

**FILED**

NOV 20 2015

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

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DEPT. OF CHILDREN & FAMILIES



APPEAL NO. 15F-07904

PETITIONER,

Vs.

CASE NO. 

FLORIDA DEPARTMENT OF  
CHILDREN AND FAMILIES  
CIRCUIT: 06 Pinellas  
UNIT: 88694

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, a telephonic administrative hearing in the above referenced matter was convened on November 3, 2015 at 8:36 a.m.

**APPEARANCES**

For the Petitioner:   
Authorized Representative

For the Respondent: Signe Jacobson  
Economic Self Sufficiency Specialist II

**ISSUE**

Whether petitioner's monthly Institutional Care Program (ICP) responsibility of \$3758.11 was correctly determined. Petitioner seeks a hardship allocation to offset the living expenses of his son, . The burden of proof is assigned to the respondent<sup>1</sup>.

<sup>1</sup> Prior to the issuance of a Notice of Case Action on August 7, 2015 petitioner's monthly patient responsibility was \$2141.34.

**PRELIMINARY STATEMENT**

Petitioner was represented by his father-in-law. Also present was his mother-in-law, [REDACTED]. Petitioner's exhibit "1" was entered into evidence.

Ms. Jacobson appears as both the representative and witness for the respondent. Respondent's exhibit "1" was entered into evidence.

The record was held open through November 10, 2015 for respondent to provide:

- Clarification of how the amount of petitioner's uncovered medical expenses was calculated.
- Relevant running record comments.

Information was received and entered as respondent's exhibit "2".

The record was held open through November 13, 2015 to allow the petitioner to respond to post hearing submissions. Information received from the petitioner was entered as petitioner's exhibit "2".

**FINDINGS OF FACT**

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following findings of fact are made:

1. During a surgical procedure in July 2014, petitioner experienced a [REDACTED]. He was thereafter admitted to [REDACTED]. [REDACTED] is a skilled nursing facility.
2. Petitioner was subsequently determined eligible for Institutional Care Program (ICP) Medicaid.
3. At time of ICP eligibility, petitioner had a community spouse and a disabled son. Part of petitioner's monthly income was diverted to his spouse, [REDACTED].
4. In July 2015 petitioner's representative reported [REDACTED] died on [REDACTED].  
[REDACTED]

5. Petitioner's son, [REDACTED] relocated to an assisted living facility.
6. Based on the reported change, respondent re-calculated petitioner's monthly ICP patient responsibility. A Notice of Case Action was issued on August 7, 2015<sup>2</sup> that, effective September 1, 2015, the month patient responsibility would be \$3758.11.
7. The monthly responsibility was based on petitioner's income less deductions for a personal needs allowance and uncovered medical expenses. The initial calculations were:

\$2509.20	Pension
<u>\$1563.00</u>	Social Security
\$4072.20	Total Gross Income

8. Petitioner does not refute respondent's calculation of income.
9. Deductions from petitioner's income were:

\$ 105.00	Personal Needs Allowance
<u>\$ 209.08</u>	Uncovered Medical Expenses
\$ 314.08	Total Deductions

10. The final calculation of petitioner's monthly patient responsibility was:

\$4072.20	Total Gross Income
<u>-\$ 314.08</u>	Total Deductions
\$3758.12	Petitioner's Monthly Responsibility

11. Respondent's exhibit "1" shows the following medical expenses deducted from petitioner's pension:

- \$50.82: Health Insurance
- \$ 5.93: Dental/Vision Premium

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<sup>2</sup> In response to this notice, petitioner's representative contacted the Office of Appeal Hearings on September 11, 2015 and requested a fair hearing.

\$56.75: Total monthly medical expenses

12. Respondent was unable to explain how \$209.08 in monthly uncovered medical expense was calculated. The record was held open for further clarification.

13. Post hearing respondent replied stating, in part:

... it was discovered that an error had occurred within the system that miscalculated the uncovered medical expenses. The system was corrected and now shows correct UMED amounts in the budget effective 8/2015 – ongoing. A notice of case action was mailed on 11/6/2015 showing the corrected patient responsibility. Patient responsibility was calculated as follows: \$4072.20 Total Gross Unearned Income - \$105 Personal Need Allowance - \$56.75 Uncovered Medical Expenses = \$3910.45 Patient Responsibility.

