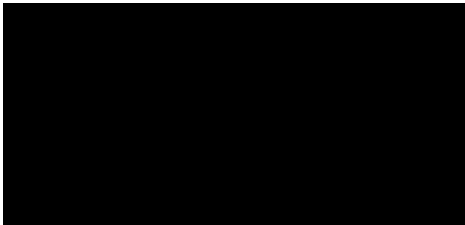


Jan 15, 2016

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

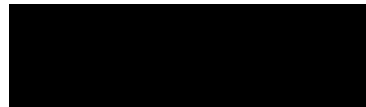
Office of Appeal Hearings
Dept. of Children and Families



APPEAL NO. 15F-07641

PETITIONER,

Vs.



FLORIDA DEPARTMENT
OF CHILDREN AND FAMILIES
CIRCUIT: 17 Broward
UNIT: AHCA

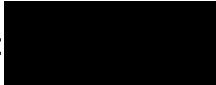
RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on November 20, 2015, at 10:35 a.m.

APPEARANCES

For the Petitioner:  the petitioner's wife.

For the Respondent: Jackie Pughsley, Economic Self Sufficiency Specialist,
Department of Children and Families (DCF).

STATEMENT OF ISSUE

At issue is the Department's action in approving the petitioner for Institutional Care Program Medicaid (ICP) benefits with a patient responsibility of \$228.77 a month and allow the community spouse a diverted \$867.23 a month, as opposed to the petitioner having \$0 patient responsibility and the community spouse receiving a

diverted amount of \$1,096 a month. The petitioner carries the burden of proof by a preponderance of evidence.

PRELIMINARY STATEMENT

The respondent submitted into evidence Respondent Exhibit 1 through 4. The petitioner submitted into evidence Petitioner Exhibit 1.

FINDINGS OF FACT

Based upon the oral and documentary evidence presented at the final hearing and on the entire proceeding, the following Findings of Fact are made:

1. The petitioner currently lives in a nursing home and was found eligible by the Department to receive ICP benefits. The Department determined the petitioner has a patient responsibility as part of his stay in a nursing home.

2. The petitioner's wife lives in her home and has been designated as the "community spouse" in regards to the petitioner's eligibility for the ICP Program.

3. In determining the amount of an ICP recipient's patient responsibility and the community spouse's income allowance, the Department has specific formulas.

4. The Department's Maintenance Need Allowance Budget, submitted as part of Respondent Exhibit 2, shows the community spouse's shelter cost of \$1,488. This cost is a total of the community spouse's shelter cost and utility cost combined. The shelter cost includes the community spouses' monthly mortgage and monthly property tax. Next, the Department subtracted thirty percent of the MMMIA (Minimum Monthly Maintenance Income Allowance), which is \$590, from the shelter cost to arrive at the excess shelter cost of \$898.

5. Next, the Department added the MMMIA amount of \$1,966 to the above noted excess shelter cost to arrive at the Allowable Shelter Deduction of \$2,864. Next, the Department subtracted the community spouse's gross income of \$2,452.10 from the above noted Allowable Shelter Deduction to arrive at the Community Spouse Income Allowance amount of \$411.90.

6. Next, the Department subtracted \$600 from the MMMIA amount of \$1,966 to arrive at a subtotal of \$1,366. This amount is then divided by three (3), which created a "Family Allowance" amount of \$455.33. The \$600 noted above is derived from the petitioner and community spouses' (minor) daughter's unearned income. The Family Allowance noted above and the Community Spouse Income Allowance amount of \$411.90 added together equals \$867.23, which is the community spouse's total Maintenance Need Allowance amount.

7. Also submitted as part of Respondent Exhibit 2 is a copy of the Department's Patient Responsibility Budget sheet. This sheet includes the petitioner's Total Gross Unearned Income amount of \$1,201 derived from the petitioner's Social Security payment. Subtracting the Personal Need Allowance of \$105 along with the Maintenance Need Allowance of \$867.23 allowed the Department to arrive at the petitioner's patient responsibility amount of \$228.77.

8. The petitioner's representative submitted as part of Petitioner Exhibit 1 copies of her household bills and a handwritten list of these household bills and expenses. She argued that the Department should also take into consideration her household bills such as car payment, car insurance, cable bills, and lawn maintenance bills when determining the petitioner's patient responsibility amount. She indicated that the lawn

maintenance costs is unavoidable as the petitioner himself used to do the lawn maintenance and she cannot do this activity. Additionally, she indicated that the cost of owning and operating a car is unavoidable. The petitioner's representative, however, did not dispute any of her household income amounts as used in the calculations by the Department.

9. The respondent argued that the above bills or costs for the petitioner's wife or community spouse are not considered by the Department, as per Department policy, in determining patient responsibility amount and community spouse diversion amounts. The Department representative also indicated the petitioner was receiving only \$30 in SSI benefits previous to April 2015 and thus had no patient responsibility assigned at that time.

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 § 409.285, Fla. Stat.

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

12. Fla. Admin. Code R. 65A-1.713 SSI-Related Medicaid Income Eligibility Criteria states in relevant part:

4) Income Budgeting Methodologies. To determine eligibility SSI budgeting methodologies are applied except where expressly prohibited by 42 U.S.C. § 1396 (2000 Ed., Sup. IV) (incorporated by reference), or another less restrictive option is elected by the state under 42 U.S.C. § 1396a(r)(2) (2000 Ed., Sup. IV) (incorporated by reference). When

averaging income, all income from the most recent consecutive four weeks shall be used if it is representative of future earnings. A longer period of past time may be used if necessary to provide a more accurate indication of anticipated fluctuations in future income.

