

**FILED**

Feb 23, 2016

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

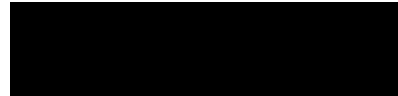
Office of Appeal Hearings  
Dept. of Children and Families



APPEAL NO. 15F-09761

PETITIONER,

Vs.



FLORIDA DEPARTMENT  
OF CHILDREN AND FAMILIES  
CIRCUIT: 09 Orange  
UNIT: 66292

RESPONDENT.

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**FINAL ORDER**

Pursuant to notice, the undersigned telephonically convened an administrative hearing in the above-referenced matter on December 28, 2015 at 1:00 p.m.

**APPEARANCES**

For the petitioner:  pro se

For the respondent: Jennifer Molnar, ACCESS Supervisor

**STATEMENT OF ISSUE**

At issue is the respondent's action to deny the Medicare Savings Plan (MSP), under Medicaid Qualifying Individual 1 (QI1) was proper. The petitioner carries the burden of proof by the preponderance of evidence.

**PRELIMINARY STATEMENT**

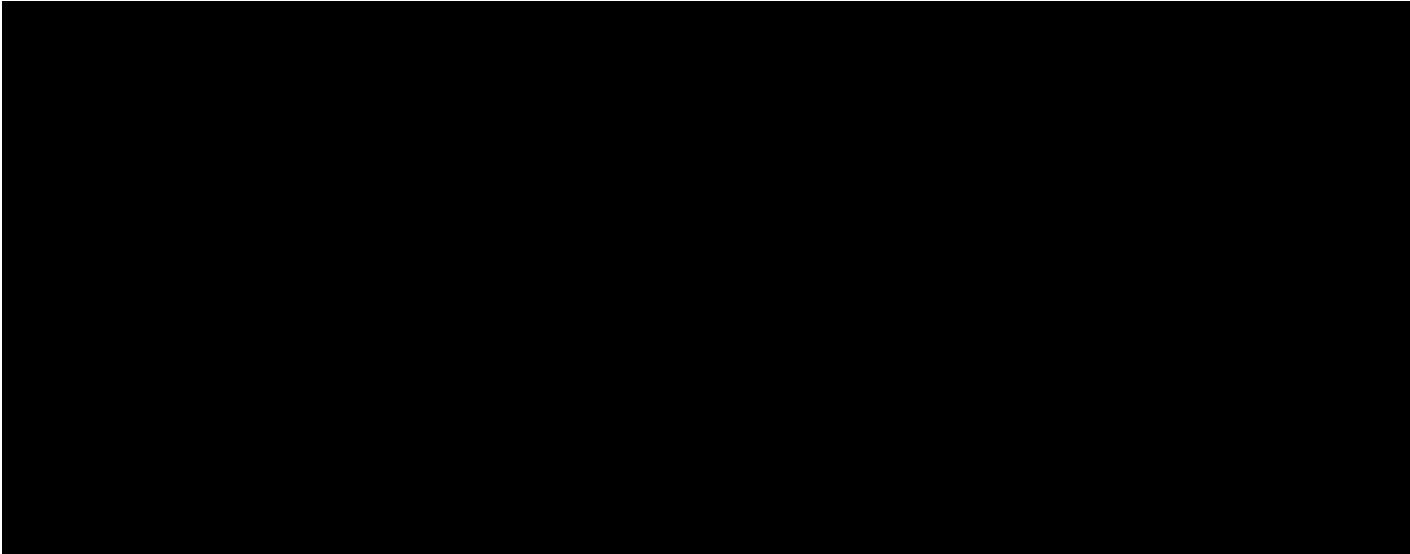
By notice dated September 15, 2015, the respondent notified the petitioner that her Medicaid QI1 application dated August 17, 2015 was denied due to income. Petitioner timely requested a hearing on October 7, 2015 to challenge the denial of

Medicaid QI1 benefits; however, the Department did not forward the petitioner's hearing request to the Office of Appeal Hearings until November 30, 2015.

The petitioner did not submit any exhibits. Respondent submitted three exhibits, entered as Respondent Exhibits "1" through "3". The record was held open until close of business on January 7, 2016 for submission of additional evidence from the respondent. On December 29, 2015, additional evidence was received and entered as Respondent Exhibit "4". The record closed on January 7, 2016.

### **FINDINGS OF FACT**

1. Prior to the action under appeal, petitioner and her husband received Medicaid QI1 benefits from November 2014 through May 31, 2015. On August 17, 2015, petitioner submitted an application for MSP.
2. The respondent reviewed the application and verified the petitioner and her husband's Social Security Disability Income (SSDI) through the State of Florida on-line query.
3. The on-line query showed petitioner's SSDI amount was \$976.81 and petitioner's husband's was \$841.69. The total amount combined was \$1,818.50. The respondent used \$1,817.00 and calculated the QI1 budget as follows:



4. The respondent calculated the household countable income as \$1,797.00, after a \$20.00 unearned income disregard was subtracted from the household's income of \$1,817.00. The income limit for a couple to qualify for QI1 benefits is \$1,793.00. The respondent determined that the petitioner's household income (\$1,797.00) exceeded the limit to qualify for Medicaid QI1.

5. Petitioner explained the correct SSDI she receives is \$975.90 and her husband's is \$840.90. Petitioner did not understand why she was no longer eligible for QI1 benefits. She explained her income has not changed.

6. The respondent recalculated the income and used \$1,815.00 minus a \$20.00 unearned income disregard, to determine the petitioner's household income as \$1,795.00. The recalculated household income still exceeded the \$1,793.00 QI1 income limit.

