

Jan 20, 2016

Office of Appeal Hearings
Dept. of Children and FamiliesSTATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGSAPPEAL NO. 15F-09653
APPEAL NO. 16F-00222

PETITIONER,

Vs.

CASE NO. FLORIDA DEPARTMENT
OF CHILDREN AND FAMILIES
CIRCUIT: 15 Palm Beach
UNIT: 88595RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on January 4, 2016, at 11:31 a.m. All parties appeared telephonically from different locations.

APPEARANCESFor the Petitioner: 

For the Respondent: Dotlin Williamson, supervisor.

STATEMENT OF ISSUE

At issue is the amount of Food Assistance Program benefits the petitioner was approved to receive at recertification. The petitioner carries the burden of proof in the FAP appeal by the preponderance of evidence.

The petitioner is also appealing the denial of full Medicaid and the enrollment in the Medically Needy Program with an estimated share of cost. She is seeking full Medicaid. The petitioner carries the burden of proof in the Medicaid appeal.

PRELIMINARY STATEMENT

The Department presented one exhibit at the hearing which was entered into evidence and marked as Respondent's Composite Exhibit 1. The petitioner did not present any exhibits at the hearing. The record was held open until January 8, 2016 for the respondent to provide the FAP and Medicaid budgets. The respondent submitted three additional exhibits which were accepted, entered into evidence and marked as Respondent's Composite Exhibits 2, 3 and Respondent's Exhibit 4. The petitioner provided one exhibit which was accepted, entered into evidence and marked as Petitioner's Exhibit 1. The record was closed on January 8, 2016.

FINDINGS OF FACT

1. On November 9, 2015, the petitioner submitted an application for recertification of Food Assistance Program (FAP) benefits through the Department's web site. The petitioner's household consists of herself (age 44) and her son (age 8). She was determined disabled and receives Social Security Disability Income (SSDI) of \$870.90 monthly. She receives alimony of \$900 monthly and child support of \$27 monthly. These amounts were verified by a letter from the petitioner's attorney and Order of Final Dissolution of Marriage. She pays for Medicare part B \$104.90 monthly. Her son was receives Social Security benefits (SS) of \$204 based on her disability. She had expenses for rent of \$1,200, electricity of \$80 and telephone of \$40. The petitioner listed monthly medical expenses of \$60 for specialist co-pays. She listed no tax

deductions. The Department approved FAP benefits and Medicaid benefits without pending the petitioner to provide verification of her medical expenses for specialist co-pays. No deduction was given for her medical expenses for specialist co-pays.

2. On November 17, 2015, the respondent sent the petitioner a Notice of Case Action informing her that her Food Assistance Program benefits will stay the same. The same notice informed her she was eligible for continued Medicaid coverage.

3. The petitioner requested a hearing on November 20, 2015 to challenge the amount of FAP benefits she was approved to receive and also her enrolment in the Medically Needy program with an estimated SOC. The petitioner requested this hearing as her medical expenses had increased.

4. At the hearing, the Department offered to update the FAP budget and Medicaid budget with new medical expenses of recurring co-payments for specialist co-pays.

5. To determine the FAP benefits for October 2015 ongoing, the respondent added the petitioner's monthly gross alimony of \$900, SSDI of \$870, son's SS of \$204 and child support of \$27, resulting to the monthly unearned income of \$2,001. A standard deduction of \$155 was subtracted and an excess medical expense of \$166.90 was subtracted resulting in total adjusted income of \$1,679.10. The excess medical expenses were calculated by subtracting \$35 from her total medical expenses of \$201.90 (\$104.90 Medicare Part B + \$80 co-payments \$12 prescriptions + \$5 Humana). The shelter cost of \$1,200 was added to the utility standard of \$345 to get the total shelter/utility cost of \$1,545. Fifty percent of the adjusted net income (\$839.55) is the standard shelter. This was subtracted from the total shelter/utility, resulting in \$705.45. This was subtracted from the adjusted income (\$1,679) resulting in \$973.65 as the Food

Assistance adjusted income. The maximum net income limit for a household of two is \$1,328. As the petitioner's net income is lower than maximum net income limit, the respondent proceeded to calculate the benefit reduction. The Food Assistance adjusted income of \$973.65 was multiplied by 30%, to get the benefit reduction of \$293 (rounded up). This was subtracted from the maximum FAP amount of \$357 resulting in \$64. The \$10 recoupment was subtracted resulting in \$54 as the petitioner's monthly FAP.

