

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

FILED

MAY 11 2015

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES

APPEAL NO. 15F-01647

PETITIONER,

Vs.

CASE NO. [REDACTED]

FLORIDA DEPT OF
CHILDREN AND FAMILIES
CIRCUIT: 09 Osceola
UNIT: 66032

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned telephonically convened an administrative hearing in the above-referenced matter at 1:00 p.m. on April 8, 2015.

APPEARANCES

For the Petitioner: [REDACTED] pro se

For the Respondent: Randy Bright, ACCESS supervisor

STATEMENT OF ISSUE

At issue is whether respondent's action to include all of petitioner's household income in the Medically Needy Program (MNP) Share of Cost (SOC) calculation is proper. The respondent carries the burden of proof by the preponderance of evidence.

PRELIMINARY STATEMENT

By notice dated February 5, 2015 respondent notified petitioner MNP SOC for he and wife would increase from \$2,191 to \$2,340 effective March 1, 2015. Petitioner timely requested a hearing to challenge the SOC increase.

Petitioner submitted one exhibit, entered as Petitioner Exhibit "1". Respondent submitted four exhibits, entered as Respondent Exhibits "1" through "4". The record was closed on April 8, 2015.

FINDINGS OF FACT

1. Prior to the action under appeal, petitioner and his wife were enrolled in the MNP with a \$2,191 SOC.
2. On January 14, 2015 petitioner submitted a Medicaid recertification application. The application indicates petitioner and his wife are employed at Walt Disney and receive Social Security Disability Income (SSDI).
3. Respondent included petitioner and his wife's SSDI and petitioner provided four weeks most current gross income from Walt Disney for he and his wife. Respondent subtracted the appropriate deduction from petitioner's total household income to arrive at \$2,340 MNP SOC.
4. On February 5, 2015 respondent mailed petitioner a Notice of Case Action notifying MNP SOC would increase from \$2,191 to \$2,340 effective March 1, 2015.
5. Petitioner agreed with the income amounts respondent used to determine the \$2,340 MNP SOC. Although, petitioner believes using his last year's W-2 would better represent his monthly income.
6. Petitioner asserts the first \$14,000 of his and his wife's income (each) should be excluded due to the Able Act of 2014. Therefore, petitioner alleges his MNP SOC amount is incorrect.
7. Respondent was not aware of the Able Act or the \$14,000 income exclusion.

PRINCIPLES OF LAW AND ANALYSIS

8. 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.

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

10. Federal regulation at 20 C.F.R. PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED defines income used in the MNP.

11. Federal regulation 20 C.F.R. § 416.1102 defines income and in part states

Income is anything you receive in cash or in kind that you can use to meet your needs for food and shelter...

12. Federal regulation 20 C.F.R. § 416.110 Income we count, in part states:

...There are different types of income, earned and unearned, and we have rules for counting each...

13. Federal regulation 20 C.F.R. § 416.1110 What is earned income in part states:

Earned income may be in cash or in kind. We may include more of your earned income than you actually receive. We include more than you actually receive if amounts are withheld from earned income because of a garnishment or to pay a debt or other legal obligation, or to make any other payments. Earned income consists of the following types of payments:

(a) Wages—(1) Wages paid in cash—general. Wages are what you receive (before any deductions) for working as someone else's employee. Wages are the same for SSI purposes as for the social security retirement program's earnings test. (See §404.429(c) of this chapter.) Wages include salaries, commissions, bonuses, severance pay, and any other special payments received because of your employment...

14. Federal regulation 20 C.F.R. § 416.1120 What is unearned income states:

Unearned income is all income that is not earned income. We describe some of the types of unearned income in § 416.1121. We consider all of

these items as unearned income, whether you receive them in cash or in kind.

15. Federal regulation 20 C.F.R. § 416.1121 Types of unearned income in part states:

Some types of unearned income are—

(a) Annuities, pensions, and other periodic payments. This unearned income is usually related to prior work or service. It includes, for example, private pensions, social security benefits, disability benefits, veterans benefits, worker's compensation, railroad retirement annuities and unemployment insurance benefits...

16. In accordance with the above authorities, respondent included petitioner and his wife's SSDI and income from Walt Disney in the MNP SOC determination.

17. Petitioner argued that the first \$14,000 of he and his wife's income (each) should be excluded due to the Able Act of 2014.

18. The Achieving a Better Life Experience Act of 2014 § 101, 26 U.S.C. 529A (1986), (ABLE Act of 2014) states in part:

The purposes of this title are as follows:

(1) To encourage and assist individuals and families in saving private funds for the purpose of supporting individuals with disabilities to maintain health, independence, and quality of life...

19. The Able Act of 2014 § 102, further states in part:

(b) Qualified ABLE Program.--For purposes of this section--

(1) NOTE: Definition. In general.--The term "qualified ABLE program" means a program established and maintained by a State, or agency or instrumentality thereof--(A) under which a person may make contributions for a taxable year, for the benefit of an individual who is an eligible individual for such taxable year, to an ABLE account which is established for the purpose of meeting the qualified disability expenses of the designated beneficiary of the account...

20. The undersigned concludes at this time, the State of Florida has not established the qualified ABLE program (See House Bill 937 (2015)). In addition, petitioner failed to

show that he and his wife have qualified ABLE accounts in which entitles them to a lower MNP SOC.

21. After careful review of the cited authorities and evidence, the undersigned concludes respondent followed rule in including all of petitioner's household income in the MNP SOC determination.

DECISION


Based upon the foregoing Findings of Fact and Principles of Law and Analysis, the appeal is denied and respondent's action is approved.

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 11th day of May, 2015,

in Tallahassee, Florida.



Priscilla Peterson

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Copies Furnished To: [REDACTED] Petitioner
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