

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

FILED

JUN 24 2015

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES

APPEAL NO. 15F-01715
15F-04768
15F-04769

PETITIONER,

Vs.

CASE NO. [REDACTED]

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

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned reconvened a telephonic administrative hearing in the above-referenced matter on May 14, 2015 at 11:37 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 approval of his Food Assistance Program (FAP) benefit allotment in the amount of \$16, effective February 1, 2015. The petitioner held the burden of proof.

Also at issue is the petitioner's enrollment in the Medically Needy program with an increased monthly share of cost in the amount of \$1258, effective February 1, 2015.

The petitioner also disputes the termination of the Special Low Income Medicare Beneficiary (SLMB) coverage. The Department held the burden of proof in the termination.

PRELIMINARY STATEMENT

The hearing originally convened on April 28, 2015 at 9:06 a.m. The petitioner also presented an issue with the Medically Needy and SLMB programs. The respondent was not prepared to review the petitioner's Medicaid and SLMB issues. The petitioner requested for the hearing to be rescheduled to review both programs at the same time. The petitioner's request was granted and the hearing was rescheduled to May 14, 2015 at 11:30 a.m.

The record was held open until 5:00 p.m. on May 28, 2015 to allow the petitioner to submit additional evidence. Evidence was not received.

FINDINGS OF FACT

1. Prior to the action under appeal, the petitioner, age 50, was receiving \$165 in FAP benefits. The petitioner completed an application to recertify for FAP benefits on December 24, 2014. The petitioner reported on the application that he is receiving Social Security income in the amount of \$1043 and \$415.95 in retirement benefits from the Florida Retirement System.

2. The Department included in its Food Assistance calculations the petitioner's Social Security income the amount of \$1043 and his retirement benefits in the amount of \$415.95 for a total gross income of \$1458.95. The Department subtracted the standard deduction in the amount of \$155 from the gross monthly income to result in

\$1303.95 adjusted net income. The adjusted net income was multiplied by .50 to arrive at a \$651.98 shelter standard. The petitioner was allowed a rental obligation in the amount of \$875 and a \$337 Standard Utility Allowance (SUA) to result in a total shelter cost in the amount of \$1212. The \$1212 was reduced by the shelter standard to result in \$560.03 excess shelter deduction. The excess shelter deduction (\$560.03) was then subtracted from the adjusted net income of \$1303.95 to result in adjusted income in the amount of \$743.93. The \$743.93 FAP adjusted net income was multiplied by the standard 30% to result in a \$224 benefit reduction. The maximum monthly FAP benefit allotment for a one-person household size is \$194. The \$224 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 a one person household, disabled, and meets the net income limit.

3. The Department provided the Medicaid budget to explain how the share of cost was calculated. The Department included in its calculations Social Security income in the amount of \$1043 and retirement benefits in the amount of \$415.95. The Department subtracted the \$20 standard deduction and the Medically Needy Income Limit (MNIL) of \$180 for an individual from \$1438.95 to result in a monthly share of cost in the amount of \$1258.

4. The petitioner's gross monthly income in the amount of \$1438.95 was included in the budget to determine continued eligibility for the SLMB program. He pays a Medicare Part B premium in the amount of \$104.90. The \$20 unearned income disregard was subtracted from the total gross income which resulted in a countable

income of \$1438.95. The income standard for the SLMB program is \$1187 for an individual. The Department determined the petitioner exceeded the income standard and was no longer eligible for the SLMB program; therefore, the Department proceeded to determine his eligibility for the QI1 program. The income standard for the QI1 program is \$1324. The Department determined the petitioner was not eligible for the QI1 program.

5. Petitioner argues that his income will decrease to \$728.30 effective May 1, 2015. The petitioner argues that his income is the same and he has always reported his Social Security income along with his retirement benefits. The petitioner argues that he is in a bad position now that he is no longer eligible to get his Medicare premium paid through Medicaid. The petitioner does not receive any home or community based services.

6. The Department explained that the petitioner's retirement benefits were not included in the FAP, Medically Needy, and SLMB budgets in the past, which is why his FAP benefits decreased and he is no longer eligible for the SLMB program. The Department reviewed the online Social Security inquiry screen to obtain verification of the petitioner's Social Security income and contends that his income will remain at \$1043. The Department explained that the Social Security Administration will recoup the Medicare premiums in the amount of \$104.90 for three months, which equals to \$314.70. This explains why the petitioner's net Social Security income will be \$728.30 ($\$1043 - \314.70) for the month of May 2015.

7. The petitioner was not given a deduction in the FAP and Medically Needy budgets for the Medicare premium in the amount of \$104.90 he is now responsible for paying. The undersigned completed a FAP budget to include the Medicare premium as an excess medical deduction.

8. The undersigned included in the FAP budget the petitioner's Social Security income the amount of \$1043 and his retirement benefits in the amount of \$415.95 for a total gross income of \$1458.95. The standard deduction in the amount of \$155 from the gross monthly income to result in \$1303.95 total income. The petitioner's Medicare premium was subtracted by the medical standard in the amount of \$35, to result in an excess medical expense of \$69.90. The adjusted net income was subtracted by the excess medical expense (\$69.90) to result in an adjusted net income of \$1234.05. The adjusted net income was multiplied by .50 to arrive at a \$617.03 shelter standard. The rental obligation in the amount of \$875 and \$337 SUA resulted in a total shelter cost in the amount of \$1212. The \$1212 was reduced by the shelter standard (\$617.03) to result in \$594.98 excess shelter deduction. The excess shelter deduction (\$594.98) was then subtracted from the adjusted net income of \$1234.05 to result in adjusted income in the amount of \$639.08. The \$639.08 FAP adjusted net income was multiplied by the standard 30% to result in a \$192 benefit reduction. The maximum monthly FAP benefit allotment for a one-person household size is \$194. The \$192 benefit reduction was subtracted from the maximum monthly FAP benefit allotment to result in \$2. Based on the above calculations, the undersigned finds that the additional

excess medical expense did not cause an increase in the petitioner's FAP benefits, as he is already eligible for the minimum benefit allotment of \$16.

