

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

FILED

Dec 09, 2015

Office of Appeal Hearings
Dept. of Children and Families



APPEAL NO. 15F-08569
15F-09533

PETITIONER,

Vs.

CASE NO. 

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 18 Seminole
UNIT: 55207

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned telephonically convened an administrative hearing in the above-referenced matter at 9:35 a.m. on November 13, 2015.

APPEARANCES

For the Petitioner:  pro se

For the Respondent: Erid Quinones, ACCESS Supervisor

STATEMENT OF ISSUE

At issue is whether respondent's action to: 1) decrease petitioner's Food Assistance (FA) benefits and 2) terminate her full Medicaid and instead enroll her in the Medically Needy (MN) Program with a \$1,049 Share of Cost (SOC) is proper. The burden of proof by the preponderance of evidence is assigned to the petitioner for the FA issue and to the respondent for the Medicaid issue.

PRELIMINARY STATEMENT

By notice dated September 23, 2015, the respondent (or Department) notified petitioner that her FA benefits would remain the same and she was enrolled in MN with an estimated \$1,049 SOC. Petitioner timely requested a hearing to challenge the FA amount and enrollment in the MN Program.

Pamela Vance, Hearing Officer, appeared as an observer. Petitioner did not submit exhibits. Respondent submitted four exhibits, entered as Petitioner Exhibits "1" through "4". Petitioner did not receive the respondent's exhibits and elected to proceed with the hearing without the exhibits. The record was held open until November 16, 2015, for the respondent to submit an additional exhibit. The exhibit was received timely and entered as Respondent Exhibit "5". The record was closed on November 16, 2015.

FINDINGS OF FACT

1. Petitioner's FA benefits were reduced from \$194 to \$16 effective in July 2015.
2. Petitioner previously received Supplemental Security Income (SSI). As a result, petitioner received full Medicaid through the Social Security Administration (SSA).
3. In May 2015, petitioner's husband passed away; resulting in SSA terminating her SSI. Therefore, petitioner was no longer eligible for full Medicaid through the SSA. Instead, petitioner started receiving Social Security Widow Disability Income (SSWDI).
4. On August 28, 2015, petitioner submitted a recertification application for FA and Medicaid benefits for herself. The application lists \$1,249 income from Social Security.

5. To be eligible for Adult-Related (referred to as SSI-Related) Medicaid, petitioner's income cannot exceed the \$864 income limit. Petitioner's \$1,249 SSWDI exceeds the \$864 income limit. The next available program is MN with a SOC.

6. Respondent determined petitioner's SOC as follows:

\$1,249	SSWDI
-\$ 20	unearned income disregard
-\$ 180	Medically Needy Income Level (MNIL)
<u>\$1,049</u>	SOC

7. Respondent calculated petitioner's FA benefits as follows:

\$1,249.00	SSWDI
-\$ 155.00	standard deduction
<u>\$1,094.00</u>	adjusted income

\$ 472.66	rent/shelter
-\$ 345.00	standard utility deduction
<u>\$ 817.66</u>	shelter/utility cost
-\$ 547.00	50% adjusted income (\$1,094/2)
<u>\$ 270.66</u>	excess shelter deduction

\$1,094.00	adjusted income
-\$ 270.66	excess shelter deduction
<u>\$ 823.34</u>	adjusted income after deductions

30% of \$823.34 = \$247 round up (benefit reduction)

8. The maximum FA benefits a single person household can receive are \$194; which is more than the \$247 FA benefit calculation determined above (#7). However, since petitioner's income is less than \$1,962 (the 200% gross income limit for a household size of one) she is eligible to receive the \$16 minimum FA benefit amount.

9. On September 23, 2015, the respondent mailed petitioner a Notice of Case Action, notifying her FA (\$16) would remain the same and she was enrolled in MN with a \$1,049 SOC.

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 Fla. Stat. § 409.285. This order is the final administrative decision of the Department of Children and Families under Fla. Stat. § 409.285.

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

MEDICAID VS MEDICALLY NEEDY ISSUE

12. The Fla. Admin. Code R. 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:

(a) For MEDS-AD Demonstration Waiver, income cannot exceed 88 percent of the federal poverty level...

(h) For Medically Needy, income must be less than or equal to the Medically Needy income standard after deduction of allowable medical expenses...

