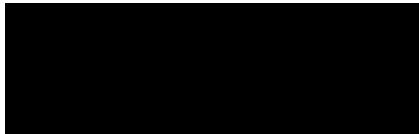


STATE OF FLORIDA  
DEPARTMENT OF CHILDREN AND FAMILIES  
OFFICE OF APPEAL HEARINGS

**FILED**

Feb 01, 2016

Office of Appeal Hearings  
Dept. of Children and Families



APPEAL NO. 15F-09398  
16F-00149

PETITIONER,

Vs.

CASE NO. 

FLORIDA DEPARTMENT  
OF CHILDREN AND FAMILIES  
CIRCUIT: 10 Polk  
UNIT: 88585

RESPONDENT.

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**FINAL ORDER**

Pursuant to notice, the undersigned convened an administrative hearing telephonically in the above-referenced matter on January 5, 2016 at 9:35 a.m.

**APPEARANCES**

For the Petitioner: 

For the Respondent: Barbara Haley, ACCESS Supervisor

**STATEMENT OF ISSUE**

Petitioner is appealing the Department's action of November 6, 2015 terminating her Qualifying Individuals 1 (QI 1) Medicare Buy-In benefit. The respondent carries the burden of proof by the preponderance of evidence for the QI 1 benefit.

Petitioner is appealing the beginning date of Food Assistance benefits as the Department did not notify her of a policy change, which would have allowed her to

receive Food Assistance benefits sooner. The petitioner carries the burden of proof by the preponderance of evidence for the Food Assistance benefits.

### **PRELIMINARY STATEMENT**

The Department submitted evidence on December 28, 2015, which was entered as Respondent Exhibit 1.

The record remained open through January 12, 2016 for the Department to submit additional evidence as related to the Food Assistance appeal requested during hearing on 1/5/2016. The Department submitted the information on January 11, 2016. The information was entered as Respondent Exhibit 2.

### **FINDINGS OF FACT**

1. The Department issued a Notice of Case Action on September 3, 2013 to inform the petitioner her Food Assistance Program (FAP) benefit would end on September 30, 2013. The Notice provided the reason the benefits would end was "Your household's income is too high to qualify for this program.
2. The Department explained in April 2, 2013 the policy changed for receipt of the minimum benefit of FAP. The policy outlined that one or two member assistance groups must be eligible for a benefit of \$0 or more to receive the minimum monthly allotment of \$16.
3. The Department believes the petitioner's FAP benefit closed effective September 30, 2013 as the April 2, 2013 policy was applied to her case.
4. The Department explained on October 11, 2013 the Department rescinded the policy transmittal issued on April 2, 2013. The requirements for receipt of the minimum allotment for a one or two member household were included in a new

Transmittal C-13-10-0007. The Transmittal also provided instructions on how to handle reviews and applications for FAP benefits because of the policy change.

5. The Department believes notices were issued to those who would regain eligibility because of the October policy change, but could not recall during the hearing.

6. The petitioner submitted applications on December 2, 2013, November 26, 2014 and October 23, 2015 for SSI-Related Medicaid and Medicare Savings Plan benefits only. The petitioner did not select FAP on either application.

7. The petitioner submitted an application on November 9, 2015 for FAP only.

8. The Department issued a Notice of Case Action on November 13, 2015 approving the petitioner's November 9, 2015 application for FAP. The petitioner's November 2015 allotment was \$11.00. The petitioner's FAP benefit beginning December 2015 is \$16.

9. The petitioner reported she reapplied for FAP on November 9, 2015 after a conversation with a Department representative a few days prior to that date. The Department representative she spoke with advised she should have been eligible for FAP since the policy changed a month after her FAP closed.

10. The Department recorded in the "Running Record Comments" a petitioner inquiry on December 3, 2015 about the FAP benefits she should have received from October 2013 until her application on November 9, 2015.

11. The Department explained that because the petitioner did not mark her application for FAP each time she reapplied after September 2013, she did not have an application for benefits until November 2015.

12. The Department did not have an active assistance group to reinstate benefits when the policy changed and did not take action to reopen the FAP benefits.

13. The petitioner explained she did not believe she was eligible for FAP and did not mark her applications for benefits to which she did not believe herself to be entitled. She believes the Department should have notified her of the policy change in October 2013 so that she could have reapplied and not lost two years of FAP benefits.