14. Petitioner's son, [REDACTED] was born [REDACTED] In 2011 petitioner and his wife were appointed guardian for their son. The son was determined to have a

[REDACTED]

15. The cost of [REDACTED] assisted living facility is \$1500 per month. He also attends a job training program. The cost is \$250.00 per month. Each amount is self-paid.

16. The monthly unearned income of [REDACTED] consists of Social Security Disability and Social Security. The combined amount is \$1036.60 per month.

17. The amount of [REDACTED] monthly unearned income is not disputed.

18. Petitioner's representative argues that prior to the death of [REDACTED] sufficient income was diverted from [REDACTED] to help pay [REDACTED] expenses. The representative requests a hardship allocation from petitioner's income for the purpose of covering the monthly deficit of [REDACTED] living and vocational expenses.

19. Respondent considered whether [REDACTED] qualified for a dependent allowance. As petitioner no longer had a community spouse, the calculation was based on the following:

\$981.00:	Consolidated Need Standard (CNS) for 1 dependent
- <u>\$1036.00:</u>	[REDACTED] monthly income
\$ 0.00	Dependent's Allowance

#### **CONCLUSIONS OF LAW**

20. 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 Fla. Stat. § 409.285.

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

22. The standard of proof in an administrative hearing is by a preponderance of the evidence. The preponderance of the evidence standard requires proof by "the greater weight of the evidence," (Black's Law Dictionary at 1201, 7<sup>th</sup> Ed.).

23. Petitioner's representative requests a hardship allocation be granted so that additional income can be directed toward the care of the disabled son. As such, analysis is directed toward the calculation of petitioner's monthly patient responsibility.

24. Fla. Admin Code R. 65A-1.7141 states, in part:

After an individual is determined eligible for ... Institutional Care Program (ICP), the Department determines the individual's patient responsibility. "Patient responsibility" is the amount the Agency for Health Care Administration (AHCA) must reduce its payments to a medical institution and intermediate care facility or payments for home and community based services provided to an individual towards their cost of care. Patient

responsibility is based on the amount of income remaining after the following deductions are applied pursuant to 42 CFR § 435.725 and 42 CFR § 435.726. This process is called "post eligibility treatment of income".

(1) For institutional care services and Hospice, the following deductions are applied to the individual's income to determine patient responsibility in the following order:

(a) A Personal Needs Allowance (PNA) of \$105. Individuals residing in medical institutions and intermediate care facilities shall have \$105 of their monthly income protected for their personal need allowance.

(c) An additional PNA for therapeutic wages. If the institutionalized individual earns therapeutic wages, an additional deduction from income equal to one-half of the monthly therapeutic wages, up to a maximum of \$111, shall be applied and treated as an additional PNA protected for personal need.

(d) An additional PNA for court ordered child support. If the institutionalized individual is court ordered to pay child support an additional PNA is deducted in an amount equal to the court ordered support paid by the individual to meet their court ordered obligation. The additional PNA is applied only if a court ordered deduction was not made under another provision under the post eligibility process.

(e) The community spouse income allowance. The Department applies the formula and policies under § 1924 of the Social-Security Act, and Rule 65A-1.716, F.A.C., to compute the community spouse income allowance after the institutionalized spouse is determined eligible for institutional care benefits.

(f) The community spouse's excess shelter and utility expenses. The amount by which the sum of the spouse's expenses for rent or mortgage payment (including principal and interest), taxes and insurance and, in the case of a homeowner's association, condominium or cooperative, required maintenance charge, for the community spouse's principal residence and utility expense exceeds thirty percent of the amount of the Minimum Monthly Maintenance Needs Allowance (MMMNA) is allowed. The utility expense is based on the current Food Assistance Program's standard utility allowance as referenced in subsection 65A-1.603(2) F.A.C.

