

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

**FILED**

MAR 16 2015

APPEAL NO. 15F-00926

OFFICE OF APPEAL HEARINGS  
DEPT. OF CHILDREN & FAMILIES

  
PETITIONER,

Vs.

CASE NO. 

FLORIDA DEPT OF  
CHILDREN AND FAMILIES  
CIRCUIT: 07 Volusia  
UNIT: 88368

RESPONDENT.  
\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on February 18, 2015 at 1:00 p.m.

**APPEARANCES**

For the Petitioner:  petitioner's friend

For the Respondent: Viola Dickinson, Economic Self-Sufficiency Specialist II

**STATEMENT OF ISSUE**

Petitioner is appealing the Department's action to enroll him in the Medically Needy Program as he is seeking full Medicaid benefits.

**PRELIMINARY STATEMENT**

By notice dated October 9, 2014, the respondent notified the petitioner that he was enrolled in the Medically Needy Program effective November 1, 2014 with a Share of Cost (SOC) of \$1,414.00. Another notice was sent to the petitioner on December 1, 2014, notifying him that his SOC was increasing from \$1,414.00 to \$1,441.00 effective

January 1, 2015. The petitioner timely requested this administrative hearing to challenge the respondent's actions.

The petitioner was present for the hearing; however, he requested to be represented by his friend [REDACTED]

The petitioner did not submit any exhibits. The respondent submitted seven exhibits, which were accepted into evidence and marked as Respondent Exhibits "1" through "7" respectively. The record was held open until February 19, 2015 for the respondent to supplement the record. The respondent timely provided the additional information, which was accepted into evidence and marked as Respondent Exhibit "8". The record closed on February 19, 2015.

#### **FINDINGS OF FACT**

1. The petitioner's household includes the petitioner (63) only.
2. On September 30, 2014, the petitioner submitted an online application to renew his Food Assistance and Medicaid benefits. The only issue under appeal is the enrollment in the Medically Needy Program instead of approval for full Medicaid.
3. The petitioner was receiving \$1,614.00 in Social Security Retirement (SSRE) benefits through December 31, 2014. Effective January 1, 2014, his SSRE benefits increased to \$1,641.00 per month. The petitioner is court ordered to pay \$1,049.10 per month in child support to his ex-wife; therefore, the Social Security Administration (SSA) deducts this amount from his gross SSRE benefits each month and then issues him the difference.
4. The respondent explained the petitioner had always been enrolled in the Medically Needy program with a SOC; however, around August 2014 a change was made to

the petitioner's income (his net SSRE benefits were used in the budget instead of the gross amount) in error which made him eligible for full Medicaid for August 2014 and September 2014. When the mistake was discovered, the petitioner's case was once again updated with his gross SSRE benefits making him ineligible for full Medicaid.

5. The income limit for an aged/disabled individual to receive full Medicaid is \$871.00.

The petitioner's countable income of \$1,621.00 exceeds this amount; therefore, the respondent enrolled him in the Medically Needy Program.

6. The respondent calculated his Medically Needy budget and determined his \$1,441.00 SOC as follows:

|  |                   |
|--|-------------------|
| Total unearned income (petitioner's gross SSRE benefits) | \$1,641.00        |
| <u>Unearned income disregard</u>                         | -\$ 20.00         |
| <b>Countable Unearned Income</b>                         | <b>\$1,621.00</b> |
| Countable Earned Income                                  | \$ 0.00           |
| <u>Countable Unearned Income</u>                         | +\$1,621.00       |
| <b>Total Countable Income</b>                            | <b>\$1,621.00</b> |
| Total countable income                                   | \$1,621.00        |
| <u>Medically Needy Income Limit (MNIL)</u>               | -\$ 180.00        |
| <b>Share of Cost (SOC)</b>                               | <b>\$1,441.00</b> |

7. The petitioner's representative asserted the respondent should deduct the \$1,049.10 child support payments from the petitioner's gross income since that money goes to his ex-wife; she didn't understand how the petitioner is expected to live with the approximately \$560.00 per month he actually receives.

8. The respondent explained that the petitioner's child support payments are included as a deduction in his Food Assistance Program (FAP) benefits; however, these are not an allowable deduction for the SSI-Related Medicaid programs.

9. The respondent also informed the petitioner how the Medically Needy Program works and advised him to provide his unpaid medical bills every month so they can determine if he meets his SOC.
10. The petitioner's representative expressed concern that he will not be able to meet his SOC every month because the amount is so high. She explained he needs surgery and monthly medications that he has not been able to get because he doesn't have Medicaid. She asserted the petitioner needs full Medicaid in order to get the medical care he needs.

