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

[redacted]

APPEAL NO. 15F-08311

PETITIONER,

Vs.

[redacted]

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

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on January 12, 2016 at 9:03 a.m., at 2295 Victoria Avenue in Fort Myers, Florida.

APPEARANCES

For Petitioner: Petitioner

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

STATEMENT OF ISSUE

At issue is whether the department took correct action regarding petitioner's current and past health insurance premiums and dental cost as related to his enrollment in the Medically Needy (MN) program, including the three months prior to the month of application. Also, as he stated that the department has sent several Notices of Case Actions (NOCA) with different amounts for his monthly share of cost (SOC) due to his enrollment in MN program, the petitioner wants to ensure that the correct SOC is being

considered. The petitioner is asserting the affirmative and bears the burden of proving his case by a preponderance of the evidence.

PRELIMINARY STATEMENT

The hearing was originally scheduled to convene on November 13, 2015 at 1:00 p.m. On October 7, 2015, the undersigned was contacted by the petitioner to request the hearing be rescheduled as a face-to-face hearing. The petitioner's request was granted and the hearing was rescheduled to be heard in [redacted] on the same day, November 13, 2015 at 10:30 a.m.

On November 4, 2015, the petitioner contacted the undersigned requesting a continuance due to being out of state and would like to be rescheduled in December 2015. The petitioner's request was granted and the hearing rescheduled to December 14, 2015 at 10:30 a.m. In December 14, 2015, the petitioner requested a continuance as he requested a larger room to include witnesses and members of the media. The petitioner's request was granted and the hearing was rescheduled to be reconvened in Fort Myers, Florida on January 12, 2016.

The petitioner submitted 10 exhibits that were accepted into evidence and marked as Petitioner's Exhibits "1" through "10" respectively.

The respondent submitted 17 exhibits that were accepted into evidence and marked as Respondent's Exhibits "1" through "17" respectively. The record was held open until the close of business on January 22, 2016 for the respondent to supplement the record and for the petitioner to review and provide a response, if necessary. The respondent timely provided the additional documentation, which were accepted into evidence and marked as Respondent's Exhibits "18" through "24". On January 28,

2016, the petitioner requested an additional week to provide a response. The additional time was granted. The record closed on February 8, 2016 as the petitioner did not submit any additional evidence.

FINDINGS OF FACT

1. The petitioner (age 72) is a single-person household. In July 2015, the petitioner's sole source of income was his Social Security benefits (SSA) in the monthly gross amount of $1,429. The petitioner has Medicare Part B with a $104.90 monthly premium.

2. A paper application for Medicaid benefits was submitted, by the petitioner, on July 13, 2015. The application noted that the petitioner's SSA gross income was $1,325 and that the health insurance premiums that were paid monthly was his Medicare and a United Healthcare Supplemental (United Healthcare) of $233.15. The petitioner has been paying another health insurance premium: SilverScript Medicare Supplement (SilverScript).

3. The department calculated the MN budget by including the petitioner's gross monthly SSA income in the amount of $1,429 as the gross total income. The total gross income was subtracted by the unearned income disregard of $20 to result in $1,409 total countable income. The total countable income was subtracted by the Medically Needy income limit (MNIL) of $180, for one person, to result in a monthly SOC of $1,229.

4. As the petitioner is requesting a review of his paid health insurance premium expenses for the 3-month period prior to his application, the department considered the health insurance premiums that the petitioner is obligated to pay monthly

in the determination of the Remaining SOC. For the period of April 2015 through August 2015, the department considered the Medicare and the [redacted] premiums for a total amount of $338.05, which was subtracted from the SOC for a Remaining SOC of $890. For the period of September 2015 and ongoing, the department considered the Medicare [redacted] and the [redacted] (unverified) health insurance premiums for a total amount of $348.45, which was subtracted from the SOC for a Remaining SOC of $880.

5. The petitioner's Medicare premiums were paid by the State of Florida, as a third-party payer, effective July 2015. The department also noted that the Medicaid program that paid the Medicare premium was incorrectly approved for the petitioner and provided a NOCA, dated December 15, 2015, indicating that the program would end effective December 31, 2015.

6. The petitioner must meet his SOC on a monthly basis in order to be Medicaid eligible. The SOC is met by having the total allowable medical expenses meet or exceed the SOC and that the Medicaid eligibility begins from the date that the SOC is met until the end of the month.