SSDI	\$870.00
Alimony	\$900
SS(son)	\$204
Child Support	\$27
Total household income	\$2,001
Standard deduction for a household of 2	(\$155)
Excess medical expenses (\$201-\$35.00)	(\$166.90)
Adjusted income after deductions	
Shelter costs	\$1,200
Standard utility Allowance	\$345
Total shelter/utility cost	\$1,545
Shelter standard (50% adjusted income)	\$839
Excess shelter deduction	\$705
Adjusted income	\$1,679.10
Excess Shelter Deduction	\$705.45
Adjusted income after shelter deduction	\$973.65
Thrifty Food Plan for HH 2	\$357.00
30% of \$973.65	(\$293)
Monthly Allotment	\$64
Recoupment	\$10
Recurring Monthly Allotment	\$54

6. On January 14, 2016, the Department issued a new Notice of Case Action, advising the petitioner that she was eligible for \$54 in FAP benefits. The same notice

informed that she will receive \$144 more for October 1, 2015 through January 31, 2016.

The Department supplemented the months October 2015 through January 2016.

7. The respondent determined the petitioner's household income exceeded the income limit for full Medicaid benefits and enrolled her in the Medically Needy Program with a share of cost (SOC).

8. The respondent performed the following budget calculations when it determined the petitioner's estimated SOC. Her alimony and SSDI were added to get her total monthly income of \$1,770.90. The Medically Needy Income Limit of \$387 for a household size of two was subtracted resulting to \$1,383. Her insurance premium of \$109.90 was subtracted resulting to the petitioner's SOC of \$1,273.

9. By notice dated November 17, 2015, the respondent notified the petitioner her Medically Needy has been reviewed and the members listed below are eligible for continued Medicaid coverage. Her son's Medicaid benefit is not at issue.

10. The petitioner explained she is disabled and needs special food. She also asserts she stopped going to some of her doctors because she cannot afford to pay the co-payments.

CONCLUSIONS OF LAW

11. 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.

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

The FAP benefits issue will be addressed first.

13. Federal regulation C.F.R. § 273.9 addresses income/allowable deductions budgeting in the FAP in part and states as follows:

(a) Income eligibility standards. Participation in the Program shall be limited to those households whose incomes are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet.

(b) Definition of income...

(2) Unearned income shall include, but not be limited to: ...

(ii) Annuities; pensions; retirement, veteran's, or disability benefits; worker's or unemployment compensation including any amounts deducted to repay claims for intentional program violations as provided in §272.12; old-age, survivors, or social security benefits...

(iii) Support or alimony payments made directly to the household from non household members.

14. Federal regulation 7 C.F.R. § 273.9(d) sets forth the specific deductions allowable in the calculation of the final Food Assistance Program benefit allotment.

These potential allowable deductions are limited to include only: (1) standard deduction, (2) earned income deduction, (3) excess medical deduction, (4) dependent care deduction, (5) child support deduction, (6) standard utility allowance, and shelter expenses.

15. The respondent must follow these federal budgeting guidelines when determining eligibility. It also directs the Department to consider Social Security Disability Income, Social Security benefits, alimony and child support income as unearned incomes that must be included in the eligibility determination.

16. The federal regulation 7 C.F.R. § 273.10 (e) addresses “Calculating net income and benefit levels” as follows:

(1) Net monthly income (i)...

(A) Add the gross monthly income earned by all household members and the total monthly unearned income of all household members, minus income exclusions, to determine the household's total gross income...

(C) Subtract the standard deduction.

