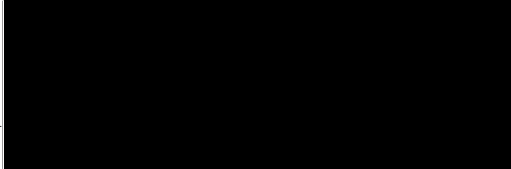


STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

FILED

APR 22 2015

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES



PETITIONER,

Vs.

APPEAL NO. 14F-10403
15F-02994

CASE NO. 

FLORIDA DEPT OF
CHILDREN AND FAMILIES
CIRCUIT: 05 Lake
UNIT: 88002

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on March 25, 2015 at 9:00 a.m. in Tavares, Florida.

APPEARANCES

For the Petitioner:  pro se

For the Respondent: Patricia DiSilvestro, Economic Self Sufficiency Specialist II, appeared by telephone.

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. Petitioner is also appealing the Department's action to deny payment of the Medicare Part B premium under the Qualified Individuals (QI1) Medicaid Program, or any other applicable Medicare Savings Plan (MSP) programs, due to excess income.

PRELIMINARY STATEMENT

By notice dated September 15, 2014, the respondent notified the petitioner that he was enrolled in the Medically Needy Program effective September 2014, with a Share of Cost (SOC) of \$1,134.00 and that his QI1 application was denied due to "your household's income is too high to qualify for this program." Another notice was sent to the petitioner on September 22, 2014, notifying him that his SOC was decreasing from \$1,134.00 to \$1,133.00 effective October 1, 2014. The petitioner timely requested this administrative hearing to challenge the respondent's actions.

Horace Orr, Economic Self Sufficiency Specialist I, appeared as an observer.

The petitioner submitted one exhibit, which was accepted into evidence and marked as Petitioner Exhibit "1". The respondent submitted nine exhibits, which were accepted into evidence and marked as Respondent Exhibits "1" through "9" respectively. The record closed on March 25, 2015.

FINDINGS OF FACT

1. The petitioner's household includes the petitioner (78) only.
2. On September 9, 2014, the petitioner submitted an online application for Medicaid benefits.
3. The petitioner was receiving \$1,438.90 in Social Security Retirement (SSRE) benefits through December 31, 2014. Effective January 1, 2014, his SSRE benefits increased to \$1,462.90 per month. The petitioner is court ordered to pay \$800.00 per month in alimony to his ex-wife by income deduction order; therefore, the Social Security Administration (SSA) deducts this amount from his gross SSRE benefits each month. The petitioner's Medicare premium of \$104.90 is also deducted from

his SSRE benefits leaving him with a net income of \$558.00 per month (\$1,462.90 - \$800.00 - \$104.90).

4. The income limit for an aged/disabled individual to receive full Medicaid is \$871.00. The petitioner's countable income exceeds this amount; therefore, the respondent enrolled him in the Medically Needy Program.
5. The respondent calculated his Medically Needy budget for September, 2014 through December, 2014 and determined his \$1,133.00 SOC as follows:

Total unearned income (petitioner's gross SSRE benefits)	\$1,438.00
<u>Unearned income disregard</u>	<u>-\$ 20.00</u>
Countable Unearned Income	\$1,418.00
Countable Earned Income	\$ 0.00
<u>Countable Unearned Income</u>	<u>+\$1,418.00</u>
Total Countable Income	\$1,418.00
Total countable income	\$1,418.00
Medically Needy Income Limit (MNIL)	-\$ 180.00
<u>Med. Insurance Premium</u>	<u>-\$ 104.90</u>
Share of Cost (SOC)	\$1,133.00

6. Effective January, 2015, the petitioner's SOC increased to \$1,158.00 due to an increase in his SSRE benefits and his Medically Needy budget was adjusted as follows:

Total unearned income (petitioner's gross SSRE benefits)	\$1,463.00
<u>Unearned income disregard</u>	<u>-\$ 20.00</u>
Countable Unearned Income	\$1,443.00
Countable Earned Income	\$ 0.00
<u>Countable Unearned Income</u>	<u>+\$1,443.00</u>
Total Countable Income	\$1,443.00
Total countable income	\$1,443.00
Medically Needy Income Limit (MNIL)	-\$ 180.00
<u>Med. Insurance Premium</u>	<u>-\$ 104.90</u>
Share of Cost (SOC)	\$1,158.00

7. The respondent calculated the petitioner's budget for the Medicare Savings Plan programs as follows:

Total unearned income (petitioner's gross SSRE benefits)	\$1,463.00
<u>Unearned income disregard</u>	<u>-\$ 20.00</u>
Countable Unearned Income	\$1,443.00
Countable Earned Income	\$ 0.00
<u>Countable Unearned Income</u>	<u>+\$1,443.00</u>
Total Countable Income	\$1,443.00

8. The income limits for an individual to qualify for the three Medicare Savings Plan (MSP) programs were as follows: Qualified Medicare Beneficiary (QMB) = \$990.00, Special Low Income Medicare Beneficiary (SLMB) = \$1,187.00 and Qualified Individuals 1 (QI1) = \$1,335.00. The petitioner was not eligible for the QI1 program, or any other Medicaid program that would pay the Medicare Part B premium, because his total countable income (\$1,443.00) exceeds the income limits for these programs.

