

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

FILED

MAY 06 2015

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES

APPEAL NO. 15F-01515
15F-01898

PETITIONER,

Vs.

CASE NO. [REDACTED]

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 04 Duval
UNIT: 88371

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on March 25, 2015 at 1:43 p.m. at the respondent's facility located in Jacksonville, Florida.

APPEARANCES

For the Petitioner: The petitioner was present and represented herself.

For the Respondent: Matthew Lynn, Economic Self-Sufficiency Specialist

STATEMENT OF ISSUE

The petitioner is appealing the Department's action on January 28, 2015 to determine a Food Assistance Program (FAP) benefit allotment in the amount of \$24.

Also at issue is the respondent's action to terminate full-coverage Medicaid and enroll the petitioner into the Medically Needy program with an estimated monthly share of cost in the amount of \$677.

PRELIMINARY STATEMENT

The FAP appeal was scheduled to convene on March 19, 2015 at 10:00 a.m. The petitioner also requested a hearing for an issue with the Medicaid program. The Medicaid appeal was scheduled for an in-person hearing on March 25, 2015 at 1:30 p.m.

On March 4, 2015, the petitioner contacted the undersigned to receive clarification as to which of the two hearing dates were correct. Since the petitioner requested an in-person hearing, she was advised that the hearing set for March 19, 2015 would be cancelled and the in-person hearing scheduled for March 25, 2015 would be used to hear both matters.

Appearing as a witness by telephone for the respondent was Stephanie Ross
ESSS II.

FINDINGS OF FACT

1. On January 22, 2015, the petitioner (age 48) completed an application to recertify for FAP and Medicaid benefits. The petitioner is disabled. Prior to the action under appeal, the petitioner was receiving full-coverage Medicaid under the MT-C program.

2. The Department included in the Food Assistance budget, effective March 2015, the petitioner's gross monthly Social Security income in the amount of \$877. The petitioner was eligible for FAP benefits as she met the gross income standard in the amount of \$1946 for a household size of one person. The \$155 standard deduction was deducted from the total gross income to result in \$722 adjusted net income. The adjusted net income was multiplied by .50 to result in a \$361 shelter standard. The petitioner's rent in the amount of \$182 and the \$337 standard utility allowance (SUA) resulted in \$519 total shelter. The shelter standard in the amount of \$361 was subtracted from the total shelter costs to result in a \$158 excess shelter deduction. The excess shelter deduction was subtracted from the adjusted net income to result in \$564 FAP adjusted net income. The FAP adjusted net income was multiplied by 30 percent to result in a benefit reduction in the amount of \$170. The maximum FAP benefit is \$194 for a one person household. The monthly benefit allotment was reduced by the \$170 benefit reduction to result in a monthly FAP benefit in the amount of \$24.

3. The Department discovered that it incorrectly determined the petitioner to be eligible for protected Medicaid under the MT-C program as she did not meet the financial and technical requirements. She was terminated from the protected Medicaid program and enrolled in the Medically Needy program with a monthly share of cost in the amount of \$677.

4. The total income included in the budget for the petitioner's Medically Needy enrollment was \$877. The \$20 unearned income disregard was subtracted from the total gross income which resulted in a countable income of \$857. The Department

subtracted the medically needy income level (MNIL) in the amount of \$180 for a household size of one to result in an estimated share of cost in the amount of \$677. The petitioner was determined to be eligible for the QMB program to pay for her Medicare Part B premium in the amount of \$104.90.

5. The petitioner does not dispute the income and expenses included in the Department's calculations. She does not understand why her FAP benefit allotment was \$161 until February 2015 and \$24 beginning March 2015 when her reported information is the same. The petitioner does not understand how she was placed in the MTC program in error. She has been receiving Medicaid since 2011. She argues she will not be able to pay her bills due to the Department's error. The petitioner contends that she has out-of-pocket medical expenses and will provide copies. The undersigned did not receive any expenses, post-hearing.

6. The Department explained that there was an error in its computer system that caused the approval of the petitioner's full-coverage Medicaid. The Department explained that the petitioner had to meet all of the eligibility requirements to be eligible for the MT-C program.

7. Respondent Exhibit 2 pages 21 and 22 include the SSA Title II Inquiry and SSI Title XVI Inquiry screens. The SSA Title II Inquiry shows the petitioner began receiving Social Security income in April 2009. The petitioner is currently receiving \$877 in Social Security income. The SSI Title XVI Inquiry screen shows an SSI payment in the amount of \$2022 made on December 8, 2010; \$106 made on January 1,

2011; and \$2013 on March 4, 2011, which was the last payment received. The screen shows a SSI payment status code of "T31".

