

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

FILED

Dec 18, 2015

Office of Appeal Hearings
Dept. of Children and Families



APPEAL NO. 15F-08320
15F-10224

PETITIONER,
Vs.

CASE NO. 

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 20 Charlotte
UNIT: 88287

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on November 16, 2015 at 1:58 p.m. in Fort Myers, Florida.

APPEARANCES

For Petitioner: 

For Respondent: Signe Jacobson, Economic Self-sufficiency Specialist II

STATEMENT OF ISSUE

The petitioner is appealing the Department's action (1) to deny her full Medicaid benefits and instead enroll her into the Medically Needy Share of Cost Program with an effective begin date of September 2015, (2) to deny the Medicare Savings Program (MSP) benefits, and (3) to begin Medically Needy enrollment effective September 2015, as the petitioner would like the Medicaid/Medically Needy and MSP benefits to begin

April 2015. The petitioner disputes the share of cost determination, as the Department is counting her husband's income in the budget. The petitioner is asserting the affirmative and bears the burden of proving her case by a preponderance of the evidence.

PRELIMINARY STATEMENT

██████████ the petitioner's daughter, appeared as a witness for the petitioner.

The petitioner submitted thirteen (13) exhibits that were accepted into evidence and marked as Petitioner's Exhibits "1" through "13" respectively.

The respondent submitted twenty-six (26) exhibits that were accepted into evidence and marked as Respondent's Exhibits "1" through "26" respectively.

The record was held open until the close of business on November 23, 2015 for the respondent to supplement the record. The petitioner declined an opportunity to review any additional evidence provided by the respondent prior to closing the record. The respondent timely provided the additional documentation, which were accepted into evidence and marked as Respondent's Exhibits "27". The record closed on November 23, 2015.

FINDINGS OF FACT

1. On September 8, 2015, the petitioner submitted a paper application to add Medicaid benefits to an existing Food Assistance case.
2. Previous to the September application, the petitioner submitted a paper application on June 17, 2015. The Medicaid benefits and the MSP benefits were denied per a Notice of Case Action sent on July 20, 2015.

3. The two-person household consist of the petitioner (age 67) and her husband, [REDACTED] (age 66). The petitioner receives Social Security Administration (SSA) gross income of \$898.90 and her husband receives SSA gross income of \$1,323.90. The income is received monthly. The petitioner and her husband are both Medicare recipients of Parts A and B. The Part B premium is \$104.90 for each recipient. The Department presented a Data Exchange printout from SSA confirming the income and the Medicare benefits.

4. For the Share of Cost determination, the respondent determined the total countable income of \$2,201 (Total household's gross SSA income of \$2,221 minus the \$20 unearned income disregard) and subtracted the Medically Needy Income Limit of \$241 to equal the Share of Cost of \$1,960. Additionally, the respondent subtracted the total Medicare premium of \$209.80 for a remaining Share of Cost of \$1,750.

5. The MSP is a Medicaid Buy-in Program in which the State of Florida pays the Medicare premiums. There are three types of MSPs with different income limits: Qualified Medicare Beneficiaries (QMB), income limit of 100% of the Federal Poverty Limit (FPL); Special Low Income Medicare Beneficiary (SLMB), income limit of 120% of the FPL; and Qualifying Individual 1 (QI1), income limit of 135% of the FPL.

6. To be eligible for the MSP, a couple's combined income (minus any applicable income disregards) cannot exceed the following income standards for a couple: QMB - \$1,328, SLMB - \$1,593, and QI-1 \$1,793.

7. On September 22, 2015, the Department mailed a Notice of Case Action to the petitioner. The petitioner and her husband were enrolled in the Medically Needy

Program with a \$1,750 Share of Cost effective September 2015 and ongoing. The Q11 Program was denied with the reason, “(y)our household income is too high to qualify for this program.”

