

Feb 18, 2016

Office of Appeal Hearings
Dept. of Children and Families

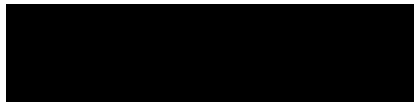
STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS



APPEAL NO. 15F-09696

PETITIONER,

Vs.



FLORIDA DEPARTMENT
OF CHILDREN AND FAMILIES
CIRCUIT: 11 Dade
UNIT: 66703

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on January 28, 2016 at 10:37 am. All parties appeared telephonically from different locations.

APPEARANCES

For the petitioner:  pro se

For the respondent: Osvlado Cruz,
ACCESS Economic Self-Sufficiency Supervisor

STATEMENT OF ISSUE

At issue is whether the respondent's action to terminate petitioner's full Medicaid and instead enroll him in the Medically Needy Program with a \$1454 Share of Cost (SOC) is proper. The burden of proof was originally assigned to the petitioner; however, after further review, the burden of proof is assigned to the respondent in accordance with Fla. Admin. Code R. 65-2.060 (1).

PRELIMINARY STATEMENT

By notice dated November 18, 2015, respondent notified petitioner that his full Medicaid would end November 31, 2015 and he was enrolled in the Medically Needy Program with a \$1,454 SOC, effective December 1, 2015. Petitioner timely requested a hearing to challenge termination of full Medicaid and enrollment in the Medically Needy Program.

Petitioner did not submit any exhibits. Respondent submitted five exhibits, which were entered into evidence and marked as Respondent Exhibits "1" through "5". The record was held open until February 1, 2016 to submit additional evidence including application submitted by petitioner, income standards for Medicaid, and policy related to calculating income for Medicaid. The above mentioned information was provided on January 28, 2016, and the record was closed on February 1, 2016.

FINDINGS OF FACT

1. Prior to the action under appeal, the petitioner received full Medicaid benefits.
2. On October 16, 2015, the petitioner submitted a web application for Medicaid benefits for himself and his wife. On that application, he reported 2 household members: himself and his wife. The petitioner asserts that he was only requesting Medicaid benefits for himself.
2. Petitioner is disabled and receives \$855 in Social Security Disability Income (SSDI) per month. Petitioner is not currently receiving Medicare Part A and B. His wife is employed at [REDACTED] and is paid bi-weekly. There were no reported unpaid reoccurring medical expenses.

3. The respondent determined the household's income using paystubs provided by the petitioner. The income is as follows:

[REDACTED]	<u>Date</u>	<u>Gross Amount</u>
	10/02/2015	\$892.89
	<u>10/16/2016</u>	<u>\$892.89</u>
		\$1,785.78

4. Petitioner does not have minor children, therefore, he is not eligible for Family Medicaid. To be eligible for Adult (SSI-Related) Medicaid, petitioner's income cannot exceed the \$1,169 income limit. The next program available is the Medically Needy Program with a SOC.

5. Respondent determined petitioner's countable income as follows:

Unearned Income

\$855.00	SSDI
- 20.00	unearned income disregard
<u>\$835.00</u>	countable unearned income

Earned Income

\$1,785.78	earned income
- 65.00	earned income disregard
- 860.39	1/2 remaining disregard
<u>\$860.39</u>	countable earned income

6. Respondent determined petitioner's SOC as follow:

\$860.00	earned countable income (rounded down)
+ 835.00	unearned countable income
- 241.00	Medically Needy Income Level (MNIL)
<u>\$1,454.00</u>	SOC

7. On November 18, 2015, respondent mailed petitioner a Notice of Case Action notifying his Medicaid was terminated and he was enrolled in the Medically Needy Program with a \$1,454 SOC.

8. Petitioner asserts he has too many expenses and should have full Medicaid because he is disabled and incurs too many household expenses.

CONCLUSIONS OF LAW

8. 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.

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

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

...(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.

11. The Fla. Admin. Code R. 65A-1.713, SSI-Related Medicaid Income

Eligibility Criteria states in part:

(1) Income limits. An individual's income must be within limits established by federal or state law and the Medicaid State Plan. The income limits are as follows:

(a) For MEDS-AD Demonstration Waiver, income cannot exceed 88 percent of the federal poverty level...

(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 costs. If countable income exceeds the

Medically Needy income level the department shall deduct allowable medical expenses in chronological order, by day of service...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...

12. The above authority explains to be eligible for full Medicaid; income cannot exceed 88 percent of the federal poverty level. Medically Needy provides coverage for individuals who do not qualify for full Medicaid due to income.

13. The Department's Program Policy Manual, CFOP 165-22 (The Policy Manual), at appendix A-9 (January 2016), identifies \$1,169 as 88 percent of the federal poverty level for a household size of two.

14. The Policy Manual at section 2240.0604.03, Income of Spouse of Eligible Individual (MSSI, SFP) states:

Each individual who is at least age 65, blind, or disabled, and whose countable income and assets do not exceed certain prescribed limits will be an eligible individual. If such an eligible individual is living in the same household with a spouse, who is neither aged, blind, nor disabled, the income and assets of the spouse (whether or not available to the individual) are considered in determining the eligible individual's income and assets, except in circumstances where this is deemed inequitable. An aged, blind, or disabled individual who has an eligible spouse may only qualify as an eligible individual if the combined countable income and assets of the couple do not exceed the income and asset limits specified for such couples.

15. Petitioner's wife's monthly earned income is calculated at \$1,785.79. Petitioner's monthly unearned income is calculated at \$855. Petitioner's countable monthly income \$1,695 exceeds the \$1,169 income limit to be eligible for full Medicaid. Therefore, petitioner is not eligible for full Medicaid.

16. 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.

17. Federal Regulations 20 C.F.R. § 416.1124 explain unearned income not counted and states in part “(c) Other unearned income we do not count... (12) The first \$20.00 of any unearned income in a month...”

18. Federal Regulations 20 C.F.R. §416.112(c) (5) explains a “\$65 earned income in a month” disregard.

19. The Department’s Program Policy Manual 2440.0321, Earned Income Disregard (MSSI, SFP) states “the earned income disregard is only applied to earned income. The amount of the disregard is \$65 plus one half of the remaining earned income.”

20. The Fla. Admin Code R. 65A-1.716 sets forth the MNIL at \$241 for a household size of two.

21. In accordance with the authorities, respondent deducted \$20 unearned income, \$65 earned income disregard, ½ remaining disregard and \$241 MNIL from \$1,695, petitioner’s countable earned income, to arrive at a SOC of \$1,454.

22. The authority cited sets forth the income limits for full Medicaid as well as the rules for enrollment and budgeting methodologies for the Medically Needy Program. As the

petitioner's countable income of \$1,454 exceeds the income limit for full Medicaid (\$864), the respondent's action to terminate the petitioner's full Medicaid and enroll him in the MN program with a \$1454 SOC was proper.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, 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 18 day of February, 2016,

in Tallahassee, Florida.



Pamela Vance
Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
Office: 850-488-1429
Fax: 850-487-0662
Email: Appeal.Hearings@myflfamilies.com

Copies Furnished To: [REDACTED] Petitioner
Office of Economic Self Sufficiency

FINAL ORDER (Cont.)

15F-09696

PAGE -8