7. The petitioner submitted bills for bill-tracking consideration and the department states that the medical bills have not met or exceeded the SOC for any of the petitioner's enrolled months. The petitioner submitted into evidence the following paid bills: $29 (April 29, 2015 - [redacted], $155.80 (June 8, 2015 – [redacted] shoes), $40 (July 14, 2015 – [redacted]), $20 (August 6, 2015 – [redacted], $181 (August 25, 2016 – [redacted], $10.60 (September 3, 2015 – [redacted], $0.96 (September 3, 2015 – [redacted], $155.80 (September 11, 2015 –

[redacted], $75 (September 14, 2015 – [redacted]), and $229.98 (September 14, 2016 – [redacted]). The petitioner states that the shoes from [redacted] were not acquired through a prescription from nor provided by a medical provider. The petitioner is unsure of the amount paid monthly for his [redacted] premiums. The petitioner also stated that the insurance premium for [redacted] has changed to $187; however, he was unable to state what month this was effective. Verification of the monthly [redacted] health insurance premiums have not been provided to the department. No unpaid medical bills or dental bills were provided.

8. The department states that they would consider the petitioner's enrollment in the Medically Needy program for the three months prior to the month of application as the petitioner stated during the appeal that he had medical expenses in those months.

9. Though the petitioner has been provided a Medicaid identification number, the petitioner states that he is unable to find a Medicaid dental provider who will accept him as a patient. The petitioner also states that he has made numerous requests for a supervisor to call him back regarding the concerns he has for his case and he has not received any call backs.

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 Section 409.285 Fla. Stat. This order is the final administrative decision of the Department of Children and Families under Section 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-1.701, Definitions, states in part:

> (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. The above controlling authorities explains that the full coverage Medicaid coverage group (MEDS-AD Demonstration Waiver) in the SSI-related Programs is for individuals whose income is below the federal poverty level and are not receiving Medicare, or if receiving Medicare are eligible for Medicaid covered institutional care services (ICP), hospice services, or community based services. The findings show that the petitioner is receiving Medicare but is not receiving ICP, hospice, or community based services. Therefore, the undersigned concludes that petitioner does not qualify for full coverage Medicaid.

14. Fla. Admin. Code. R. 65A-1.710(5), SSI-Related Medicaid coverage Groups, states in part that the "Medically Needy Program. A Medicaid coverage group, as allowed by 42 U.S.C. §§ 1396a and 1396d, for aged … individuals … who do not qualify for categorical assistance…"

15. The above authority explains that the Medically Needy Program is a coverage group for aged individuals who do not qualify for full Medicaid.

16. Fla. Admin. Code R. 65A-1.713 (2) explains that the Department follows the SSI policy specified in 20 C.F.R. 416.1100 for included and excluded income. Federal Regulations at 20 C.F.R. 416.1124 (c)(12) sets forth income that is not counted

in this program and states, "(t)he first $20 of any unearned income in a month other than …income based on need."

17. The Fla. Admin. Code R. 65A-1.716 sets forth the Medically Needy income levels and states :

> (1) The monthly federal poverty level figures based on the size of the filing unit…
> (2) Medicaid income and payment eligibility standards and Medically Needy income levels are by family size as follows…
> Size…1 Level $180…

18. As the petitioner is not eligible for full Medicaid, the Department enrolled him in the MN program and assigned a SOC based on his gross income of $1,429. Prior to any consideration of medical expenses (including health insurance premiums) and after the deductions of the $20 general exclusion and the MNIL for one of $180, the SOC was determined to be $1,229.

19. The undersigned concludes that the respondent's action to enroll him in the Medically Needy Program with a monthly share of cost in the amount of $1,229 was a correct action.

20. The Code of Federal Regulations, 42 C.F.R. § 435.915, states in part that "(t)he agency must make eligibility for Medicaid effective no later than the third month before the month of application…

21. Fla. Admin. Code. R. 65A-1.701, Definitions, states in part:

> (30) Share of Cost (SOC): SOC represents the amount of recognized medical expenses that a Medically Needy enrolled individual or family must incur each month before becoming eligible to receive Medicaid benefits for medical expenses incurred during the remainder of the month.