8. The petitioner timely requested a hearing on September 28, 2015.

9. The petitioner alleges that she was receiving Medicaid benefits and MSP benefits in California prior to moving to Florida this year. The petitioner states that she requires medical services and is currently neglecting treatment as she is unable to pay the co-pays required.

CONCLUSIONS OF LAW

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 § 409.285, Fla. Stat. 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 R. 65-2.056.

The Medicaid/Medically Needy issue will be addressed first:

12. The Fla. Admin. Code R. 65A-1.701 sets forth:

(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.

13. There is no evidence to reflect that the petitioner nor the petitioner's husband is enrolled in Medicaid covered institutional care services, hospice services, or home and community based services. According to the above controlling authority, the petitioner is ineligible to receive full Medicaid as she is a Medicare recipient and does not fit one of the exclusions of a Medicare recipient. The undersigned concludes that the Department was correct in its action to deny full Medicaid.

14. Fla. Admin. Code R. 65.A-1710, SSI-Related Medicaid Coverage Groups, states in part, the Medically Needy Program is "(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."

15. The Department's Program Policy Manual, CFOP 165-22 (Policy Manual), at section 2240.0604.03 Income of Spouse of Eligible Individual (MSSI, SFP) states:

The policy in this section is applicable only to MEDS-AD, Medically Needy, Protected Medicaid, Working Disabled, QMB, SLMB, QI-1, OSS, and HCDA.

Each individual who is at least age 65, blind, or disabled, and whose countable income and assets do not exceed certain prescribed limits will be an eligible individual. If such an eligible individual is living in the same household with a spouse, who is neither aged, blind, nor disabled, the income and assets of the spouse (whether or not available to the individual) are considered in determining the eligible individual's income and assets, except in circumstances where this is deemed inequitable. An aged, blind, or disabled individual who has an eligible spouse may only qualify as an eligible individual if the combined countable income and assets of the couple do not exceed the income and asset limits specified for such couples.

16. Pursuant to the above authority, petitioner's SSA income, and her husband's SSA income must be included in the determination of their monthly SOC amounts and the MSPs.

17. Federal regulation at 20 C.F.R. § 416.1124 (c) (12) establishes a \$20 disregard for “the first \$20 of any unearned income in a month”. Respondent deducted \$20 from petitioner’s \$2,221 to arrive at \$2,201 countable income.

18. Fla. Admin. Code R. 65A-1.716(2) indicates the Medically Needy Income Level (MNIL) for a family size of two as \$241. Respondent deducted \$241 from the petitioner’s countable income of \$2,201 for a Share of Cost of \$1,960.

19. The Policy Manual at passage 2640.0506.03, Recognized Health Insurance Costs, states in part, “(h)ealth insurance is primarily established for payment of medical costs. ... The following expenses related to health insurance are considered allowable medical expenses: 1. Medical premiums...” The respondent deducted the total Medicare premiums of \$209.80 for a Remaining Share of Cost of \$1,750.

20. The petitioner and the petitioner’s husband were correctly enrolled in the Medically Needy Program with a monthly Share of Cost effective September 2015.

The denial of the Medicare Savings Program will now be addressed:

21. Fla. Admin. Code R. 65A-1.702 Special Provisions explains the MSPs and in part states:

(12) Limits of Coverage.

(a) Qualified Medicare Beneficiary (QMB). Under QMB coverage, individuals are entitled only to Medicare cost-sharing benefits, including payment of Medicare premiums.

(b) Special Low-Income Medicare Beneficiary (SLMB). Under SLMB coverage, individuals are entitled only to payment of the Part B Medicare premium. If eligible, AHCA shall pay the premium for up to three months retroactive to the month of application...

(d) Part B Medicare Only Beneficiary (QI1). Under QI1 coverage, individuals are only entitled to payment of their Medicare Part B premium. (This is coverage for individuals who would be eligible for QMB or SLMB coverage except their income exceeds limits for those programs.)...

22. Fla. Admin. Code R. 65A-1.713 SSI-Related Medicaid Income Eligibility

Criteria in part 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...