(H) Total the allowable shelter expenses to determine shelter costs, unless a deduction has been subtracted in accordance with paragraph (e)(1)(i)(G) of this section. Subtract from total shelter costs 50 percent of the household's monthly income after all the above deductions have been subtracted. The remaining amount, if any, is the excess shelter cost...

(2) Eligibility and benefits...

(ii)(A)...the household's monthly allotment shall be equal to the maximum food stamp allotment for the household's size reduced by 30% of the household's net monthly income...

17. The above-cited regulation describes the eligibility process and defines deductions. The petitioner was credited with a standard deduction, an excess shelter deduction and an excess medical deduction. There is no indication the petitioner was eligible for any other deductions.

18. The Food Assistance standards for income and deductions appear in the Department's Program Policy Manual CFOP 165-22 (Policy Manual), at Appendix A-1. Effective October 2015, the 200% Federal Poverty level (FPL) for a household size of two is \$2,191. A two-person assistance group's net income limit is \$1,328, the standard deduction is \$155 and the standard utility allowance is \$345. The same reference shows the maximum FAP benefits for two persons as \$357 effective October 2015.

19. After considering the evidence, the testimony and the appropriate authorities cited above, the hearing officer concludes the respondent's action to approve \$64 in

FAP benefits for October 2015 ongoing before \$10 recoupment and \$54 after recoupment for the petitioner is correct.

20. The hearing officer concludes the petitioner is not eligible for any additional FAP benefits based on the income and expenses presented and on the above-cited rules.

Medicaid Benefits will now be addressed

The petitioner has been determined disabled by Social Security. Her Medicaid eligibility was determined under the Family Related Medicaid as it was more advantageous for the petitioner.

21. Federal Medicaid Regulations 42 C.F.R. § 435.218 Individuals with MAGI-based income above 133 percent FPL (Federal Poverty Level) states in part:

(a) *Basis*. This section implements section 1902(a) (10) (A) (ii) (XX) of the Act.

(b) *Eligibility*—(1) *Criteria*. The agency may provide Medicaid to individuals who:

(i) Are under age 65;

(ii) Are not eligible for and enrolled for mandatory coverage under a State's Medicaid State plan in accordance with subpart B of this part;

(iii) Are not otherwise eligible for and enrolled for optional coverage under a State's Medicaid State plan in accordance with section 1902(a)(10)(A)(ii)(I) through (XIX) of the Act and subpart C of this part, based on information available to the State from the application filed by or on behalf of the individual; and

(iv) Have household income that exceeds 133 percent FPL but is at or below the income standard elected by the agency and approved in its Medicaid State plan, for the applicable family size.

(2) *Limitations*. (i) A State may not, except as permitted under an approved phase-in plan adopted in accordance with paragraph (b)(3) of this section, provide Medicaid to higher income individuals described in paragraph (b)(1) of this section without providing Medicaid to lower income individuals described in such paragraph.

(ii) The limitation on eligibility of parents and other caretaker relatives specified in § 435.119(c) of this section also applies to eligibility under this section.

22. Family-Related Medicaid income criteria is set forth in 42 C.F.R. 435.603 and states:

(a) (2) Effective January 1, 2014, the agency must apply the financial methodologies set forth in this section in determining the financial eligibility of all individuals for Medicaid, except for individuals identified in paragraph (j) of this section and as provided in paragraph (a)(3) of this section.

(3) In the case of determining ongoing eligibility for beneficiaries determined eligible for Medicaid coverage to begin on or before December 31, 2013, application of the financial methodologies set forth in this section will not be applied until March 31, 2014 or the next regularly-scheduled renewal of eligibility for such individual under §435.916 of this part, whichever is later.

(b) *Definitions.* For purposes of this section—

Child means a natural or biological, adopted or step child.

Code means the Internal Revenue Code.

Family size means the number of persons counted as members of an individual's household. In the case of determining the family size of a pregnant woman, the pregnant woman is counted as herself plus the number of children she is expected to deliver. In the case of determining the family size of other individuals who have a pregnant woman in their household, the pregnant woman is counted, at State option, as either 1 or 2 person(s) or as herself plus the number of children she is expected to deliver....

