 indicates that for a family size of two the Adult Income Limit of $241 and a Standard Disregard of $146.

26. In accordance with the above controlling authorities, the undersigned reviewed the Medicaid eligibility for the petitioner. Step 1: The total income counted in the budget is $1,476. Step 2: There are no deductions provided as there was no tax return. Step 3: The total income of $$1,476 less the standard disregard of $146 is $1,330. Step 4: The balance of $1,330 is greater than the income limit of $241 for the petitioner to receive full Medicaid. Step 5: No MAGI disregard allowed. Therefore $1,330 is still

greater than the income limit of $241. The undersigned concludes the petitioner is ineligible for Medicaid. The undersigned further concludes Medically Needy eligibility must be explored for the petitioner.

27. The Policy Manual at 2630.0502 Enrollment (MFAM) sets forth:

> If an individual meets the Medically Needy Program's technical eligibility criteria, he is enrolled into the program. There is no income limit for enrollment. The individual is only eligible (entitled to Medicaid) when he has allowable medical bills that exceed the SOC.
> The income for an enrolled assistance group need not be verified. Instead, an estimated SOC is calculated for the assistance group. If after bill tracking, it appears the assistance group has met his "estimated" SOC, the unverified income must be verified before the Medicaid can be authorized. An individual is eligible from the day their SOC is met through the end of the month.

28. The Policy Manual at 2630.0500 Share of Cost (MFAM) states:

> The Share of Cost (SOC) refers to the amount of medical bills which an individual enrolled in the Medically Needy Program must incur in any given month before Medicaid coverage may be authorized.
> Eligibility must be determined for Medically Needy any time the assistance group meets all technical factors but the income exceeds the appropriate income limit for Medicaid.
> To calculate the share of cost, compare the countable net income to the Medically Needy Income Level based on the size of the standard filing unit. The difference is the assistance group's share of cost.

29. Effective January 2014, Appendix A-7 indicates that for a household of two, the MNIL is $387.

30. Pursuant to Fla. Admin. Code R. 65A-1.701 Definitions, states in part:

> (30) Share of Cost (SOC): SOC represents the amount of recognized medical expenses that a Medically Needy enrolled individual or family must be responsible to pay each month before becoming eligible to receive Medicaid benefits for the remainder of the month.

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

32. To determine the SOC the respondent determined the petitioner's household monthly to be $1,476. The Medically Needy Income Level (MNIL) of $387 for a standard filing unit size of two was subtracted resulting to the daughter's estimated SOC of $1,089.

33. The hearing officer found that no exception to this calculation. A no more favorable share of cost could be determined. Eligibility for full Medicaid for the daughter was not found.

34. Based on the above-cited rules, and the testimonies presented, the hearing officer concludes the respondent was correct to terminate full Medicaid and enroll the petitioner's daughter in the Family-Related Medically Needy Program after completing an ex-parte determination. Therefore, the hearing officer affirms the respondent's action and cannot conclude eligibility for full Medicaid under any other coverage group. The petitioner has failed to meet her burden that her daughter is eligible for full Medicaid.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the Medicaid appeal is denied.

The appeal (15F-00686) related to the FAP is dismissed as moot.

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 25th day of March, 2015,

in Tallahassee, Florida.

Roosevelt Reveil

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