22. The Fla. Admin. Code R. 65A-1.713 sets forth the Medically Needy budgeting process regarding SOC and states:

> (4) Income Budgeting Methodologies.
> (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. Countable income is determined in accordance with subsection 65A-1.713(2), F.A.C. 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. The paid expense may not have been previously deducted from countable income during a period of eligibility. Medical expenses reimbursed by a state or local government not funded in full by federal funds, excluding Medicaid program payments, are allowable deductions. Any other expenses reimbursable by a third party are not allowable deductions. Examples of recognized medical expenses include:
> 1. Allowable health insurance costs such as medical premiums, other health insurance premiums, deductibles and co-insurance charges; and,
> 2. Allowable medical services such as the cost of public transportation to obtain allowable medical services; medical services provided or prescribed by a recognized member of the medical community; and personal care services in the home prescribed by a recognized member of the medical community.

23. The Department's Program Policy Manual (Policy Manual), CFOP 165-22, passage 2640.0508, Proof of Medical Expenses, states in part that:

> The following are verification requirements for allowable medical expenses to be counted toward share of cost.
> For Medicare premiums the individual's statement may be accepted (including coinsurance charges).
> For other health insurance premiums proof is needed of the amount and frequency of the premium. Acceptable evidence is the insurance policy, canceled check, receipt, pay stub or verbal verification from the agent.
> For paid medical services bills (includes coinsurance payments) proof is needed of the date of the payment, amount of payment and an estimate of

> third party liability/TPP, if applicable. Acceptable evidence is the paid bill, receipt, canceled check, written statement from doctor or verbal verification from the provider. (For TPP, verbal verification is not acceptable.)

24. For the period of April 2015 to August 2015, the department considered the total amount of health insurance premiums (verified and unverified) equaling $338.05, which was subtracted from the SOC of $1,229 to reduce the SOC to $890. For the period of September 2015 and ongoing, the department considered the total amount of health insurance premiums (verified and unverified) equaling $348.45, which was subtracted from the SOC of $1229 to reduce the SOC to $880. The reoccurring health insurance premiums have been considered, prior to bill-tracking any other paid and/or unpaid medical bills for each of the months enrolled in the Medically Needy program. As the effective date of the reduced United Healthcare premium and the amount of the SilverScript premium have not been verified, these premiums cannot be used to meet the SOC, on a monthly basis, until they have been verified. Though [redacted] and [redacted] have not been verified and that the Medicare premiums for the months from July 2015 to December 2015 were paid by a third party, the undersigned concludes that the department has considered the reoccurring health insurance premiums in the SOC determination, particularly in the bill-tracking phase of the enrollment, which included the three-month period prior to the month of application.

25. As the total reported monthly health insurance premiums do not meet or exceed the SOC for each of the months that the expenses were incurred by the petitioner, the SOC will not be met without additional paid and/or unpaid medical expenses included in the bill-tracking process. The petitioner presented paid medical

receipts totaling the following for each month: $29 (April 2015), $40 (July 2015), $201 (August 2015), and $316.54 (September 2015). The totals listed do not include the monthly health insurance premiums as the Medicare premiums were paid by the state during the above months and the amount paid for the other health insurance premiums have not been verified. The undersigned concludes that the paid expenses for each month do not meet or exceed the SOC for any of the bill-tracked months. Also when reviewing the three months prior to the month that a bill is being tracked, the total amount of carried-over medical expenses do not meet or exceed the SOC. For example, while bill-tracking the month of September, paid bills for June, July and August (three prior months to the month of bill-tracking) that have not been used to meet the share of cost in another month, can be used in determining whether or not the SOC is met in September. The total amount of paid bills in July, August and September equal $557.54, which does not meet the SOC for September of $1,229. Again, the Medicare premiums were paid by the state and the other health insurance premiums have not been verified. If the health insurance premiums were verified, the potential to meet the SOC improves as they would be incurred in each of the four months considered. The Snydermann shoes were not included in the calculation as it was not provided or prescribed by a recognized member of the medical community.

26. The undersigned concludes that the department was correct in not including any dental expenses in the bill-tracking process as the petitioner has stated that the dental expenses have not been incurred. If the petitioner incurs any medical expenses, including dental, the undersigned encourages him to submit verification of his medical expenses, paid or unpaid, to the department for bill-tracking purposes.

27. In terms of the petitioner's concern regarding his phone calls not returned by supervisors within the Department of Children and Families, he may contact Krystalee Salgado, Client Relations Coordinator, at (239) 895-0231 or toll-free at (877) 595-0384.

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.

DONE and ORDERED this 19 day of February, 2016, in Tallahassee, Florida.

Raymond Muraida

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