

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

FILED

JUN 05 2015

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES



APPEAL NO. 15F-02399
15F-04571

PETITIONER,

Vs.

CASE NO. 

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 04 Duval
UNIT: 88329

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned reconvened a telephonic administrative hearing in the above-referenced matter on May 7, 2015 at 11:41 a.m.

APPEARANCES

For the Petitioner: Petitioner was present and represented himself.

For the Respondent: Diane Washington, Economic Self-Sufficiency Specialist II

STATEMENT OF ISSUE

The petitioner is appealing the decrease of his Food Assistance Program (FAP) benefit allotment from \$24 to \$16, effective April 1, 2015.

Also at issue is the petitioner's continued enrollment in the Medically Needy program with an increased monthly share of cost in the amount of \$997, effective April 1, 2015.

The respondent held the burden of proof in this case.

PRELIMINARY STATEMENT

The hearing originally convened on April 14, 2015 at 9:17 a.m. The hearing exceeded the allotted time, which required rescheduling. The hearing was rescheduled to May 7, 2015 at 11:30 a.m.

Appearing as a witness for the petitioner was [REDACTED] friend to the petitioner.

FINDINGS OF FACT

1. Prior to the action under appeal, the petitioner, age 66, was receiving \$24 in FAP benefits. The petitioner received an increase in his Social Security income to the amount of \$1197. The petitioner's benefits were reduced to \$16.

2. The Department included in its calculations the petitioner's Social Security income the amount of \$1197. This met the gross income limit for one person. The Department subtracted the standard deduction in the amount of \$155 and a \$15 excess medical expense from the gross monthly income to result in \$1027 adjusted net income. The adjusted net income was multiplied by .50 to arrive at a \$513.50 shelter standard. The petitioner was allowed a rental obligation in the amount of \$525 and a \$337 Standard Utility Allowance (SUA) to result in a total shelter cost in the amount of \$862. The \$862 was reduced by the shelter standard to result in \$348.50 excess shelter deduction. The excess shelter deduction (\$348.50) was then subtracted from the adjusted net income of \$1027 to result in adjusted income in the amount of \$678.50. The \$678.50 FAP adjusted net income was multiplied by the standard 30% to result in a \$204 benefit reduction. The maximum monthly FAP benefit allotment for a one-person

household size is \$194. The \$204 benefit reduction was subtracted from the maximum monthly FAP benefit allotment to result in \$0. The petitioner was eligible for the minimum monthly benefit allotment in the amount of \$16 because he is single, disabled, and meets the net income limit.

3. The Department provided the Medicaid budgets to explain how the share of cost was calculated. The Department included in its calculations Social Security income in the amount of \$1197. The Department subtracted the \$20 standard deduction and the Medically Needy Income Limit (MNIL) of \$180 for a one person household from \$1197 to result in a monthly share of cost in the amount of \$997.

4. Petitioner does not dispute he receives the income included in the Department's calculations but believes none of his income should be counted in the budget. The petitioner's witness referred to the website at www.fns.usda.gov/snap/eligibility under the section "Eligibility Requirements". The petitioner's witness believes the section labeled "Special Rules for Elderly or Disabled" states persons receiving SSI or SSDI are eligible for the full FAP benefit allotment because their income is not to be included when calculating the benefit allotment. The petitioner's witness believes the Department is making up its own rules in its decision-making process. The petitioner argues that he has always been approved for the Medically Needy program but believes he is entitled to full-coverage Medicaid. The petitioner is receiving Medicare and does not receive any home or community based services.

5. The Department explained that while the petitioner is disabled and receiving Social Security income, it is a requirement that his income be included in the FAP budget.

PRINCIPLES OF LAW AND ANALYSIS

6. 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.

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

The reduction of the FAP benefit allotment will be addressed first:

8. 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.

9. The above policy explains that food assistance is intended to supplement other household income and depends on the assistance group's size and financial circumstances.

10. Federal Food Assistance Regulations at 7 C.F.R. §273.9 "Income and deductions" states:

(b) *Definition of income.* Household income shall mean all income from whatever source excluding only items specified in paragraph (c) of this section.

(2) Unearned income shall include, but not be limited to:

(ii) Annuities; pensions; retirement, veteran's, or disability benefits; worker's or unemployment compensation including any amounts deducted to repay claims for intentional program violations as provided in § 272.12; oldage, survivors, or social security benefits;

(c) *Income exclusions.* Only the following items shall be excluded from household income and no other income shall be excluded:

(1) Any gain or benefit which is not in the form of money payable directly to the household, including in-kind benefits and certain vendor payments.