14. The Department issued a Notice of Case Action on November 6, 2015 informing the petitioner that her Qualifying Individual 1 (QI 1) benefit was denied. The Notice indicates the reason for denial was "Your household's income is too high to qualify for this program" and "You are receiving the same type of assistance from another program."

15. The petitioner receives income in the amount of \$1,077 from Social Security and \$269.72 from [REDACTED] long-term disability. Her total income is \$1,346.72 effective January 2015.

16. The Department cited the Income Limit effective July 2015 for the QI 1 program is \$1,325.

17. The Department explained policy only allows a \$20 disregard in the QI 1 eligibility determination.

18. The petitioner understands the rules as the Department explained them. However, being only \$1.72 over the income limit for QI 1 puts her in a bad situation, as she will now have to pay her Medicare premium. She does not know how she will afford her expenses and the premium.

#### **CONCLUSIONS OF LAW**

19. 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.

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

### FOOD ASSISTANCE

21. Federal Food Assistance Regulations found in 7 C.F.R. § 273.10

“Determining household eligibility and benefits levels” states in relevant part:

- (e) Calculating net income and benefit levels...
- (2) Eligibility and benefits....
  - (ii)(A) Except as provided in paragraphs (a)(1), (e)(2)(iii) and (e)(2)(vi) of this section, 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 as calculated in paragraph (e)(1) of this section.
    - (1) The State agency shall round the 30 percent of net income up to the nearest higher dollar; or
    - (2) The State agency shall not round the 30 percent of net income at all. Instead, after subtracting the 30 percent of net income from the appropriate Thrifty Food Plan, the State agency shall round the allotment down to the nearest lower dollar.
  - (B) If the calculation of benefits in accordance with paragraph (e)(2)(ii)(A) of this section for an initial month would yield an allotment of less than \$10 for the household, no benefits shall be issued to the household for the initial month.
  - (C) Except during an initial month, all eligible one- and two-person households shall receive minimum monthly allotments equal to the minimum benefit and all eligible households with three or more members which are entitled to \$1, \$3, and \$5 allotments shall receive allotments, of \$2, \$4, and \$6, respectively, to correspond with current coupon book determinations.

22. The Department's Policy Transmittal C-13-10-0007 dated October 11, 2013 “Food Assistance Minimum Benefit” states in relevant part:

This memorandum rescinds Transmittal C-13-04-0002 effective April 2, 2013, 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 or
- The AG contains an elderly or disabled member and does not pass the 200% gross income test but does have income less than or equal to the 100% of the net income limit or
- The AG contains an individual disqualified for an intentional program violation, felony drug trafficking, fleeing felon, or serving an employment and training sanction and has income less than or equal to the 130% gross and the 100% net income limits.

#### Providing the Food Assistance Minimum Allotment to Eligible AGs

##### Reviews:

When processing reviews for one or two member Temporary Cash Assistance or Medicaid AGs, staff must:

- Determine if the Department closed a food assistance minimum benefit AG in the case because the food assistance budget calculated a negative benefit for April 2013 or after
- Open the food assistance AG using the FIAT process explained in Attachment 1, if the case contains a closed negative food assistance minimum benefit AG and

Issue auxiliaries for past months' minimum food assistance benefits, to AGs closed or denied only because of the recent policy clarification. For months prior to November, the minimum benefit was \$16 and for November 2013 and after, the minimum benefit will be \$15. Do not issue an auxiliary for any month prior to April 2013 or when a valid application was on file, whichever is later

- For example, if a household applied in June 2013, failed and was denied due to the minimum allotment process, and is completing a review for another program now, open the food assistance case for October and ongoing, including the FIAT and complete an auxiliary for June, July, August, and September

23. The findings show the petitioner's benefits closed effective September 30, 2013 due to the policy change from April 2, 2013. The findings show the petitioner filed

an application to recertify her Medicaid benefits on December 2, 2013. The example in the above controlling authority explains a situation similar to this instant case. The undersigned concludes the Department failed to follow the instructions provided to reopen the food assistance case and issue the missing benefits due to the petitioner at that time.

24. 7 C.F.R. § 273.17 “Restoration of lost benefits” states:

(a) Entitlement. (1) The State agency shall restore to households benefits which were lost whenever the loss was caused by an error by the State agency or by an administrative disqualification for intentional Program violation which was subsequently reversed as specified in paragraph (e) of this section, or if there is a statement elsewhere in the regulations specifically stating that the household is entitled to restoration of lost benefits. Furthermore, unless there is a statement elsewhere in the regulations that a household is entitled to lost benefits for a longer period, benefits shall be restored for not more than twelve months prior to whichever of the following occurred first:

(i) The date the State agency receives a request for restoration from a household; or

(ii) The date the State agency is notified or otherwise discovers that a loss to a household has occurred.

