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

[redacted]

APPEAL NO. 15F-09219

PETITIONER,

Vs.

[redacted]

FLORIDA DEPARTMENT
OF CHILDREN AND FAMILIES
CIRCUIT: 17 Broward
UNIT: 88249

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on December 17, 2015 at 11:40 a.m. All parties appeared telephonically from different locations.

APPEARANCES

For the Petitioner: [redacted]

For the Respondent: Luisa Soto, acting supervisor

STATEMENT OF ISSUE

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

PRELIMINARY STATEMENT

As of the date of the hearing, the petitioner did not receive the evidence packet, but agreed to go forward without it.

During the hearing, the petitioner did not submit any exhibits for the undersigned to consider. The Department submitted seven (7) exhibits which were accepted into evidence and marked as Respondent's Exhibits 1 through 7 respectively.

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, [redacted] is 44 years old and has been determined disabled by Social Security Administration (SSA) effective December 2014. Petitioner is not yet eligible for Medicare benefits.

2. Petitioner's monthly gross Social Security Disability (SSD) benefit is $1,956. The SSD income amount is not in dispute, *see* Respondent's Exhibit 4.

3. On January 14, 2015, the petitioner applied for Medicaid benefits for himself. He reported a past medical bill for hospitalization from [redacted], but 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. The share of cost amount is directly dependent on the petitioner's income.

5. To begin the budgeting process for the petitioner's Medically Needy Program, the Department counted monthly income of $1,956, minus a $20 standard income disregard followed by a $180 Medically Needy Income Level (MNIL) deduction for one person,

from his resulting income. After these deductions, the share of cost was determined to be $1,756, *see* Respondent's Exhibit 3.

6. On March 11, 2015, the Department sent a notice to the petitioner informing him he was approved for the Medically Needy Medicaid with a $3,278 estimated share of cost. In October 2015, the SOC was adjusted to $1,756. A notice of that action was not provided to the undersigned. On November 4, 2015, the petitioner requested an appeal challenging his 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 he has serious health issues that require constant monitoring, but less than his SOC. That his SOC is too high and that he cannot afford that much monthly expense on a fixed income. That the Medically Needy Program is only good for hospitalization. Petitioner argued after paying for his household expenses, he has no money left and cannot afford any deductibles. During the hearing, the petitioner mentioned that he has no recurring medical expenses for the moment, but is expecting monthly bills of $240 for his bed and $700 for catheters in addition to bills for his physical and respiratory therapy sessions.

8. The Department's representative explained that petitioner does not have to spend out of pocket if he has recurring medical expenses that exceed his 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 Department's representative explained that all unpaid medical bills not previously used can be used during any future months for which eligibility is needed.

CONCLUSIONS OF LAW

9. 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.

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

11. 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.

12. 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.

13. 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 him for SSI-Related Medically Needy Program benefits.

14. 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.

15. 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…

16. 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.

17. 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. The petitioner's countable income after the $20 deduction is $1,936, which exceeds the standard for full Medicaid benefits. Petitioner is not receiving Medicare but his income is in excess of the Program

limit to receive full Medicaid benefits. The respondent explored petitioner's eligibility for the Medically Needy Program.

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

19. 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.

20. 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.

21. 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…"

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

23. 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 $1,756.

24. 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.

25. Petitioner is encouraged to submit all medical bills to the Department for tracking so that it can be determined when the share of cost is met and when Medicaid coverage could begin.

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 29 day of January, 2016,

in Tallahassee, Florida.

Roosevelt Reveil

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Copies Furnished To: [redacted], Petitioner
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