(c) *Basic rule.* Except as specified in paragraph (i), (j), and (k) of this section, the agency must determine financial eligibility for Medicaid based on "household income" as defined in paragraph (d) of this section.

(d) *Household income*—(1) *General rule.* Except as provided in paragraphs (d)(2) through (d)(4) of this section, household income is the sum of the MAGI-based income, as defined in paragraph (e) of this section, of every individual included in the individual's household.

(2) *Income of children and tax dependents.* (i) The MAGI-based income of an individual who is included in the household of his or her natural, adopted or step parent and is not expected to be required to file a tax return under section 6012(a)(1) of the Code for the taxable year in which eligibility for Medicaid is being determined, is not included in household income whether or not the individual files a tax return.

(ii) The MAGI-based income of a tax dependent described in paragraph (f)(2)(i) of this section who is not expected to be required to file a tax return under section 6012(a)(1) of the Code for the taxable year in which eligibility for Medicaid is being determined is not included in the household income of the taxpayer whether or not such tax dependent files a tax return.

(3) In the case of individuals described in paragraph (f)(2)(i) of this section, household income may, at State option, also include actually available cash support, exceeding nominal amounts, provided by the person claiming such individual as a tax dependent.

(4) Effective January 1, 2014, in determining the eligibility of an individual using MAGI-based income, a state must subtract an amount equivalent to 5 percentage points of the Federal poverty level for the applicable family size only to determine the eligibility of an individual for medical assistance under the eligibility group with the highest income standard using MAGI-based methodologies in the applicable Title of the Act, but not to determine eligibility for a particular eligibility group.

23. The Policy Manual at passage 1830.0101 Income (MFAM) states:

...**Taxable Unearned income** is income for which there is no performance of work or services. Taxable unearned income may include:

1. Retirement, disability payments, unemployment/workers' compensation, etc.;
2. Annuities, pensions, and other regular payments;
3. Alimony and spousal support payments;
4. Dividends, interest, and royalties;
5. Prizes and awards;
6. Social Security and Social Security Disability Income.

Excluded income is income (earned or unearned) that is not counted when determining eligibility.

24. The Policy Manual at passage 1830.0700, addresses SUPPORT PAYMENTS (MFAM) and states:

Support payments are funds paid by a non-custodial parent or spouse intended for the support or maintenance of a member of the household. Support paid by a non-custodial parent is considered child support to the child for whom the payment is intended and is excluded.

All child support received or anticipated to be received for any member of the including delinquency or arrearages is excluded unearned income. Payments received for a child no longer in the home is considered a contribution and is also excluded.

Spousal support or alimony is an amount of money allocated from one spouse to another by the court as a result of a divorce or separation agreement. The amount of alimony received or anticipated to be received must be counted as unearned income minus any collection fees charged.

25. The Policy Manual at passage 2630.0108 Budget Computation (MFAM) states:

Financial eligibility for Family-Related Medicaid is determined using the household's Modified Adjusted Gross income (MAGI). The MAGI is the household's adjusted gross income as calculated by the Internal Revenue Service plus any foreign earned income and interest income exempt from tax.

In computing the assistance group's eligibility, the general formula is:

Step 1 - (Gross Unearned + Gross Earned) = (Total Gross Income).

Step 2 - Deduct any allowable income tax deductions (lines 23-35 from 1040). Deduct any allowable deductions for financial aid or self-employment to obtain the Modified Adjusted Gross Income.

Step 3 - Deduct the appropriate standard disregard. This will give the countable net income.

Step 4 - Compare the total countable net income to the coverage group's income standard.

If less than or equal to the income standard* for the program category, **STOP**, the individual is eligible. If greater than the income standard for the program category, continue to **Step 5**.

Step 5 - Apply a MAGI deduction (5% of the FPL based on SFU size).

If the 5% disregard would make the individual eligible, include the disregard. Otherwise the individual is ineligible for Medicaid.

Individuals determined ineligible for Medicaid will be enrolled in Medically Needy and referred, as appropriate, to Florida Kid Care and/or the Federally Facilitated Marketplace (FFM).