8. The Department discovered that a portion of the petitioner's rent is being vendor paid through another source and was not eligible to claim the full rental amount as a deduction. The Department corrected the petitioner's monthly rental obligation from \$638 to \$182, the portion she is obligated to pay, effective March 1, 2015, causing her FAP benefit allotment to decrease to \$24.

CONCLUSIONS OF LAW

9. 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.

10. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code § 65-2.056.

11. In accordance with Fla. Admin. Code § 65-2.060 (1), the burden of proof was assigned to the respondent.

The FAP benefit allotment will be addressed first:

12. The Department's Program Policy Manual, 165-22, section 0210.0102 Program Overview (FS) explains the purpose of the program and states:

Assistance groups are authorized benefits electronically through Electronic Benefits Transfer (EBT), which they use to purchase food at retail stores authorized by the United States Department of Agriculture (USDA). Food stamps are intended to supplement other assistance group

income. The amount of benefits received is based on the assistance group's size and financial circumstances.

13. The Code of Federal Regulations appearing in 7 C.F.R. § 273.9, "income and deductions" states in part:

(d) Income deductions. Deductions shall be allowed only for the following household expenses:

- (1) Standard deduction....
- (2) Earned income deduction....
- (3) Excess medical deduction. That portion of medical expenses in excess of \$35 per month, excluding special diets incurred...

Allowable medical costs are:

- (i) Medical and dental care...
 - (ii) Hospitalization or outpatient treatment...
 - (iii) Prescription drugs when prescribed by a licensed practitioner authorized under State law and other over-the-counter medication (including insulin) when approved by a licensed practitioner or other qualified health professional.....
 - (iv) Health and hospitalization insurance policy premiums.
 - (v) Medicare premiums...
- (4) Dependent care...
 - (5) Optional child support deduction...
 - (6) Shelter costs-(i) Homeless shelter deduction...
 - (ii) Excess shelter deduction...
 - (A) Continuing charges for the shelter occupied by the household, including rent...
 - (B) Property taxes, State and local assessments, and insurance on the structure itself...
 - (C) The cost of fuel for heating; cooling; electricity or fuel used for purposes other than heating or cooling;
 - (D) The shelter costs for the home if temporarily not occupied by the household...

14. The above authorities explain that expenses such as the standard deduction, rent, and the cost to heat and cool the home may be allowed as deductions from

income. Out-of-pocket medical expenses incurred by an elderly or disabled household member in excess of \$35 may also be allowed as an excess medical deduction. In this case, the petitioner is considered disabled for this program; the household would be eligible for a medical deduction once out-of-pocket medical expenses exceed \$35 per month. The petitioner reported during the hearing that she has additional out-of-pocket medical costs; there was no evidence to establish that the petitioner has out-of-pocket medical expenses in excess of \$35 per month.

15. After careful review of the Department's budget calculation, the undersigned concludes that the Department included all allowable deductions and costs in the Food Assistance Program. Based on the petitioner's income, expenses, and the above authorities, the Department correctly determined the FAP benefit allotment in the petitioner's case. The undersigned concludes the Department correctly reduced the rent deduction to only the portion petitioner is obligated to pay each month.

The termination of the petitioner's Medicaid coverage under MT-C will be discussed:

16. The Department's Program Policy Manual, 165-22, section 2040.0107 SSI-Related Medicaid Category Codes (MSSI) includes the Protected SSI Medicaid coverage group "MT-C=Regular COLA", the coverage group under which the petitioner was previously covered.

17. The Department's Program Policy web site includes a question pertaining to Medicare beneficiaries and protected Medicaid eligibility in Questions and Answers, ID number 189, dated September 7, 2007. The question is: "If a Medicare beneficiary qualifies for MTD, should we open NS and QMB instead? Are they eligible for MTD with

Medicare?" The answer: "...It only has potential to affect eligibility for MEDS-AD (MMS) and for the Protected Widows Medicaid groups (MTW, MTS)." Therefore, the undersigned concludes petitioner's eligibility for Medicare does not affect the MT-C Protected Medicaid program as it was not the protected Medicaid program for widows.

18. The Department's Program Policy Manual, 165-22, section 2040.0802.09 Disregard of the Title II COLAs (MSSI)

The following applies to the disregard of COLAs:

Step 1 - The eligibility specialist must establish the last date (month and year) in which the individual received and was eligible for both SSA and SSI benefits.

Step 2 - Using the table in Appendix A-11, the eligibility specialist must determine the date of the first COLA received following the date established in step 1.

