

FINDINGS OF FACT

1. An application for ICP benefits was submitted on the petitioner's behalf January 2009. The petitioner has been residing in a nursing facility in Florida since December 2008 after moving from New York.
2. As part of the eligibility determination process, the respondent must consider, among all factors, the petitioner's income. The petitioner receives two monthly pensions, \$670.97 and \$881.00. He also receives monthly Social Security of \$1,731.
3. The respondent explains that as of January 2009, the maximum monthly income allowed for ICP is \$2,022. When income exceeds the limit, the respondent requires that a properly completed income trust be established.
4. The income trust was established March 2009 and benefits commenced at that time.
5. The representative explains that she had difficulty transferring one of the pensions and the Social Security to Florida. In fact, the one pension in question (a total of three check of \$670.97 each) was not received until March 2009.
6. As for the Social Security, four checks covering January through April 2009 were not received until April 2009. The petitioner is seeking ICP coverage for the three months as noted above in the issue.

CONCLUSIONS OF LAW

Fla. Admin. Code 65-2.056 Basis of Hearings states in part:

(3) The Hearing Officer must determine whether the department's decision on eligibility or procedural compliance was correct at the time the decision was made. The hearings are de novo hearings, in that, either party may present new or additional evidence not previously considered by the department in making its decision.

In this instant case, this hearing officer will review the actual income for the months in question.

65A-1.713 SSI-Related Medicaid Income Eligibility Criteria states in part:

(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:

(d) For ICP, gross income cannot exceed 300 percent of the SSI federal benefit rate after consideration of allowable deductions set forth in subsection 65A-1.713(2), F.A.C. Individuals with income over this limit may qualify for institutional care services by establishing an income trust which meets criteria set forth in subsection 65A-1.702(15), F.A.C.

65A-1.702 Special Provisions states in part:

(15) Trusts.

(a) The department applies trust provisions set forth in 42 U.S.C. § 1396p(d).

(b) Funds transferred into a trust or other similar device established other than by a will prior to October 1, 1993 by the individual, a spouse or a legal representative are available resources if the trust is revocable or the trustee has any discretion over the distribution of the principal. Such funds are a transfer of a resource or income, if the trust is irrevocable and the trustee does not have discretion

over distribution of the corpus or the client is not the beneficiary. No penalty can be imposed when the transfer occurs beyond the 36 month look back period. Any disbursements which can be made from the trust to the individual or to someone else on the individual's behalf shall be considered available income to the individual. Any language which limits the authority of a trustee to distribute funds from a trust if such distribution would disqualify an individual from participation in government programs, including Medicaid, shall be disregarded.

(c) Funds transferred into a trust, other than a trust specified in 42 U.S.C. § 1396p(d)(4), by a person or entity specified in 42 U.S.C. § 1396p(d)(2) on or after October 1, 1993 shall be considered available resources or income to the individual in accordance with 42 U.S.C. § 1396p(d)(3) if there are any circumstances under which disbursement of funds from the trust could be made to the individual or to someone else for the benefit of the individual. If no disbursement can be made to the individual or to someone else on behalf of the individual, the establishment of the trust shall be considered a transfer of resources or income.

(d) The trustee of a qualified income trust, qualified disabled trust or pooled trust shall provide quarterly statements to the department which identify all deposits to and disbursements from the trust for each month.

(e) Undue Hardship. A period of ineligibility shall not be imposed if the department determines that the denial of eligibility based on counting funds in an irrevocable trust according to provisions in paragraphs 65A-1.702(12)(b) and (c), F.A.C., would work an undue hardship on the individual. Undue hardship exists when application of a trust policy would deprive an individual of food, clothing, shelter or medical care such that their life or health would be endangered. This can be caused by legal restrictions or illegal actions by a trustee. All efforts by the individual, spouse or representative to access the resources or income must be exhausted before this exception applies.

Fla. Integrated Pub. Policy Manual states in part:

1840.0110 Income Trusts (MSSI)

The following policy applies only to the Institutionalized Care Program (ICP), institutionalized MEDS-AD, institutionalized

Hospice, Home and Community Based Services (HCBS) and PACE. It does not apply to Community Hospice.

To qualify, an individual's gross income cannot exceed 300 percent of the SSI federal benefit rate (refer to Appendix A-9 for the current income standard). If an individual has income above the ICP income limit, they may become eligible for institutional care or HCBS if they set up and fund a qualified income trust. A trust is considered a qualified income trust if:

1. it is established on or after 10/01/93 for the benefit of the individual;
2. it is irrevocable;
3. it is composed only of the individual's income (Social Security, pensions, or other income sources); and
4. the trust stipulates the state will receive the balance in the trust upon the death of the individual up to an amount equal to the total medical assistance paid on their behalf.

The eligibility specialist must forward all income trusts to their Region or Circuit Program Office for review and submission to the District Legal Counsel (DLC) for a decision on whether the trust meets the criteria to be a qualified income trust. Refer to Appendix A-22.1, "Guidance for Reviewing Income Trusts," for instructions on processing income trust cases.

The individual (or their legally authorized representative) must deposit sufficient income into the income trust account in the month in which the income is received to reduce their countable income (the income outside the trust) to within the program income standard. The individual must make the deposit each month that eligibility is requested. This may require the individual to begin funding an executed income trust account prior to its official approval by the District Legal Counsel.

Upon review, the bank deposits for the petitioner (Petitioner Exhibit 1) have shown that his monthly income did not exceed Program limits until April 2009 when his Social Security check began to be deposited. By then the income trust was established.

Prior to April 2009, the monthly income did not exceed \$2,022 at any time.

The petitioner should have been eligible for ICP benefits.

DECISION

The appeal is granted. The respondent will authorize eligibility in ICP Medicaid for December 2008, and January and February 2009 as the monthly income did not exceed the monthly limit of \$2,022.

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 Department has no funds to assist in this review, and any financial obligations incurred will be the petitioner's responsibility.

DONE and ORDERED this 23rd day of July, 2009,

in Tallahassee, Florida.



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Copies Furnished To