26. The Policy Manual at Appendix A-7 indicates the Family-Related Medicaid Income Limit for a parent in a household size of two as \$241, the Standard Disregard of \$146, the Medically Needy Income Limit (MNIL) of \$387 and the MAGI Disregard of \$66.

27. In accordance with the above controlling authorities, the undersigned calculated eligibility for Medicaid for the petitioner and did not find the petitioner eligible for full Medicaid as the petitioner's modified adjusted gross income is more than the income limit of \$241 for a household of two. Step 1: The undersigned added the petitioner's SSDI of \$870.90 to her alimony of \$900 and child support resulting to the modified adjusted gross income of \$1,770.90. Step 2: There are no deductions provided, as

there was no tax return. Step: 3: The total income of \$1,770.90 less the standard disregard of \$146 is \$1,624.90. Step 4: The total countable net income of \$1,624.90 was compared with the income standard for two of \$241. Step 5: Since it was greater than the income standard, the MAGI disregards of \$66 was subtracted, resulting to \$1,558.90. This was compared to the income limit of \$241 for full Medicaid. The petitioner's income was greater than the income limit for full Medicaid. The undersigned concludes the petitioner is ineligible for full Medicaid. The undersigned further concludes Medically Needy eligibility must be explored for the petitioner.

The Medically Needy share of cost will now be addressed

28. Fla. Admin. Code R. 65A-1.701 (30) defines Share of Cost (SOC) as, "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".

29. The methods of determining the share of cost for Medically Needy Program benefits is set forth in the Fla. Admin. Code R. 65A-1.713. It states:

(1) (h) For Medically Needy, income must be less than or equal to the Medically Needy income standard after deduction of allowable medical expenses...

(4) (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 cost...

30. The above cited authorities and policies address income standards and limits, calculating countable income, and income budgeting in the Family-Related Medically Needy Program.

31. The Department's Transmittal No. P-15-09-0009, dated September 18, 2015, addresses Medically Needy Budgeting for Family-Related Medicaid and states:

SFU/Counting Income for Medically Needy

Staff will continue to determine the Medicaid Standard Filing Unit (SFU) based on expected tax filing information as provided by the individual. If an assistance group (AG) is ineligible for full Medicaid coverage due to income, eligibility for Medically Needy coverage must be determined. A child with countable income must be excluded from the Family-Related Medically Needy AG if inclusion is not beneficial to the individual whose eligibility is being determined...

If the AG's countable income is less than or equal to the Medically Needy Income Limit (MNIL) for the remaining household size, open the AG for Medically Needy with a \$0 share of cost.

If the AG's countable income is greater than the MNIL for the remaining household size, enroll the AG in Medically Needy with a share of cost as determined by the remaining countable income.

Note: Do not exclude a child(ren) with countable income from a full coverage Medicaid AG. This policy only applies to the Family-Related Medically Needy Program.

32. The above transmittal explains that the petitioner's child's income is excluded in the petitioner's Medically Needy budget.

33. The undersigned carefully reviewed the Department's determination of the petitioner's share of cost budget and did not find any errors with the Department's calculation of the petitioner's SOC. Her SSDI of \$870.90 was added to her alimony of \$900 to get her modified adjusted gross income of \$1,770.90. The MNIL of \$387 was subtracted to get \$1,383, less the medical insurance premiums of \$109.90 resulting in the petitioner's share of cost of \$1,273.

34. The undersigned concludes the respondent's action to deny full Medicaid benefits and to enroll the petitioner in the Medically Needy Program was correct.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law the petitioner's appeal for FAP benefit is denied.

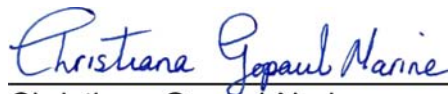
As to the Medicaid appeal, the appeal is denied for full Medicaid and the respondent's action is upheld. As to the petitioner's SOC, the appeal is denied.

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 20 day of January, 2016,

in Tallahassee, Florida.



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