Step 3 - The eligibility specialist must multiply the current SSA amount for the individual and appropriate family members by the conversion factor associated with the date obtained in step 2. This computation will determine the SSA benefit amount without the COLAs, that is, the SSA benefit amount to be used in the budget.

19. The Department's Program Policy Manual, 165-22, Appendix A-11, Title II Cost of Living Increases Under Public Law 94-566 (Protected Medicaid Conversion Factors) shows the amount of COLA as 0.0% for January 2011. The conversion factor is listed as .919. In this case, the last date in which the petitioner received and was eligible for both SSA and SSI benefits was March 2011. The petitioner is currently receiving \$877 in Social Security income. The petitioner's Social Security income multiplied by the conversion factor of .919 results in \$805 Social Security income without the COLA.

20. The Department's Program Policy Manual, 165-22, section 2040.0802.10 Budgeting (MSSI) states:

Determine gross monthly income per the policy in Chapters 1800 and 2400, applying the applicable income deductions and exclusions. Measure the countable income against the current SSI FBR. If the countable income does not exceed the current SSI FBR, the individual is eligible for Medicaid under the Protected Medicaid provision.

21. The Department's Program Policy Manual, 165-22, section 2040.0804.01

Regular COLA Protected Medicaid (MSSI) states:

To be eligible for this Regular COLA Protected Medicaid, the individual must meet all the SSI criteria, with the exception that the Title II COLAs will be disregarded in determining eligibility on the factor of income.

The individual must also meet the following special requirements:

1. is currently receiving Title II (Social Security benefit);
2. was concurrently receiving Title II benefits and SSI benefits in any month subsequent to April 1977;
3. lost SSI eligibility for any reason; and
4. would now be eligible for SSI if the Title II COLAs, which they received after they were last eligible for (and received) SSI and Title II benefits concurrently, were deducted from their countable income.

22. The SSI Federal benefit rate (FBR) for the year 2015 is listed in the Department's Program Policy Manual, 165-22, Appendix A-10 as \$733. The petitioner's Social Security income would be \$805 after the COLA for the applicable time period was deducted from her current Social Security income.

23. In this case, the findings show that the petitioner is currently receiving Social Security income only. She was previously receiving Social Security income and SSI at the same time in December 2010, January 2011, and March 2011, and her SSI was terminated in March 2011. The petitioner's income not counting any cost of living increases exceeds the current SSI FBR. Therefore, the undersigned concludes that the Department's action to terminate the petitioner's Protected Medicaid coverage was

correct as she did not meet all of the requirements to be eligible for the protected SSI Medicaid (MT-C program).

The enrollment in the Medically-Needy program will now be addressed:

24. Fla. Admin. Code 65A-1.701, Definitions, states in part:

(20) MEDS-AD Demonstration Waiver: Medicaid coverage group for aged or disabled individuals who meet all SSI-related Medicaid non-financial eligibility criteria, whose resources do not exceed the limit in the Medically Needy Program, whose income is at or below 88 percent of the federal poverty level **and are not receiving Medicare or if receiving Medicare are also eligible for Medicaid covered institutional care services, hospice services or home and community based services.** (emphasis added)

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

25. The above authority explains that the MEDS-AD Medicaid coverage (full Medicaid) is only for individuals who do not receive Medicare. The exception is if a Medicare recipient also receives Medicaid covered institutional care services, hospice services or home and community based services. Petitioner does not fit into this exception. The Department next computed petitioner's share of cost in the Medically Needy Program.

26. Fla. Admin. Code section 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.

27. 20 C.F.R. §416.1124 (c)(12) sets forth the income deduction of \$20 for all adult-related (or SSI-related) Medicaid coverage groups.

28. Fla. Admin. Code 65A-1.713 "SSI-Related Medicaid Income Eligibility Criteria" states in part, "(2) (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."

29. The Medically Needy income levels are set forth in the Fla. Admin. Code at 65A-1.716 :

(1) The monthly federal poverty level figures based on the size of the filing unit...

(2) Medicaid income and payment eligibility standards and Medically Needy income levels are by family size as follows...

Size...1 Level \$180...

30. The petitioner has Medicare Part B and is receiving QMB coverage. Based on the findings and the above controlling authorities, the undersigned concludes the Department's action to enroll the petitioner in the Medically Needy program for the aged and disabled was correct.

DECISION

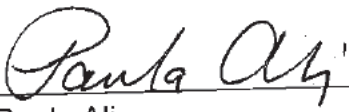
Based upon the foregoing Findings of Fact and Conclusions of Law, both appeals are denied.

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 6th day of May, 2015,

in Tallahassee, Florida.



Paula Ali *PA*

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