

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

FILED
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OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES

[REDACTED]

APPEAL NO. 15F-07159
APPEAL NO. 15F-07357

PETITIONER,

Vs.

CASE NO. [REDACTED]

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 06 Pinellas
UNIT: 88342

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened one administrative hearing in the above-referenced matter on September 23, 2015 at 1:06 p.m. in [REDACTED] and convened one administrative hearing by telephone on October 19, 2015 at 1:02 p.m. All parties appeared from different locations during the telephonic hearing. One continuance was granted for both the petitioner and the respondent.

APPEARANCES

For Petitioner: [REDACTED] pro se

For Respondent: Ed Poutre, Economic Self Sufficiency Specialist II

STATEMENT OF ISSUE

At issues are whether the respondent's action to (1) decrease petitioner's Food Assistance (FA) benefits to \$16.00 per month for June 2015 through August 2015; (2) to terminate petitioner's full Medicaid benefits and instead enroll him in the Medically

Needy (MN) program effective July 1, 2015; and (3) to terminate petitioner's wife's Medicaid benefits effective July 1, 2015 are correct. The burden of proof for the Food Assistance appeal is assigned to the petitioner and the burden of proof for petitioner and his wife's Medicaid appeals are assigned to the respondent.

PRELIMINARY STATEMENT

At both hearings, the petitioner was present and testified. Petitioner provided one witness who testified at both hearings: [REDACTED] petitioner's wife. Petitioner submitted four exhibits, which were accepted into evidence and marked as Petitioner's Exhibits "1" through "4". At both hearings, the respondent was represented by Ed Poutre with the Department of Children and Families (hereafter "DCF", "Respondent" or "Agency"). Respondent submitted ten exhibits, which were accepted into evidence and marked as Respondent's Exhibits "1" through "10". At the September 23, 2015 hearing, Daniel Graycheck, supervisor with DCF, observed the proceedings. The record closed on October 19, 2015.

FINDINGS OF FACT

1. On May 4, 2015, the petitioner completed a recertification application for Food Assistance (FA) and SSI-Related Medicaid benefits. The application listed petitioner and his wife as the only household members; no income for the household; property taxes of \$89 per month; mortgage of \$860 per month; electric of \$181 per month; and no ongoing medical expenses.
2. Petitioner's Social Security Disability Insurance (SSDI) amount is \$1,841 (gross) per month.

3. On May 27, 2015, the respondent mailed petitioner a Notice of Case Action indicating petitioner's May 4, 2015 FA application was approved for \$16 per month effective June 2015; and his May 4, 2015 Medically Needy application was approved with a monthly SOC amount of \$1,641. The notice also indicated petitioner and his wife's full Medicaid benefits ended effective June 30, 2015.

4. On August 27, 2015, the respondent mailed petitioner a Notice of Case Action indicating his FA benefits were increasing to \$183 effective October 2015 and ongoing as he had a change in his household's circumstances.

5. Petitioner received FA benefits in the amount of \$16 per month for the period of June 2015 through August 2015. Although the aforementioned notice indicated petitioner's FA benefits increased effective October 2015, the respondent explained petitioner's FA benefits actually increased effective September 2015. Petitioner's only issue in regards to his FA benefit amount is the \$16 per month he received for period of June 2015 through August 2015. He is not appealing the FA benefit amount of \$183 per month effective September 2015 and ongoing.

6. Respondent calculated the petitioner's FA budget for June 2015 through August 2015 as follows:

Expenses/Income	Dollar Amount
Unearned Income	\$1841.00
Total household income	\$1841.00
<u>Standard deduction for a household of 1</u>	<u>-\$ 155.00</u>
Adjusted income after deductions	\$1686.00
Rent/shelter	\$ 949.00
<u>Standard utility allowance</u>	<u>+\$ 337.00</u>
Total rent/utility costs	\$1286.00
<u>Shelter standard (50% adjusted income)</u>	<u>-\$ 843.00</u>

Excess shelter deduction	\$ 443.00
Adjusted income	\$1686.00
Excess Shelter Deduction	<u>-\$ 443.00</u>
Adjusted income after shelter deduction	\$1243.00

7. Respondent took 30% of \$1,243 to calculate the benefit reduction of \$373, which exceeds \$357 or the maximum FA benefit amount for a household of two. Petitioner was eligible for the minimum monthly FA benefit amount of \$16 as he resided in a two-person household and received disability income.

8. For the period of June 2015 through August 2015, the respondent determined petitioner's household's expenses as the expenses listed on his May 4, 2015 application and verified his SSDI income through the State of Florida SSA State On-Line Query system. The interview type for petitioner's May 4, 2015 application was passive.

9. Respondent determined petitioner's MN SOC amount as \$1,641 effective July 2015 and ongoing as follows:

\$1841.00	petitioner's SSDI income
<u>-\$ 20.00</u>	<u>unearned income disregard</u>
\$1821.00	total countable income
<u>-\$ 180.00</u>	<u>MNIL for a household of one</u>
\$1641.00	share of cost

10. Respondent determined petitioner not eligible for full SSI-Related Medicaid benefits as his monthly SSDI income is over the SSI-Related Medicaid income standard of \$864.00.