(i) Uncovered medical expense deduction. The following policy will be applied in considering medical deductions for institutionalized individuals and individuals receiving HCBS services to calculate the amount allowed for the uncovered medical expense deduction:

1. For institutionalized persons or residents of medical institutions and

intermediate care facilities, the deduction includes:

a. Any premium, deductible, or coinsurance charges or payments for health insurance coverage.

b. For other incurred medical expenses, the expense must be for a medical or remedial care service and be medically necessary as specified in subsection 59G-1.010(166), F.A.C., and be recognized in state law. For medically necessary care, services and items not paid for under the Medicaid State Plan, the actual billed amount will be the amount of the deduction, not to exceed the maximum payment or fee recognized by Medicare, commercial payors, or any other third party payor, for the same or similar item, care, or service.

2. The expense must have been incurred no earlier than the three month period preceding the month of application providing eligibility.

3. The expense must not have been paid for under the Medicaid State Plan.

4. Other health insurance policies, including long term care insurance, are considered to be the first payor for medical items, care, or services covered by such policies and the remaining items can be used as an uncovered medical expense deduction. Therefore, to be deducted from the individual's income, the individual must demonstrate that other insurance does not cover such medical items, care, or services.

5. The medical and remedial care expenses that were incurred as the result of imposition of a transfer of asset penalty is limited to zero.

25. The greater weight of evidence establishes the above deductions applicable to the petitioner are the personal needs allowance and uncovered medical expenses.

Neither evidence nor testimony establish petitioner has therapeutic wages or court ordered child support. Additionally, the Findings of Fact establish petitioner no longer has a community spouse.

26. Respondent correctly allocated a personal needs allowance of \$105.00 as a deduction from petitioner's income.

27. The only evidence presented regarding uncovered medical expenses was \$50.82 for health insurance and \$5.93 for a dental/vision premium. The combined total for these expenditures is \$56.75. It is noted this information is found in respondent's exhibit "1" and petitioner's exhibit "2".

28. Regarding a hardship allocation, Fla. Admin. Code R. 65A-1.712(4)(f) addresses exceptional circumstances. The circumstances, however, are only applicable to a community spouse. The Findings of Fact establish petitioner's community spouse died in June 2015.

29. It is noted that 42 C.F.R. §435.725 addresses the maintenance need of a family member in the home.

30. The authority addressing a dependent allowance is found in the Department's Program Policy Manual, CFOP 165-22, which states:

**2640.0121 Dependent Allowance (MSSI)**

For ICP, MEDS-ICP, institutional Hospice, Long Term Care Diversion, PACE, and the Assisted Living Waiver Programs when the eligible individual does not have a community spouse but does have a dependent unmarried child under the age of 21 or a disabled adult child living at home, the dependent is entitled to a portion of the individual's income equal to the TCA Consolidated Needs Standard minus the dependent's income. (Refer to Appendix A-5 for the CNS.)

31. The Department's Program Policy Manual, 165-22, Appendix A-5 identifies the Consolidated Needs Standard (CNS) for one individual is \$981.00.

32. The Findings of Fact establish the petitioner's son lives in assisted living. Regardless of his place of residence, his monthly income of \$1036.60 exceeds the CNS of \$981.00. As such, the controlling authority does not support a dependent allowance.

33. It is noted that respondent's position changed in regard to the monthly patient responsibility. At time of hearing, the patient responsibility was \$3758.11. Due to an error related to calculating uncovered medical expenses, the amount changed to \$3910.45. A new Notice of Case Action was issued on November 6, 2015.

34. Based on the Notice of Case Action dated August 7, 2015, the greater weight of evidence establishes the following:

- An applicable authority allowing for a hardship allocation was not presented.
- Petitioner was correctly allocated a personal needs allowance of \$105.00.
- Petitioner's monthly uncovered medical expenses are \$56.75.
- After issuance of the notice, petitioner's monthly patient responsibility was corrected to \$3910.45

35. Respondent has met its required evidentiary burden in this matter. Income and deductions were correctly considered.

36. If the petitioner disputes the income or uncovered medical expenses associated with the Notice of Case Action issued on November 6, 2015, hearing rights can once again be exercised.

37. If the amount of petitioner's uncovered medical expenses should increase, a new calculation of the monthly patient responsibility can be requested from the Department.

### **DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, this appeal is 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.

FINAL ORDER (Cont.)  
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DONE and ORDERED this 20 day of November, 2015,  
in Tallahassee, Florida.



Frank Houston  
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](mailto:Appeal.Hearings@myflfamilies.com)

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