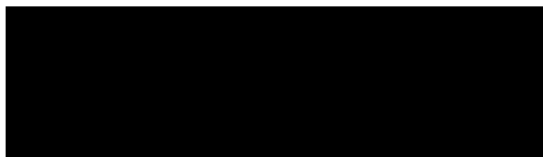


**FILED**

**JUN 22 2015**

**OFFICE OF APPEAL HEARINGS  
DEPT OF CHILDREN & FAMILIES**

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



APPEAL NO. 15F-03062

PETITIONER,

Vs.

CASE NO. 

FLORIDA DEPARTMENT OF  
CHILDREN AND FAMILIES  
CIRCUIT: 15 Palm Beach  
UNIT: 88591

RESPONDENT.

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**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above referenced matter on April 28, 2015, at 3:01 p.m.

**APPEARANCES**

For the Petitioner: 

For the Respondent: Jamekia Howard, ACCESS supervisor

**STATEMENT OF ISSUE**

The petitioner is appealing the respondent's action to enroll her in the Medically Needy Program. She is seeking full Medicaid. The petitioner carries the burden of proof in this appeal.

**PRELIMINARY STATEMENT**

The petitioner did not present any exhibits into evidence. The respondent presented one exhibit, which was accepted, entered into evidence and marked as Respondent's Composite Exhibit 1. The record was held open until the end of business

on April 28, 2015, for the respondent to provide the Medically Needy budget. The information was received, entered into evidence and marked as Respondent's Composite Exhibit 2. The record was closed on April 28, 2015.

### **FINDINGS OF FACT**

1. On January 30, 2015, the petitioner submitted an application requesting Food Assistance and Medicaid benefits. Food Assistance benefits is not at issue. At the time of her application, the petitioner was 65 years old. She received \$673 Social Security Retirement (SSRE) income monthly. Her total gross SSRE income was \$778 monthly. She was also receiving Medicare and the state pays \$104.90 for her Medicare Part B insurance. She reported expenses for rent, condominium maintenance, electricity and telephone (Respondent's Composite Exhibit1).
2. The respondent determined the petitioner was ineligible for full Medicaid as she was receiving Medicare and enrolled her in the Medically Needy Program with a share of cost (SOC). The petitioner does not have any children under the age of 18; therefore, eligibility for Family Related Medicaid was not reviewed.
3. The respondent's calculation of the petitioner's Medically Needy SOC is as follows. A \$20 unearned income disregard was subtracted from her SSRE of \$673 which resulted in her countable unearned income of \$653. The Medically Needy Income Level for one, \$180, was then subtracted, which resulted in the final SOC of \$473 (Respondent's Composite Exhibit 2)
4. By notice dated March 2, 2015, the respondent notified the petitioner that she was enrolled in the Medically Needy Program with an estimated share of cost of \$473 for January 2015 and ongoing months.

5. On April 7, 2015, the petitioner timely requested an administrative hearing to challenge the decision.

6. The petitioner explained she needs to go to a dentist because she has an abscess and cannot afford to pay for the dental procedure. She asserts Medicare does not cover dental cost and only covers 80% of medical cost. She was receiving Medicaid and Medicare in New Jersey but after she moved to Florida, she lost her Medicaid benefits, as she turned 65 years of age. She does not have any money left after she pays for her living expenses.

#### **PRINCIPLES OF LAW AND ANALYSIS**

7. The Department of Children and Families, Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties, pursuant to Florida Statute § 409.285. This is the final administrative decision of the Department of Children and Families under § 409.285, Fla. Stat.

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

9. Fla. Admin. Code R. 65A-1.701 Definitions states:

(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.

10. The above authority explains that the MEDS-AD (full Medicaid for an aged or disabled person) has an income limit of 88% of the federal poverty level. Effective July 1, 2014, the income limit for one person was \$856 and effective April 2015, is \$864,

according to the Department's ACCESS Florida Policy Manual (Policy Manual) at Appendix A-9. In addition to meeting that limit, the person must not have Medicare.

The petitioner's income is below the above income limit but **she has Medicare benefits**, therefore, eligibility is not found for full Medicaid benefits.

11. Income budgeting is set forth in Fla. Admin. Code R. 65A-1.713. It states:

(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:

(h) For Medically Needy, income must be less than or equal to the Medically Needy income standard after deduction of allowable medical expenses...

(4) (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. If countable income exceeds the Medically Needy income level the department shall deduct allowable medical expenses in chronological order, by day of service. Countable income is determined in accordance with subsection 65A-1.713(2), F.A.C. To be deducted the expenses must be unpaid, or if paid, must have been paid in the month for which eligibility is being determined or incurred and paid during the three previous calendar months to the month for which eligibility is being determined but no earlier than the three retroactive application months. The paid expense may not have been previously deducted from countable income during a period of eligibility. Medical expenses reimbursed by a state or local government not funded in full by federal funds, excluding Medicaid program payments, are allowable deductions. Any other expenses reimbursable by a third party are not allowable deductions. Examples of recognized medical expenses include:

1. Allowable health insurance costs such as medical premiums, other health insurance premiums, deductibles and co-insurance charges; and,
2. Allowable medical services such as the cost of public transportation to obtain allowable medical services; medical services provided or prescribed by a recognized member of the medical community; and personal care services in the home prescribed by a recognized member of the medical community.

12. Fla. Admin. Code R. 65A-1.710 (5) states, "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."

13. The above authority explains that the Medically Needy Program is a coverage group for aged, blind or disabled individuals who do not qualify for full Medicaid due to the level of income.

14. Federal Regulations at 20 C.F.R. § 416.1124 (c) (12), Unearned Income we do not count, states in part, "The first \$20 of any unearned income in a month..."

15. Fla. Admin. Code R. 65A-1.702 (13) Determining Share of Cost (SOC) states, "The SOC is determined by deducting the Medically Needy Income Level from the individual's or family's income."

16. Fla. Admin. Code R. 65A-1.701 (30) defines Share of Cost (SOC) as:

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.

17. Fla. Admin. Code R. 65A-1.716 (2), Income and Resource Criteria, sets forth the Medically Needy Income Level for one person at \$180.00.

18. The Policy Manual at 2440.0102, Medically Needy Income Limits (MSSI) states:

When the assistance group has met the technical eligibility criteria and the asset limits, it is enrolled. There is no income limit for enrollment. The assistance group is income eligible (entitled to Medicaid) once income is less than or equal to the Medically Needy Income Level (MNIL) or medical bills equal the amount by which his income exceeds the MNIL. Once medical bills are equal to this surplus income, referred to as share of cost, the assistance group is eligible.

The eligibility specialist must determine eligibility for Medically Needy any time the assistance group's income exceeds the income limits for another full Medicaid Program.

19. The above rule states that the SOC is determined by subtracting the Medically Needy Income Level from the individual or family's income. For the petitioner, the determination of the SOC is the monthly SSRE income less a \$20 disregard, less the MNIL of \$180, which resulted in her share of cost of \$473 effective January 2015 and ongoing. Eligibility for a lower SOC is not found.

20. The undersigned concludes that the respondent's action to deny full Medicaid and enroll petitioner in a Medically Needy Program is within the rules of the Program.

### **DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is denied and the respondent's action is affirmed.

### **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 ~~22~~ day of June, 2015,  
in Tallahassee, Florida.

*Christiana Gopaul-Narine*

Christiana Gopaul-Narine ~~KED~~  
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Copies Furnished To: [REDACTED] Petitioner  
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