(2) Any income in the certification period which is received too infrequently or irregularly to be reasonably anticipated, but not in excess of \$30 in a quarter.

(3)(i) Educational assistance, including grants, scholarships, fellowships, work study, educational loans on which payment is deferred, veterans' educational benefits and the like.

(4) All loans, including loans from private individuals as well as commercial institutions, other than educational loans on which repayment is deferred.

(5) Reimbursements for past or future expenses, to the extent they do not exceed actual expenses, and do not represent a gain or benefit to the household.

(6) Moneys received and used for the care and maintenance of a third-party beneficiary who is not a household member.

(7) The earned income (as defined in paragraph (b)(1) of this section) of any household member who is under age 18, who is an elementary or secondary school student, and who lives with a natural, adoptive, or stepparent or under the parental control of a household member other than a parent.

(8) Money received in the form of a nonrecurring lump-sum payment, including, but not limited to, income tax refunds, rebates, or credits; retroactive lump-sum social security, SSI, public assistance, railroad retirement benefits, or other payments; lump-sum insurance settlements; or refunds of security deposits on rental property or utilities.

(9) The cost of producing self-employment income.

(10) Any income that is specifically excluded by any other Federal statute from consideration as income for the purpose of determining eligibility for the food stamp program. The following laws provide such an exclusion:

(i) Reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (Pub. L. 91-646, section 216).

(ii) Payments received under the Alaska Native Claims Settlement Act (Pub. L. 92-203, section 21(a));

- (iii) Any payment to volunteers under Title II (RSVP, Foster Grandparents and others) of the Domestic Volunteer Services Act of 1973 (Pub. L. 93-113) as amended.
- (iv) Income derived from certain submarginal land of the United States which is held in trust for certain Indian tribes (Pub. L. 94-114, section 6).
- (v) Allowances, earnings, or payments (including reimbursements) to individuals participating in programs under the Job Training Partnership Act (Pub. L. 90-300), except as provided for under paragraph (b)(1)(v) of this section.
- (vi) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540).
- (vii) Earned income tax credits received as a result of Pub. L. 95-600, the Revenue Act of 1978 which are received before January 1, 1980.
- (viii) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of the Yakima Indian Nation or the Apache Tribe of the Mescalero Reservation (Pub. L. 95-433).
- (ix) Payments to the Passamaquoddy Tribe and the Penobscot Nation or any of their members received pursuant to the Maine Indian Claims Settlement Act of 1980 (Pub. L. 96-420, section 5).
- (x) Payments of relocation assistance to members of the Navajo and Hopi Tribes under Pub. L. 93-531.
- (11) Energy assistance...
- (12) Cash donations based on need received on or after February 1, 1988 from one or more private nonprofit charitable organizations, but not to exceed \$300 in a Federal fiscal year quarter.
- (13) Earned income tax credit payments received either as a lump sum or payments under section 3507 of the Internal Revenue Code of 1986 (relating to advance payment of earned income tax credits received as part of the paycheck or as a reduction in taxes that otherwise would have been paid at the end of the year).
- (14) Any payment made to an E&T participant under § 273.7(d)(3) for costs that are reasonably necessary and directly related to participation in the E&T program.
- (15) Governmental foster care payments received by households with foster care individuals who are considered to be boarders in accordance with § 273.1(c).
- (16) Income of an SSI recipient necessary for the fulfillment of a plan for achieving self-support (PASS) which has been approved under section 1612(b)(4)(A)(iii) or 1612(b)(4)(B)(iv) of the Social Security Act.
- (17) Legally obligated child support payments paid by a household member to or for a nonhousehold member, including payments made to a third party on behalf of the nonhousehold member (vendor payments) and amounts paid toward child support arrearages.

(18) At the State agency's option, any State complementary assistance program payments excluded for the purpose of determining eligibility under section 1931 of the SSA for a program funded under Title XIX of the SSA.

(19) At the State agency's option, any types of income that the State agency excludes when determining eligibility or benefits for TANF cash assistance as defined by 45 CFR 260.31(a)(1) and (a)(2), or medical assistance under Section 1931 of the SSA, (but not for programs that do not evaluate the financial circumstances of adults in the household and programs grandfathered under Section 404(a)(2) of the SSA).

11. The Department's Program Policy Manual, 165-22, section 1810.0904.01 "SSA Income (FS)" further explains: "Benefits that are paid by SSA are considered unearned income. The gross entitlement amount in dollars and cents prior to any deduction is budgeted..."

