

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



APPEAL NO. 15F-08406

PETITIONER,

Vs.

FLORIDA DEPARTMENT OF  
CHILDREN AND FAMILIES  
CIRCUIT: 17 Broward  
UNIT: 88595



RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on November 24, 2015 at 9:58 a.m. All parties appeared telephonically from different locations.

**APPEARANCES**

For the Petitioner:



For the Respondent: Luisa Soto, acting-supervisor.

**STATEMENT OF ISSUE**

Petitioner is appealing the Department's action of denying her full Medicaid benefit and enrolling her in the Medically Needy Program with a high estimated share of cost (SOC). The petitioner is seeking full Medicaid coverage. The petitioner carries the burden of proof by the preponderance of evidence.

### **PRELIMINARY STATEMENT**

[REDACTED] petitioner's father, appeared as a witness of her behalf.

During the hearing, the petitioner submitted one exhibit which was accepted and marked as Petitioner's Composite Exhibit 1. The Department submitted seven (7) exhibits which were accepted into evidence and marked as Respondent's Exhibits 1 through 7 respectively.

The record was left open through December 22, 2015 for the petitioner to submit additional information for the respondent to consider. Petitioner's evidence was received and marked as Petitioner's Composite Exhibit 2. The Department did not respond. The record was closed on December 22, 2015.

### **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. The petitioner is 54 years old with neurological and physical limitations. She underwent spine surgeries in July 2013 and ended up in a coma a few hours later. She has been determined disabled by Social Security Administration (SSA) and received Supplemental Security Income (SSI) for a short while.
2. Petitioner's monthly gross Social Security Disability (SSD) benefit is \$887. The SSD income amount is not in dispute, see Petitioner's Composite Exhibit 1. Petitioner is not yet eligible for Medicare benefits.
3. On May 26, 2015, the petitioner submitted an application to continue her Medicaid benefits and did not report any recurring medically related expenses, see Respondent's Exhibit 1.

4. The Department's representative explained its action to enroll the petitioner in the Medically Needy Program with a share of cost. She explained that the petitioner gross income exceeds the SSI-Related Medicaid Program income limit (\$864). She explained that petitioner was evaluated under the Medically Needy (MN) Program and that her share of cost amount is directly dependent on her income.

5. To begin the budgeting process for Medically Needy Program, the Department counted monthly income of \$887, minus a \$20 standard income disregard followed by a \$180 Medically Needy Income Level (MNIL) deduction for one person, from her income. After these deductions, the share of cost was determined to be \$687, see Respondent's Exhibit 3.

6. On June 3, 2015, the Department sent a notice to the petitioner informing her that she was approved for the Medically Needy Program with an \$867 share of cost effective July 2015, see Respondent's Exhibit 2. On October 5, 2015, the petitioner requested an appeal challenging her enrollment in the Medically Needy (MN) Program.

7. The petitioner did not dispute the income amount used by the Department in the eligibility process, but asserted as follows: That she has serious health issues that require constant monitoring, resulting in recurring medical expenses. That her SOC is too high and that she cannot afford that much monthly expense on a fixed income. During the hearing, the petitioner's witness reported the following expenses: \$625 for rent, \$32 for telephone, \$102 for electricity, \$50 for car insurance and \$30 for gas. Petitioner argued after paying for her household expenses, she has no money left and cannot afford any deductibles. The petitioner mentioned recurring medical expenses not previously reported to and verified by the Department.

8. The Department's representative explained that household expenses are not considered in the Medicaid eligibility determination and that the petitioner does not have to spend out of pocket if she has recurring medical expenses that exceed her SOC, and explained how the share of cost was determined and how it could be met. Petitioner was advised to submit all outstanding medical bills to the Department so that it can be determined when the share of cost is met and when Medicaid coverage could begin. The respondent agreed to give petitioner the opportunity to submit verification of recurring medical expenses to determine if the SOC could be lowered, however no response was received.

9. On December 15, 2015, the petitioner submitted additional information for the respondent to consider and respond. Petitioner's Composite Exhibit 2 is a print out of her recurring medical expenses. It indicates that the petitioner incurred \$133.06 in expenses for prescribed medications, \$52.31 for prescribed over-the-counter supplements and \$180 for specialist referrals between July 2015 and December 2015.