(4)(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. The department computes available income for each month eligibility is requested to determine the amount of excess countable income available to meet medical costs. If countable income exceeds the Medically Needy income level the department shall deduct allowable medical expenses in chronological order, by day of service... To be deducted the expenses must be unpaid, or if paid, must have been paid in the month for which eligibility is being determined or incurred and paid during the three previous calendar months to the month for which eligibility is being determined but no earlier than the three retroactive application months...

13. The above authority explains to be eligible for full Medicaid; income cannot exceed 88 percent of the federal poverty level. And MN provides coverage for individuals who do not qualify for full Medicaid due to income.

14. The Department's Program Policy Manual, CFOP 165-22, appendix A-9 (July 2015), identifies \$864 as 88 percent of the federal poverty level for a household size of one.

15. Petitioner's \$1,249 SSWDI exceeds the \$864 income limit to be eligible for full Medicaid. Therefore, petitioner is not eligible for full Medicaid.

16. Federal Regulations at 20 C.F.R. § 416.1124 explain unearned income not counted and states in part "(c) Other unearned income we do not count... (12) The first \$20.00 of any unearned income in a month..."

17. The Fla. Admin. Code R. 65A-1.716 sets forth the MNIL at \$180 for a family size of one.

18. In accordance with the authorities, respondent deducted \$20 unearned income and \$180 MNIL from petitioner's \$1,249 SSDI to arrive at \$1,049 SOC.

FOOD ASSISTANCE ISSUE

19. Federal Regulation at 7 C.F.R § 273.9, defines income and in part states:

- (b)(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...

20. In accordance with the above authority, the respondent included petitioner's \$1,249.00 SSWDI in the FA calculations.

21. Federal Regulation at 7 C.F.R § 273.9, defines allowable deductions and in part states:

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

(1) Standard deduction...

(6) Shelter costs...

(ii) Excess shelter deduction. Monthly shelter expenses in excess of 50 percent of the household's income after all other deductions...

(C) The cost of fuel for heating; cooling (i.e., the operation of air conditioning systems or room air conditioners); electricity or fuel used for purposes other than heating or cooling; water; sewerage; well installation and maintenance; septic tank system installation and maintenance; garbage and trash collection; all service fees required to provide service for one telephone...

(iii) Standard utility allowances... Only utility costs identified in paragraph (d)(6)(ii)(C) of this section must be used in developing standards...

22. Policy Manual, CFOP, Appendix A-1, sets forth for a household size of one the following:

\$ 194	maximum FA allotment
\$ 16	minimum FA allotment
\$ 155	standard deduction
\$ 345	standard utility allowance
\$1,962	monthly 200% gross income limit

23. Federal Regulations at 7 C.F.R. § 273.10, explains income and deduction calculations:

(i) To determine a household's net monthly income, the State agency shall...

(A) Add the gross monthly income earned by all household members and the total monthly unearned income of all household members...

(C) Subtract the standard deduction...

(H) Total the allowable shelter costs... Subtract from total shelter costs 50 percent of the household's monthly income after all the above deductions have been subtracted. The remaining amount, if any, is the excess shelter cost...

(I) Subtract the excess shelter cost...

(2) Eligibility and benefits...

(ii)(A)... the household's monthly allotment shall be equal to the maximum food stamp allotment for the household's size reduced by 30 percent of the household's net monthly income ...

24. The cited authorities set forth income and allowable deductions in the FA benefit determination. In accordance with the authorities, respondent included petitioner's \$1,249 SSWDI and allowable deduction (standard deduction, shelter and utilities) in the FA calculations.

25. The Department's TRANSMITTAL NO. C-13-10-0007, dated October 11, 2013, addresses the FA minimum amount and in part states:

...based on recent clarification from the Food and Nutrition Service, 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.

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...

26. In accordance with the above transmittal, petitioner is eligible for the \$16 minimum FA amount; due to her income being less than the \$1,962 monthly 200% gross income limit.

HEARING OFFICER'S CONCLUSION

27. In careful review of the cited authorities and evidence, the undersigned concludes the respondent followed Rule in authorizing petitioner in MN Program with a \$1,049 SOC and \$16 monthly in FA benefits.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeals are denied and the respondent's actions are affirmed.

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 09 day of December, 2015,

in Tallahassee, Florida.



Priscilla Peterson
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