11. Petitioner's wife does not receive any income from the Social Security Administration (SSA); is not over the age of 65; and has not been deemed disabled by SSA.

12. Petitioner does not agree with the respondent's determination that he is not eligible for full SSI-Related Medicaid benefits as he has a terminal illness requiring hospitalization, multiple medications, regular physician visits, and various ongoing medical tests.

CONCLUSIONS OF LAW

13. 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.

14. This proceeding is a de novo proceeding pursuant to Florida Administrative Code R. 65-2.056.

As to the monthly FA benefit amount for the period of June 2015 through August 2015

15. The Code of Federal Regulations 7 C.F.R. § 273.9 define income and deductions and states, in part:

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; strike benefits; foster care payments for children or adults who are considered members of the household. . .

(d) Income deductions. Deductions shall be allowed only for the following household expenses. . .

(1) *Standard deduction*—(i) 48 States, District of Columbia, Alaska, Hawaii, and the Virgin Islands. Effective October 1, 2002, in the 48 States and the District of Columbia, Alaska, Hawaii, and the Virgin Islands, the standard deduction for household sizes one through six shall be equal to 8.31 percent of the monthly net income eligibility standard for each

household size established under paragraph (a)(2) of this section rounded up to the nearest whole dollar...

(6) *Shelter costs...*

(ii) Excess shelter deduction. Monthly shelter expenses in excess of 50 percent of the household's income after all other deductions in paragraphs (d) (1) through (d)(5) of this section have been allowed...If the household does not contain an elderly or disabled member, as defined in § 271.2 of this chapter, the shelter deduction cannot exceed the maximum shelter deduction limit established for the area.

(iii) *Standard utility allowances.* (A) With FNS approval, a State agency may develop the following standard utility allowances (standards) to be used in place of actual costs in determining a household's excess shelter deduction: an individual standard for each type of utility expense; a standard utility allowance for all utilities that includes heating or cooling costs (HCSUA)...

16. Pursuant to the above authority, petitioner's monthly SSDI income must be included in the determination of his household's monthly FA benefit amount.

Furthermore, shelter costs, utilities, and a standard deduction must also be included in the determination of his household's monthly FA benefit amount.

17. The ACCESS Customer Service Center Guide (page 14) defines the passive (re)determination process as "determine eligibility based on the application and information the customer provides; there is no interview requirement. Contact the customer to discuss unclear or inconsistent information".

18. Pursuant to the above policy, since petitioner's May 2015 recertification period was a passive redetermination, the respondent was allowed to determine petitioner's expenses based on the information listed on his May 4, 2015 application and was allowed to verify his SSDI income through the State of Florida SSA State On-Line Query

system. Therefore, the respondent correctly calculated petitioner's expenses and income for the period of June 2015 through August 2015.

19. For June 2015 through September 2015, the ACCESS Florida Program Policy Manual Appendix A-1 sets forth the following Eligibility Standard for Food Assistance benefits:

(1) \$357 maximum FA benefit for a household size of two; (2) \$337.00 standard utility allowance; (3) \$155.00 standard deduction for a household size of two; (4) uncapped shelter deduction for AGs with elderly or disabled members; and (5) \$16 per month for the minimum allotment for one or two member household.

20. Since petitioner's gross income (\$1,841) was less than the 200% gross income limit of \$2,622 for a household of two for the period of June 2015 through August 2015, he is potentially eligible to receive the monthly minimum FA benefit amount if his household meets all regular eligibility requirements.

21. The Department's Policy transmittal numbered C-13-10-0007, Food Assistance Minimum Benefit dated October 11, 2013 shows in pertinent part that:

...all one and two member assistance groups (AGs) are eligible for the minimum monthly food assistance benefit allotment, which is 8% of the maximum allotment for a one person household.... 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...

22. The Department's Program Policy Manual (Policy Manual), CFOP 165-22, passage 2610.0106.02, Minimum Benefits (FS) states in part, "Recurring months: Issue a minimum of eight percent of the maximum benefit for a one-person assistance group

to one or two person assistance groups who meet the net income test or are categorically eligible”.

23. Pursuant to the above transmittal and policy, a two person household, which passes the gross income test or has an elderly or disabled member with income below the net income limit, is entitled to receive a minimum FA benefit amount that equals to eight percent of the maximum amount for a one person household. Petitioner's FA group is a two-person household, with a disabled member, and passes the gross income test; therefore, he and his wife are eligible to receive the monthly minimum FA benefit amount for the period of June 2015 through August 2015.

24. Pursuant to the various aforementioned authorities, the respondent correctly calculated petitioner and his wife's monthly FA benefit amount for the period of June 2015 through August 2015 by including all the required income, expenses, and deductions allowed in the determination of FA benefits.

25. In careful review of the cited authorities and evidence, the undersigned concludes the petitioner has not met his burden of proof in establishing the respondent incorrectly calculated his monthly Food Assistance benefit amount for the period of June 2015 through August 2015.