9. The petitioner asserted the respondent should deduct the \$800.00 alimony payment from his gross income since that money goes to his ex-wife and he only receives \$558.00 per month.

10. The respondent explained that the petitioner's alimony payments are not an allowable deduction for the SSI-Related Medicaid programs and his gross income must be used when determining his eligibility.

11. According to the Department's Memorandum "Qualified Domestic Relations Order, Gross vs. Net Pay" dated August 16, 2004:

A Qualified Domestic Relations Order is a specific type of court order that awards a portion of an employee's retirement benefit to an "alternate payee". For a court ordered amount to be excluded from the Medicaid

eligibility determination..., two conditions must be met. The payment must be paid directly from the source to the former spouse and the change must be irrevocable at the source.

12. Although the petitioner meets the first condition, the second condition is not met as the payment is not irrevocable at the source since the payment can only be changed or modified through the courts, not SSA.
13. The petitioner argued that he does meet the second condition because his alimony obligation cannot be revoked and only the judge can do that.

CONCLUSIONS OF LAW

14. 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.
15. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code R. 65-2.056.
16. In accordance with Fla. Admin. Code R. 65-2.060(1), the burden of proof was assigned to the petitioner for both issues.
17. 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.

18. Fla. Admin. Code R. 65A-1.702, Medicaid Special Provisions, states in relevant part:

- ...
- (12) Limits of Coverage
- (a) Qualified Medicare Beneficiary (QMB). Under QMB coverage, individuals are entitled only to Medicare cost-sharing benefits, including payment of Medicare premiums.
- (b) Special Low-Income Medicare Beneficiary (SLMB). Under SLMB coverage, individuals are entitled only to payment of the Part B Medicare premium...
- ...
- (d) Part B Medicare Only Beneficiary (QI1). Under QI1 coverage, individuals are only entitled to payment of their Medicare part B premium. (This is coverage for individuals who would be eligible for QMB or SLMB coverage except their income exceeds time limits for those programs.)

19. 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.
- (b) For QMB, income must be less than or equal to the federal poverty level after application of exclusions specified in subsection 65A-1.713(2), F.A.C.
- ...
- (g) For SLMB, income must be greater than 100 percent of the federal poverty level but equal to or less than 120 percent of the federal poverty level.
- (h) For Medically Needy, income must be less than or equal to the Medically Needy income standard after deduction of allowable medical expenses.
- ...
- (j) For a Qualified Individual 1 (QI1), income must be greater than 120 percent of the federal poverty level, but equal to or less than 135 percent of the federal poverty level. QI1 is eligible only for payment of the Part B Medicare premium through Medicaid.
- (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...

20. 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))."

21. The Code of Federal Regulations 20 C.F.R. § 416.1123 defines how unearned income is counted for SSI-Related Medicaid programs 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]

22. The above cited authorities explain 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 \$1,463.00 are reduced by \$800.00 to pay court ordered alimony support. The undersigned concludes the respondent followed rule in including the gross amount of \$1,463.00 in determining the petitioner's Medicaid eligibility.

23. 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.

24. 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.

25. 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.

26. The ACCESS Florida Program Policy Manual Appendix A-9 shows the Eligibility Standards for the following relevant SSI – Related Medicaid Programs as follows:

Coverage Group	Income Limit
MEDS-AD/ICP- MEDS/Individual (88% FPL)	\$871
QMB Individual (100% FPL)	\$990
SLMB Individual (100-120% FPL)	\$1,187
QI1 Individual (120-135% FPL)	\$1,135

27. The SSI-Related Programs – Financial Eligibility Standards show the Medically Needy Income Level (MNIL) for an individual is \$180.00.
28. The authorities cited set forth the income limits for full Medicaid and the MSP programs as well as the rules for enrollment and budgeting methodologies for the Medically Needy Program. As the petitioner's countable income of \$1,443.00 (total unearned income of \$1,463 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 \$1,158.00.
29. After careful review of the controlling legal authorities and evidence, the undersigned also concludes the respondent correctly followed rule in denying the petitioner for QI1 benefits, or any other applicable Medicare Savings Plan programs, due to his total countable income (\$1,443.00) exceeding the income limits for these programs.

DECISION


Based upon the foregoing Findings of Fact and Conclusions of Law, the 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 22nd day of April, 2015,

in Tallahassee, Florida.


Karina A. Sanchez
Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
Office: 850-488-1429
Fax: 850-487-0662
Email: Appeal.Hearings@myflfamilies.com

Copies Furnished To: [REDACTED] Petitioner
Office of Economic Self Sufficiency