7. On January 2015, the income limit for QI1 was \$1,802.00 for a couple. On April 2015, the income standard changed to \$1,793.00 for a couple.

**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. Section 409.904, Fla. Stat., Optional payments for eligible persons addresses who qualifies for this Program:

The agency may make payments for medical assistance and related services on behalf of the following persons who are determined to be eligible subject to the income, assets, and categorical eligibility tests set forth in federal and state law. Payment on behalf of these Medicaid eligible persons is subject to the availability of moneys and any limitations established by the General Appropriations Act or chapter 216.

(1) Subject to federal waiver approval, a person who is age 65 or older or is determined to be disabled, whose income is at or below 88 percent of the federal poverty level, whose assets do not exceed established limitations, and who is not eligible for Medicare or, if eligible for Medicare, is also eligible for and receiving Medicaid-covered institutional care services, hospice services, or home and community-based services. The agency shall seek federal authorization through a waiver to provide this coverage.

11. The above authority sets forth that the SSI-Related Medicaid program provides medical assistance to those who are aged or disabled according to the Social Security Act. Petitioner met the criteria, the next step is to determine income eligibility.

12. Fla. Admin. Code R. 65-1.702 Medicaid Special Provisions, in relevant part states:

(12) Limits of Coverage.

(a) Qualified Medicare Beneficiary (QMB). Under QMB coverage, individuals are entitled only to Medicare cost-sharing benefits, including payment of Medicare premiums.

(b) Special Low-Income Medicare Beneficiary (SLMB). Under SLMB coverage, individuals are entitled only to payment of the Part B Medicare

premium. If eligible, AHCA shall pay the premium for up to three months retroactive to the month of application.

...

(d) Part B Medicare Only Beneficiary (QI1). Under QI1 coverage, individuals are only entitled to payment of their Medicare Part B premium...

13. Fla. Admin. Code R 65A-1.713(1) further addresses the “SSI-Related Medicaid Income Eligibility Criteria” and explains:

(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:

(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.

14. Federal regulation at 42 C.F.R. § 435.631 General requirements for determining income eligibility in States using more restrictive requirements for Medicaid than SSI states in part:

(a) Income eligibility methods. In determining income eligibility of aged, blind, and disabled individuals in a State using more restrictive eligibility requirements than SSI, the agency must use the methods for treating income elected under §§435.121 and 435.230, under §435.601. The methods used must be comparable for all individuals within each category of individuals under §435.121 and each category of individuals within each optional categorically needy group included under §435.230 and for each category of individuals under the medically needy option described under §435.800.

15. The above authority explains that an individual must have income that is within the income limits established by federal and state laws as well as the Medicaid State plan.

The Medicare Buy-in Programs under Medicaid are QMB, SLMB and QI1. A couple must have income greater than 120% of the poverty level but equal to or less than

135% of the federal poverty level to be eligible for Qualifying Individual (QI1). It only covers payment of the Part B Medicare premium through Medicaid.

16. The above-cited regulations also explains that the QI1 Program can provide state Buy-in benefits for people with income at higher levels than the other programs.

17. On January 2015, the Department's Program Policy Manual (Policy Manual), Appendix A-9, set the Medicaid QI1 couple maximum income limit as \$1,802.00.

Eligibility Standards for SSI-Related Programs – January 2015		
Coverage Group	Income Limit	Asset Limit
Supplemental Security Income (SSI) Individual*	\$ 733	\$ 2,000
Supplemental Security Income (SSI) Couple*	\$ 1,100	\$ 3,000
ICP/HCBS/Hospice/HCDA Individual	\$ 2,199	\$ 2,000
ICP/HCBS/Hospice/HCDA Couple	\$ 4,398	\$ 3,000
MEDS-AD/ICP-MEDS/Individual (88% FPL)	\$ 871	\$ 5,000
MEDS-AD/ICP-MEDS/Couple	\$ 1,175	\$ 6,000
QMB Individual (100% FPL)	\$ 990	\$ 7,160
QMB Couple	\$ 1,335	\$ 10,750
SLMB Individual (100-120% FPL)	\$ 1,187	\$ 7,160
SLMB Couple	\$ 1,602	\$ 10,750
QI1 Individual (120-135% FPL)	\$ 1,335	\$ 7,160
QI1 Couple	\$ 1,802	\$ 10,750

18. The Policy Manual, Appendix A-9, sets the current Medicaid QI1 couple maximum income limit as \$1,793.00 as of April 2015. These standards change each year in accordance with federal law. Therefore, as of May 2015, the household income of \$1,797.00 exceeded the income standard of \$1,793.00.

19. 20 C.F.R. § 416.1124(c) (12) establishes a \$20 disregard for "the first \$20 of any unearned income in a month" and income can be reduced by that amount. Respondent deducted \$20 from petitioner's \$1,817.00 household income. Petitioner's countable income (\$1,797.00) exceeded the \$1,793.00 Medicaid QI1 income limit. During the hearing, petitioner did not agree with the household income calculated in the Medicaid

QI1 budget. The respondent recalculated the petitioner's household income based on her testimony at the hearing and deducted \$20 from petitioner's \$1,815.00 total household income. The petitioner's countable income (\$1,795.00) continued to exceed the \$1,793.00 Medicaid QI1 income limit.

20. After careful review of the cited authorities and evidence, the undersigned concludes there is no state rule or federal regulation that permits Medicaid QI1 eligibility when income exceeds the established income standards. The respondent followed rule in denying petitioner and her husband's August 17, 2015 application for Medicaid QI1 benefits due to the household's countable income exceeding the income limit for the program.

### **DECISION**

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

**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 23 day of February, 2016,

in Tallahassee, Florida.



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