12. The above regulation defines income as all income from any source and includes Social Security income as unearned income. Examples of excluded income include vendor payments, loans, educational assistance, reimbursements, and payments received under the Alaska Native Claims Settlement Act. The findings show that the petitioner is receiving \$1197 in Social Security income, which does not fall under the category of excluded income. The petitioner's Social Security income was correctly included in the Department's calculations as required by controlling federal regulations.

13. The undersigned reviewed the USDA FNS web site provided by petitioner under "Eligibility" and found this statement, "What Are the Income Limits? Most households have to meet both a monthly gross income test and a monthly net income test to be eligible for SNAP benefits. However, households in which all members are receiving SSI or TANF are considered to be eligible based on income." The petitioner

does not receive SSI which is Supplemental Security income; he receives Social Security income. The petitioner does not receive TANF which is Temporary Assistance for Needy Families or Cash Assistance for families with minor children. Social Security income is based on an individual's earning record and does not guarantee Food Assistance eligibility as SSI or TANF does.

14. Federal Food Assistance Regulations at 7 C.F.R. §273.9 (d) "Income deductions" states:

Deductions shall be allowed only for the following household expenses:

(1) Standard deduction....

(3) Excess medical deduction.

(A) Continuing charges for the shelter occupied by the household, including rent...

(C) The cost of fuel for heating; cooling; electricity or fuel used for purposes other than heating or cooling;

(iii) Standard utility allowances.

15. 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. The findings show that the petitioner has shelter expenses in the amount of \$525 each month in rent; petitioner has heating and cooling costs. These expenses were allowed.

16. The Department's Program Policy Manual, 165-22, Appendix A-1 sets forth the 200% monthly gross income standard for an assistance group size of one at \$1946, effective October 1, 2014.

17. Federal Food Assistance Regulations at 7 C.F.R. 273.10(e)(2)(ii)(C) states:

Except during an initial month, all eligible one- and two-person households shall receive minimum monthly allotments equal to the minimum benefit

and all eligible households with three or more members which are entitled to \$1, \$3, and \$5 allotments shall receive allotments, of \$2, \$4, and \$6, respectively, to correspond with current coupon book determinations.

18. The Department published Transmittal No. C-13-10-0007 "Food Assistance Minimum Benefit" which states in part:

Minimum Benefit Policy

The AG is eligible for the minimum monthly food assistance benefit allotment if the assistance group meets all regular eligibility requirements and:

- The AG has income less than or equal to the 200% gross income limit or
- The AG contains an elderly or disabled member and does not pass the 200% gross income test but does have income less than or equal to the 100% of the net income limit...

19. The policy cited above explains a one person household is entitled to receive a minimum FAP benefit allotment that equals eight percent of the maximum allotment for a single person assistance group or two person assistance group *eligible for assistance*. According to the Department's transmittal, the assistance group is eligible for the minimum allotment if the assistance group or household has income less than or equal to the 200% gross income limit. The findings show petitioner's income met the gross income limit of \$1946 for one. In this case, \$194 is the maximum allotment, of which eight percent is equal to \$16 monthly in FAP benefits. Because petitioner's countable Social Security income increased for 2015, it caused his benefit calculation to result in zero; petitioner meets the criteria to receive the minimum allotment of \$16.

20. Based on the above Findings of Fact and controlling law, the undersigned concludes that the Department was correct in its action to decrease the petitioner's FAP benefit allotment.

The continued enrollment in the Medically Needy program and increased monthly share of cost will now be addressed:

21. 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.

22. The Department's Program Policy Manual, 165-22, Appendix A-9, effective April 2015, lists the MEDS-AD income limit as \$864 for an individual.

23. The above authority explains that the MEDS-AD Medicaid coverage (full Medicaid) is for individuals whose income is below 88 percent of the federal poverty level and are not receiving Medicare. If receiving Medicare, the individual must be eligible for Medicaid covered institutional care services, hospice services or home and community based services. The evidence shows that the petitioner is receiving Medicare but there is no evidence to show that he is receiving the additional specified programs or services. Therefore, the undersigned concludes that petitioner does not qualify for full coverage Medicaid as he is a Medicare recipient in the community. The Department next computed petitioner's share of cost in the Medically Needy Program.

24. 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.”

25. Federal Regulations at 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.

26. 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.”

27. 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...

28. The findings show that the petitioner’s income increased. Petitioner’s new gross income was reduced by the \$20 income deduction and the MNIL for one of \$180 to result in an increased monthly share of cost in the amount of \$997.

29. Based on the Findings of Fact and the above controlling authorities, the undersigned concludes the Department’s action to increase petitioner’s share of cost to \$997 was correct.

DECISION

Based upon the foregoing Findings of Fact and Principles 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 5th day of June, 2015,

in Tallahassee, Florida.



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