9. The undersigned completed a Medically Needy budget to include the medical expense of the \$104.90 Medicare premium. The petitioner's Social Security income in the amount of \$1043 and retirement benefits in the amount of \$415.95 was included to result in \$1458.95 unearned income. The \$20 standard deduction was subtracted from \$1458.95 to result in \$1438.95 countable income. The income was further reduced by the MNIL in the amount of \$180 for an individual and the \$104.90 Medicare premium to result in a reduced monthly share of cost in the amount of \$1154.

PRINCIPLES OF LAW AND ANALYSIS

10. 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.

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

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

14. 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; old age, survivors, or social security benefits;

15. The above regulation defines income as all income from any source and includes Social Security income and retirement benefits as unearned income. The petitioner's Social Security income and retirement benefits were correctly included in the Department's calculations as required by controlling federal regulations.

16. 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. That portion of medical expenses in excess of \$35 per month, excluding special diets, incurred by any household member who is elderly or disabled as defined in § 271.2.

Allowable medical costs are:

...

(v) Medicare premiums

(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.

17. The above authority explains that expenses such as the standard and excess medical deductions, 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 \$875 each month in rent; petitioner has heating and cooling costs. The petitioner was allowed deductions for his rental obligation and the costs to heat and cool his home. An excess medical deduction (after \$35 medical standard) is also an allowable deduction. The petitioner is now responsible for paying his Medicare

premium in the amount of \$104.90. The petitioner's premium, minus the medical standard, results in an excess medical expense in the amount of \$69.90, which was not included as an excess medical deduction in the budget.

18. 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.

19. 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.

20. 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...

21. 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 retirement benefits were added as income, it caused his benefit calculation to result in zero; petitioner meets the criteria to receive the minimum allotment of \$16.

22. After carefully reviewing the governing authorities and evidence presented, the undersigned concludes that the Department's calculation of the petitioner's FAP benefits was incorrect. The petitioner is now responsible for paying his Medicare premium, as he was determined to no longer be eligible for the Medicare savings programs. However, the findings show that the additional excess medical expense does not result in an increase from the \$16 FAP benefit allotment already established.

23. 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 to \$16.

The continued enrollment in the Medically Needy program and increased monthly share of cost 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 Department's Program Policy Manual, 165-22, Appendix A-9, effective April 2015, lists the MEDS-AD income limit as \$864 for an individual.

26. 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.

27. 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."

28. 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.

29. 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."

30. 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...

31. The findings show that the Department did not include the petitioner's Florida Retirement Pension in its previous calculations, which caused the monthly share of cost to increase when included in the Medically Needy budget. 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 \$1258. The findings show that the additional expense of the Medicare premium further reduced the monthly share of cost to \$1154.

32. 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 \$1258 was incorrect. The undersigned concludes that the Department was correct to continue the petitioner's enrollment in the Medically Needy program; however, his share of cost is reduced to \$1154 based on the Medicare premium that is now allowed.

The termination of the SLMB and denial of Q11 will now be addressed:

33. Fla. Admin. Code § 65A-1.709 SSI-Related Medicaid Coverage states, "SSI-related Medicaid provides medical assistance to eligible individuals who are aged, blind or disabled in accordance with Titles XVI and XIX of the Social Security Act and Chapter 409, F.S."

34. The above authority sets forth that the SSI-Related Medicaid program provides medical assistance to those who are aged or disabled according to the Social Security Act.

35. Fla. Admin. Code § 65A-1.713 SSI-Related Medicaid Income Eligibility Criteria 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:

(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.

(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.

36. The above authority explains that an individual must have income that is within the income limits established by the federal and state law as well as the Medicaid State plan. An individual may qualify for the QMB program if his income is less than or equal to the federal poverty level after applying exclusions to the income. The SLMB program requires income to be greater than 100% of the federal poverty level but equal to or less than 120% of the federal poverty level. An individual must have income greater than 120% of the poverty level but equal to or less than 135% of the federal poverty level to be eligible for QI-1. QI-1 only allows payment of the Part B Medicare premium through Medicaid.

37. The Department's Program Policy Manual, 165-22, section 2440.0322

Standard Disregard (MSSI) states in part,

This policy applies to MEDS-AD, MN, QMB, SLMB, QI-1, Working Disabled, Protected Medicaid and EMA. A \$20 per month standard disregard applies to any type (earned or unearned) of income other than income which is provided on the basis of need. The amount of the disregard is not increased for a couple, regardless of whether one or both individuals have income.

38. The above authority states that for the QI-1 program, a \$20 per month standard disregard is allowed to reduce the amount in unearned income in determining eligibility for the program.

39. The Department's Program Policy Manual 165-22, Appendix A-9 sets forth the income standards for an individual effective January 2015 (at the time of application) as \$990 for the QMB program, \$1187 for the SLMB program, and \$1335 for the QI 1 program. The income standards for an individual, effective April 2015, are set forth as \$981 for the QMB program, \$1177 for the SLMB program, and \$1325 for the QI 1 program.

40. The petitioner's countable income was \$1458.95 which exceeds the income limit for an individual in the SLMB and QI 1 programs. Therefore, the undersigned concludes that the Department correctly terminated SLMB program benefits and subsequently denied QI 1 program benefits.

DECISION

Based upon the foregoing Findings of Fact and Principles of Law, the FAP, Medically Needy, and QI1 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 24th day of June, 2015,

in Tallahassee, Florida.



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