....

(b) For institutional care, hospice, and HCBS waiver programs the department applies the following methodology in determining eligibility:

1. To determine if the individual meets the income eligibility standard the client's total gross income, excluding income placed in qualified income trusts, is counted in the month received. The total gross income must be less than the institutional care income standard for the individual to be eligible for that month.

2. If the individual's monthly income does not exceed the institutional care income standard in any month the department will prorate the income over the period it is intended to cover to compute patient responsibility, provided that it does not result in undue hardship to the client. If it causes undue hardship it will be counted for the anticipated month of receipt.

13. Fla. Admin. Code R. 65A-1.712 "SSI-Related Medicaid Resource Eligibility

Criteria" states in part:

(4) Spousal Impoverishment. The Department follows policy in accordance with 42 U.S.C. § 1396r-5 for resource allocation and income attribution and protection when an institutionalized individual, including a hospice recipient residing in a nursing facility, has a community spouse. Spousal impoverishment policies are not applied to individuals applying for, or receiving services under, HCBS Waiver Programs, except for individuals in the Long-Term Care Community Diversion Program, the Assisted Living Facility Waiver or the Cystic Fibrosis Waiver.

(a) When an institutionalized applicant has a community spouse all countable resources owned solely or jointly by the husband and wife are considered in determining eligibility.

b) At the time of application only those countable resources which exceed the community spouse's resource allowance are considered available to the institutionalized spouse.

(c) The community spouse resource allowance is equal to the maximum resource allocation standard allowed under 42 U.S.C. § 1396r-5 or any court-ordered support, whichever is larger.

(d) After the institutionalized spouse is determined eligible, the Department allows deductions from the eligible spouse's income for the community spouse and other family members according to 42 U.S.C. § 1396r-5 and paragraph 65A-1.716(5)(c), F.A.C.

(e) If either spouse can verify that the community spouse resource allowance provides income that does not raise the community spouse's income to the state's minimum monthly maintenance income allowance (MMMIA), the resource allowance may be revised through the fair hearing process to an amount adequate to provide such additional income as determined by the hearing officer. Effective November 1, 2007 the hearing officers must consider all of the community spouse's income and all of the institutionalized spouse's income that could be made available to a community spouse. The hearing officers will base the revised community spouse resource allowance on the amount necessary to purchase a single premium lifetime annuity that would generate a monthly payment that would bring the spouse's income up to the MMMIA (adjusted to include any excess shelter costs). The community spouse does not have to actually purchase the annuity. The community spouse will have the opportunity to present convincing evidence to the hearing officer that a single premium lifetime annuity is not a viable method of protecting the necessary resources for the community spouse's income to be raised to the state's MMMIA. If the community spouse requests that the revised allowance not be based on the earnings of a single premium lifetime annuity, the community spouse must offer an alternative method for the hearing officer's consideration that will provide for protecting the minimum amount of assets required to raise the community spouse's income to the state's MMMIA during their lifetime

(f) Either spouse may appeal the post-eligibility amount of the income allowance through the fair hearing process and the allowance may be adjusted by the hearing officer if the couple presents proof that exceptional circumstances resulting in significant inadequacy of the allowance to meet their needs exist. Exceptional circumstances that result in extreme financial duress include circumstances other than those taken into account in establishing maintenance standards for spouses. An example is when a community spouse incurs unavoidable expenses for medical, remedial and other support services which impact the community spouse's ability to maintain themselves in the community and in amounts that they could not be expected to be paid from amounts already recognized for maintenance and/or amounts held in resources [emphasis added]. Effective November 1, 2007, the hearing officers must consider all of the community spouse's income and all of the institutionalized spouse's income that could be made available to a

community spouse. If the expense causing exceptional circumstances is a temporary expense, the increased income allowance must be adjusted to remove the expenses when no longer needed.

14. The above controlling authority sets forth a provision for couples when one member is in a nursing facility and the other remains in the community to appeal the ICP income allowances determined by the Department. The hearing officer may adjust the allowances if proof is provided to show that exceptional circumstances have resulted in significant inadequacy of the community spouse's income allowance to meet her needs. The findings show that \$867.23 of the petitioner's income is diverted to the community spouse, causing the patient responsibility to be \$228.77. In a situation where proof is provided to show that an exceptional circumstance has caused a significant inadequacy, the diversion amount to the community spouse can be increased, resulting in a lower patient responsibility amount and a greater amount paid by Medicaid (ICP) to the nursing facility.

15. A couple must present proof that an exceptional circumstance has caused unavoidable extreme financial duress for the community spouse. The petitioner's representative asserts the cost of her household expenses such as car payments, car insurance, and especially lawn maintenance should be considered for an increase in the spousal diversion amount. However, the undersigned concludes that a routine monthly expenses such as car payment, car insurance, and lawn maintenance does not meet the threshold of an exceptional or unavoidable circumstance. The petitioner's representative has not presented the undersigned with an exceptional circumstance, either temporary or long term, causing a significant financial inadequacy for her as the community spouse. Therefore, in accordance with the above controlling authority, the

undersigned concludes the petitioner does not meet the requirements for an increase in the spousal diversion amount. Petitioner has not met her burden of proof.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, this appeal is denied and the Department's action 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 15 day of January, 2016,

in Tallahassee, Florida.



Robert Akel
Hearing Officer
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Copies Furnished To: [REDACTED] Petitioner
Office of Economic Self Sufficiency