(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...

23. The Policy Manual at Appendix A-9, identifies MSP income standards for a couple as follows:

<u>July 2015</u>		
QMB,	SLMB	QI1
\$1,328	\$1,593	\$1,793

24. Federal regulation at 20 C.F.R. § 416.1124 (c) (12) establishes a \$20 disregard for "the first \$20 of any unearned income in a month". The \$20 disregard is deducted from petitioner's \$2,221 to arrive at \$2,201 countable income. The total countable income exceeds all of the MSP income standards.

25. The petitioner and the petitioner's husband were correctly denied the MSPs as their total countable income exceeded the established income standards.

The effective begin dates for the benefits will now be addressed:

26. The Policy Manual at passage 0640.0509, Retroactive Medicaid (MSSI), states in part:

This policy does not apply to QMB.

Medicaid is available for any one or more of the three calendar months preceding the application month, provided:

1. at least one member of the SFU has received Medicaid reimbursable services during the retroactive period, and
2. the individual meets all factors of eligibility during the month(s) he requests retroactive Medicaid.

The applicant may request retroactive Medicaid at any time, as long as the coverage period is for any one of three months prior to any Medicaid or SSI application.

This retroactive coverage is not affected by:

1. the application's disposition (approval or denial);
2. whether or not the individual was alive at the time of the application; or
3. when the request for assistance or request to add was made.

When the request for retroactive Medicaid for an unpaid bill(s) is for only one member of a SFU, determine Medicaid eligibility for the entire AG.

Determine eligibility for each month there were unpaid medical services provided; do not consider the month the bill was issued. Accept the individual's statement that a member of the SFU has an unpaid bill.

27. In the petitioner's case, the findings show that she applied for benefits on June 17, 2015 and September 8, 2015. Pursuant to the authority above, the petitioner may request the Department to determine eligibility for retroactive Medicaid at any time for the three months preceding the application. For the September 2015 application, the months of June 2015, July 2015 and August 2015 may be considered for a determination of eligibility. For the June 2015 application, the months of May 2015 and April 2015 may also be considered.

28. In careful review of the cited authorities, evidence and testimonies, the undersigned concludes that the respondent (1) correctly denied Medicaid and instead enrolled the petitioner and the petitioner's husband in the Medically Needy Program with a monthly share of cost amount and (2) correctly denied the MSP benefits. In regards to the eligibility for Medicaid/Medically Needy and MSP benefits effective from April 2015,

the appeal is remanded to the respondent to complete the retroactive Medicaid eligibility determination from the months between and including April 2015 and August 2015. This determination of eligibility will include Medically Needy, SLMB and the QI1 programs. The QMB program does allow for a retroactive Medicaid benefits.

29. This Order does NOT guarantee that the petitioner will be eligible for Medicaid benefits or MSP benefits. Once the determination is completed, the respondent is to mail /or denial of Medicaid, Medically Needy, or MSP benefits for the months of April 2015, May 2015, June 2015, July 2015 and August 2015.

DECISION

The appeal relating to the eligibility for full Medicaid benefits and the subsequent enrollment into the Medically Needy Program with a monthly share of cost of \$1,750 and the denial of MSP benefits, is denied.

The appeal for Medicaid/Medically Needy benefits and the MSP benefits beginning in April 2015, is granted and remanded in accordance with the Conclusion of Law. The respondent will complete the retroactive Medicaid eligibility determination from the months between and including April 2015 and August 2015. This determination of eligibility will include Medically Needy, SLMB and the QI1 programs. As the QMB program does allow for a retroactive Medicaid benefits, no determination of QMB is necessary. Once the determination is completed, the respondent is to mail the petitioner a Notice of Case Action, with appeal rights, identifying the approval/enrollment and/or denial of Medicaid, Medically Needy, or MSP benefits for the months of April 2015, May 2015, June 2015, July 2015 and August 2015.

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 18 day of December, 2015,

in Tallahassee, Florida.



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