(2) The State agency shall restore to households benefits which were found by any judicial action to have been wrongfully withheld. If the judicial action is the first action the recipient has taken to obtain restoration of lost benefits, then benefits shall be restored for a period of not more than twelve months from the date the court action was initiated. When the judicial action is a review of a State agency action, the benefits shall be restored for a period of not more than twelve months from the first of the following dates:

(i) The date the State agency receives a request for restoration:

(ii) If no request for restoration is received, the date the fair hearing action was initiated; but

(iii) Never more than one year from when the State agency is notified of, or discovers, the loss.

25. The findings show the petitioner reapplied for Food Assistance on November 9, 2015 following a conversation with the Department. The findings also show the Department was aware of the petitioner's request to have her benefits restored on December 3, 2015. The policy transmittal issued by the Department did not require an application indicating Food Assistance to make the correction in 2013. The undersigned concludes Department failed to reopen the petitioner's FAP benefits upon her application in December 2013. In accordance with the above controlling authority, the undersigned concludes the petitioner is entitled to have her benefits restored for 12 months from the discovery date of the loss to the household. The undersigned further concludes the discovery date was November 2015 when the Department advised the petitioner to reapply for FAP.

#### QUALIFYING INDIVIDUALS 1

26. Fla. Admin. Code R 65A-1.702 "Special Provisions" states in part: "(d) Part B Medicare Only Beneficiary (QI1). Under QI1 coverage, individuals are only entitled to payment of their Medicare Part B premium. (This is coverage for individuals who would be eligible for QMB or SLMB coverage except their income exceeds limits for those programs.)"

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

(j) For a Qualified Individual 1 (QI1), income must be greater than 120 percent of the federal poverty level, but equal to or less than 135 percent of the federal poverty level. QI1 is eligible only for payment of the Part B Medicare premium through Medicaid.



28. Federal Regulations at 20 C.F.R. § 416.1121 “Types of unearned income” states in relevant part: “(a) Annuities, pensions, and other periodic payments. This unearned income is usually related to prior work or service. It includes, for example, private pensions, social security benefits, disability benefits, veterans benefits, worker’s compensation, railroad retirement annuities and unemployment insurance benefits.”

29. 20 C.F.R. § 416.1124 “Unearned Income we do not count” (c)(12) states, “(12) The first \$20 of any unearned income in a month other than income in the form of in-kind support and maintenance received in the household of another (see § 416.1131) and income based on need. Income based on need is a benefit that uses financial need as measured by your income as a factor to determine your eligibility.”

30. The Department’s Program Policy Manual, CFOP 165-22, Appendix A-9 effective July 1, 2015 lists the income limit for an individual to receive QI 1 as \$1,325.

31. The findings show the petitioner’s income is from Social Security and long-term disability. The above controlling authorities identify both of these income types as unearned income. The findings show the petitioner’s total income is \$1,346.72. The above controlling authority allows \$20 of this income to be excluded. The undersigned concludes the petitioner’s countable income is \$1,326.72 ( $\$1,346.72 - \$20 = \$1,326.72$ ). The undersigned further concludes the petitioner’s countable income of \$1,326.72 does exceed the income limit to receive QI 1.

32. The undersigned reviewed all applicable rules and regulations and found no other allowable deduction allowed for QI 1 eligibility determination. Therefore, the undersigned concludes the Department’s action to terminate the petitioner’s QI 1 benefit

is correct as the QI 1 program has the highest limit of the three Medicare Savings Programs.

### **DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, the Food Assistance appeal (16F-00149) is granted. The Department is to restore the petitioner's minimum benefit amount beginning November 2014. The restoration is to include bringing the petitioner to the full minimum benefit for November 2015.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Qualifying Individuals 1 appeal (15F-09398) is denied.

**ANY FOOD STAMP BENEFITS DUE APPELLANT PURSUANT TO THIS ORDER MUST BE AVAILABLE WITHIN (10) TEN DAYS OF THIS DECISION OR WITHIN (60) SIXTY DAYS OF THE REQUEST FOR THE HEARING. ANY BENEFITS DUE WILL BE OFFSET BY PRIOR UNPAID OVERISSUANCES.**

### **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 01 day of February, 2016,  
in Tallahassee, Florida.



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