#### **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.

12. The Department determines Medicaid eligibility based on the household circumstances. When the household consists of parents and children, Medicaid

eligibility is determined under Family-Related Medicaid policy. When the household consists of an elderly or disabled individual or couple, Medicaid eligibility is determined under Adult-Related Medicaid policy (also referred to as SSI-Related Medicaid or Medically Needy). Medicaid eligibility is based on federal regulations. Petitioner was evaluated under the SSI-Related Medicaid coverage group.

13. Federal Regulations at 45 C.F.R. §435.500 sets forth the regulations for requirements for determining the eligibility of both categorically and medically needy individuals. 45 C.F.R. §435.520 states, "The agency must not impose an age requirement of more than 65 years." The regulation continues at 45 C.F.R. §435.541 to define disability as either determined by the Social Security Administration (SSA) or the Medicaid agency.

14. In this case, petitioner has been determined disabled by the SSA. For the SSI-Related Medicaid Programs, an individual must either be aged 65 or older or determined disabled by the SSA or the Department. Based on this regulation, the Department determined Medicaid eligibility for petitioner and approved her for SSI-Related Medically Needy Program benefits.

15. Federal Regulations at 20 C.F.R. §416.1123 defines how unearned income is counted and states in relevant part:

(b) Amount considered as income. We may include more or less of your unearned income than you actually receive.

(1) We include more than you actually receive where another benefit payment (such as a social security insurance benefit) (see Sec. 416.1121) has been reduced to recover a previous overpayment. You are repaying a legal obligation through the withholding of portions of your benefit amount, and the amount of the debt reduction is also part of your unearned income. Exception: We do not include more than you actually receive if you received both SSI benefits and the other benefit

at the time the overpayment of the other benefit occurred and the overpaid amount was included in figuring your SSI benefit at that time.

16. Fla. Admin. Code R. 65A-1.701, Definitions, states:

(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...

17. The above authority explains that the MEDS-AD (full Medicaid for an aged or disabled person) has an income limit of 88% of the federal poverty level.

18. The Eligibility Standards for SSI-Related Programs appear in the Department's Program Policy Manual CFOP 165-22 (the Policy Manual), at Appendix A-9. Effective July 2015, 88% of FPL for a one member household is \$864. Petitioner is not receiving Medicare but her income is in excess of the Program limit to receive full Medicaid benefits.

19. The Medically Needy Program provides coverage for individuals who meet the technical requirements for Medicaid but whose income or assets exceed the income limits.

20. Fla. Admin. Code R. 65A-1.710, SSI-Related Medicaid Coverage Groups, states in part:

The department covers all mandatory coverage groups and the following optional coverage groups:

(1) MEDS-AD Demonstration Waiver. A coverage group for aged and disabled individuals (or couples), as provided in 42 U.S.C. § 1396a(m)...(5) Medically Needy Program. 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 due to their level of income or resources. The program does not cover nursing

facility care, intermediate care for the developmentally disabled services, or other long-term care services...

(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.

21. The above authorities also define Medically Needy and 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. This program is available for aged or disabled individuals or eligible couples who do not qualify for the MEDS-AD Program.

22. Federal regulations at 20 C.F.R. § 416.1124, Unearned income we do not count, “(c) (12). The first \$20 of any unearned income in a month...”

23. Fla. Admin. Code R. 65A-1.716 (2), Income and Resource Criteria, sets forth the MNIL for an individual at \$180.

24. The above cited rules explain the budgeting procedure to determine the share of cost. The gross income is reduced by a standard deduction (\$20) and the MNIL for the assistance group size of one at \$180. The Department followed this procedure and determined the share of cost at \$867 effective July 2015 as petitioner’s income is greater than the income limit to receive full Medicaid benefits. Rent and other personal expenses are not allowable deductions under the SSI-Related Medicaid Program.

25. Based on the evidence, testimony, and the controlling authorities, the undersigned concludes that the Department correctly determined that the petitioner is not eligible for full Medicaid benefits and should be enrolled in the Medically Needy Program. No errors were found in the calculation of the amount of the share of cost.

**DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, the petitioner's appeal is denied. The Department's action is upheld.

**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 \_\_\_\_\_ day of \_\_\_\_\_, 2016,  
in Tallahassee, Florida.

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