As to the petitioner's eligibility for full SSI-Related Medicaid benefits

26. Fla. Admin. Code R. 65A-1.710 sets forth the rules of eligibility for SSI-Related Medicaid Coverage Groups. The MEDS-AD Demonstration Waiver is a coverage group for aged and disabled individuals (or couples), as provided in 42 U.S.C. § 1396a(m). For an individual less than 65 years of age to receive benefits, he or she must meet the

disability criteria of Title XVI of the Social Security Act appearing in 20 C.F.R. § 416.905 and states, in part:

(a) The law defines disability as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. To meet this definition, you must have a severe impairment(s) that makes you unable to do your past relevant work (see § 416.960(b)) or any other substantial gainful work that exists in the national economy.

27. Pursuant to the above authority, since petitioner is [REDACTED] he is eligible for Medicaid benefits under the SSI-Related Medicaid program.

28. The Policy Manual, CFOP 165-22, passage 2240.0610 Couple/One Requests Medicaid (MSSI) states:

The following policy is applicable only to MEDS-AD, QMB, SLMB, QI-1, EMA, Protected Medicaid, Medically Needy and Working Disabled Programs.

If an individual is living with their spouse and only one is requesting or receiving Medicaid (or the spouse does not meet the technical criteria for the program), the income and assets must be deemed from the spouse who is not requesting assistance (or who does not meet the technical criteria). If there is not enough income to be deemed, the income standard for one is used. If there is enough income to deem, the individual must first pass the individual test for one. If they pass the individual income test, they must also pass the couple standard using deemed income from the spouse.

29. Pursuant to the above authority, since petitioner's wife does not have any income to deem, the income standard for one person is utilized when determining the husband's eligibility for SSI-Related Medicaid benefits.

30. The Fla. Admin. Code R. 65A-1.713, SSI-Related Medicaid Income Eligibility Criteria defines income limit for the SSI-Related Medicaid Program as income that is at or below 88 percent of the federal poverty level.

31. The Policy Manual, Appendix A-9, lists the SSI-Related Income Standards for a household size of one for MEDS-AD or full SSI-Related Medicaid program as \$864 for July 2015 and ongoing.
32. Federal Regulations at 20 C.F.R. 416.1124(c)(12) sets forth income that is not counted in this program and states, "The first \$20 of any unearned income in a month other than...income based on need."
33. The Fla. Admin. Code R. 65A-1.716(2) indicates the Medically Needy Income Level (MNIL) for a family size of one as \$180.
34. Petitioner's monthly SSDI income exceeds the Medicaid income standard for him to receive full SSI-Related Medicaid benefits; therefore, he is correctly enrolled in the Medically Needy Program with a monthly share of cost.
35. In careful review of the cited authorities and evidence, the undersigned concludes the respondent correctly terminated petitioner's full SSI-Related Medicaid benefits and correctly enrolled him in the Medically Needy Program with a monthly share of cost amount effective July 1, 2015.

As to the wife's eligibility for Medicaid Benefits

36. The Fla. Admin. Code R. 65A-1.705(7)(c) Family-Related Medicaid General Eligibility Criteria, in part states:

If assistance is requested for the parent of a deprived child, the parent and any deprived children who have no income must be included in the SFU. Any deprived siblings who have income, or any other related fully deprived children, are optional members of the SFU. If the parent is married and the spouse lives in the home, income must be deemed from the spouse to the parent. For the parent to be eligible, there must be at least one child under age 18, with or without income, in the SFU, or who would be in the SFU if not receiving SSI...

37. According to the above authority, to be eligible for Family-Related Medicaid benefits, petitioner's wife must have a minor child under age 18 living in the household with her or she must be pregnant. Since petitioner's wife does not have a minor child under age 18 living in the household and since she is not pregnant, she does not meet the technical requirement to receive Medicaid benefits under the Family-Related Medicaid program.

38. Fla. Admin. Code R. 65A-1.710 sets forth the rules of eligibility for SSI-Related Medicaid Coverage Groups. The MEDS-AD Demonstration Waiver is a coverage group for aged and disabled individuals (or couples), as provided in 42 U.S.C. § 1396a(m). For an individual less than 65 years of age to receive benefits, he or she must meet the disability criteria of Title XVI of the Social Security Act appearing in 20 C.F.R. § 416.905 and states, in part:

(a) The law defines disability as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. To meet this definition, you must have a severe impairment(s) that makes you unable to do your past relevant work (see § 416.960(b)) or any other substantial gainful work that exists in the national economy.

39. Pursuant to the above authority, to be eligible for SSI-Related Medicaid benefits, petitioner's wife must be over the age of 65 or considered disabled by the Social Security Administration. Since petitioner's wife is not over the age of 65 and is not considered disabled, she does not meet the technical requirement to receive Medicaid benefits under the SSI-Related Medicaid program.

40. In careful review of the cited authorities and evidence, the undersigned concludes the respondent correctly terminated petitioner's wife's full SSI-Related Medicaid benefits effective July 1, 2015.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, petitioner's Food Assistance and SSI-Related Medicaid 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 17th day of November, 2015,

in Tallahassee, Florida.



Mary Jane Stafford
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