#### 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 § 409.285, Fla. Stat.
12. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code R. 65-2.056.
13. In accordance with Fla. Admin. Code R. 65-2.060(1), the burden of proof was assigned to the respondent.
14. Fla. Admin. Code R. 65A-1.710, SSI-Related Medicaid Coverage Groups, states in part:

...

(5) Medically Needy Program. 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. The program does not cover nursing facility care, intermediate care for the developmentally disabled services, or other long-term care services.

15. Fla. Admin. Code R. 65A-1.713 defines the income limits for SSI - Related

Medicaid programs:

(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.

...

(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...

16. The Code of Federal Regulations 20 C.F.R. § 416.1102 states "income is anything you receive in cash or in kind that you can use to meet your needs for food and shelter. Sometimes income also includes more or less than you actually receive (see § 416.1110 and §416.1123(b))."

17. The Code of Federal Regulations 20 C.F.R. § 416.1123 defines how unearned income is counted and states in part:

(a) *When we count unearned income.*

...

(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...

(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**, or to make any other payment such as payment of your Medicare premiums. [emphasis added]

18. The above cited authority explains how unearned income is counted for SSI-Related Medicaid programs; it also indicates that when a portion is withheld to pay a legal obligation, the full amount is still counted. In this case, the petitioner's monthly SSRE benefits of \$1,641.00 are reduced by \$1,049.10 to pay court ordered child support. The undersigned concludes the respondent followed rule in including the gross amount of \$1,641.00 in determining the petitioner's Medicaid eligibility.

19. The ACCESS Florida Program Manual at 2640.0500, Share of Cost (MSSI) sets forth:

The eligibility specialist must determine eligibility for Medically Needy any time the assistance group's assets and/or income exceeds the appropriate categorical asset/income limits. The eligibility specialist determines whether the assistance group's assets are within the Medically Needy asset limits and whether the assistance group members meet the technical factors. If the Medically Needy asset limit is met and the assistance group meets all technical factors, the eligibility specialist determines the amount of countable income and computes a budget using the MNIL which is the same for both family and SSI-Related Medicaid coverage groups (refer to Appendix A-7).

If income is equal to or less than the MNIL, there is no share of cost and the individual is eligible. Medicaid is authorized for individuals who are eligible without a share of cost.

If income is greater than the MNIL, share of cost is determined for appropriate members. Appropriate members are enrolled but cannot be eligible until the share of cost is met.

20. The Code of Federal Regulations 20 C.F.R. § 416.1124 defines unearned income that is not counted in SSI – Related Medicaid programs:

...  
(C)(12) The first \$20 of any unearned income in a month other than income in the form of in-kind support and maintenance received in the household of another (see §416.1131) and income based on need. Income based on need is a benefit that uses financial need as measured

by your income as a factor to determine your eligibility.

21. Fla. Admin. Code R. 65A-1.713 sets forth the Income Budgeting Methodologies for the Medically Needy Program:

...  
(C) Medically Needy. The amount by which the individual's countable 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.

22. The ACCESS Florida Program Policy Manual Appendix A-9 shows the Eligibility Standards for the following relevant SSI – Related Medicaid Programs effective January 2015:

| Coverage Group                            | Income Limit |
|---|--------------|
| MEDS-AD/ICP-<br>MEDS/Individual (88% FPL) | \$871        |

23. The SSI-Related Programs – Financial Eligibility Standards show the Medically Needy Income Level (MNIL) for an individual is \$180.00.

24. The authority cited sets forth the income limits for full Medicaid as well as the rules for enrollment and budgeting methodologies for the Medically Needy Program. As the petitioner's countable income of \$1,621.00 (total unearned income of \$1,641.00 per month minus the \$20.00 unearned income disregard) exceeds the income limit for full Medicaid (\$871.00), the undersigned concludes the respondent correctly evaluated the petitioner for the Medically Needy Program and determined his SOC to be \$1,441.00.

**DECISION**

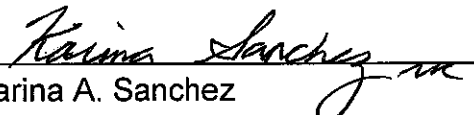
Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is denied.

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

in Tallahassee, Florida.

  
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Copies Furnished To [REDACTED] Jr., Petitioner  
Office of Economic Self Sufficiency