

Jan 19, 2016

Office of Appeal Hearings
Dept. of Children and FamiliesSTATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGSAPPEAL NO. 15F-09767
15F-09768

PETITIONER,

Vs.

CASE NO. FLORIDA DEPARTMENT
OF CHILDREN AND FAMILIES
CIRCUIT: 18 Brevard
UNIT: 55207RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned telephonically convened an administrative hearing in the above-referenced matter at 1:00 p.m. on December 21, 2015.

APPEARANCESFor the Petitioner:  pro seFor the Respondent: Ivonne Morales-Serrano, ACCESS
Self-Sufficiency Specialist II**STATEMENT OF ISSUE**

At issue is whether the respondent's action to deny the petitioner Medicaid Qualifying Individual 1 (QI1) is proper. Petitioner also has an issue with the respondent not approving Food Assistance (FA) benefits. The petitioner carries the burden of proof by the preponderance of evidence.

PRELIMINARY STATEMENT

By notice dated November 30, 2015, the respondent (or the Department) notified the petitioner his QI1 application was denied. Petitioner timely requested a hearing to challenge the denial of QI1 benefits. Petitioner is also challenging that the respondent did not approve FA benefits.

Pamela Vance, Hearing Officer, appeared as an observer. Petitioner did not submit exhibits. Respondent submitted six exhibits, entered as Respondent Exhibits "1" through "6". The record was closed on December 21, 2015.

FINDINGS OF FACT

1. On November 24, 2015, the petitioner submitted a Medicaid/Medicare Buy-In application. The application lists \$836 income from Veterans Administration (VA) and \$1,200 income from Social Security (SS).
2. Petitioner asserts that his November 24, 2015, specifically states he wants FA benefits.
3. Petitioner did not submit a FA application and the Medicaid/Medicare Buy-In application does not state that petitioner is also applying for FA benefits. The last time petitioner received FA was in 2014.
4. There are three types of Buy-In Programs; Qualified Medicare Beneficiary (QMB), Special Low-Income Medicare Beneficiary (SLMB) and Qualifying Individual 1 (QI1). Buy-In Programs, if approved, pay for Medicare premium.
5. To be eligible for the Buy-In Programs, petitioner's income cannot exceed the following income standards:

\$ 981	QMB
\$1,177	SLMB
\$1,325	QI1

6. The Department verified the petitioner receives \$1,221 gross SS income and \$836.13 gross VA income, which totals \$2,057.13 monthly. The Department subtracted \$20 unearned income disregard from \$2,057.13, resulting in \$2,037.13.
7. The highest Buy-In income standard is for QI1 (\$1,325). Petitioner's \$2,037.13 monthly income exceeds \$1,325. Therefore, he is not eligible for QI1 benefits.
8. On November 30, 2015, the Department mailed petitioner a Notice of Case Action, notifying his QI1 application was denied.
9. Petitioner asserts that he is a World War II veteran and his VA money should not be counted as income; because he was informed by the IRS that VA income is not taxed.
10. Petitioner said he "is asking Governor Scott" to make an exception in his case.
11. The Hearing Officer explained that her decision is not reviewed by Governor Scott nor will her decision be sent to Governor Scott. And if petitioner wants Governor Scott informed he will need to notify the Governor himself.

CONCLUSIONS OF LAW

12. The Department of Children and Families, Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties, pursuant to Fla. Stat. § 409.285. This order is the final administrative decision of the Department of Children and Families under Fla. Stat. § 409.285.
13. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code R. 65-2.056.

FOOD ASSISTANCE ISSUE

14. Federal regulations at 7 C.F.R. § 273.2 Office operations and application processing in part states:

(2) Application processing. **The application process includes filing and completing an application form** (emphasis added) being interviewed, and having certain information verified...

(b) **Food Stamp application form**—(emphasis added) (1) Content. Each application form shall contain:

(i) In prominent and boldface lettering and understandable terms a statement that the information provided by the applicant in connection with the application for food stamp benefits will be subject to verification by Federal, State and local officials to determine if such information is factual; that if any information is incorrect, food stamps may be denied to the applicant; and that the applicant may be subject to criminal prosecution for knowingly providing incorrect information;

(ii) In prominent and boldface lettering and understandable terms a description of the civil and criminal provisions and penalties for violations of the Food Stamp Act;

15. The above authority states, “The application process includes filing and completing an application form...” In this case, the petitioner did not submit an application for FA benefits. The application he submitted is titled “MEDICAID/MEDICARE BUY-IN APPLICATION” and nowhere on the application does it indicate that petitioner is also applying for FA. Therefore, the Department did not determine eligibility for FA benefits.

16. Fla. Admin. Code R. 65-2.042 Applicant/Recipient Fair Hearings address Fair Hearings and in part states

The Department of Children and Family Services, hereinafter referred to as Department or Agency, is required to provide notice and an opportunity of a hearing to any applicant or recipient when the Department’s action, intended action or failure to act would adversely affect the individual’s or family’s eligibility for an amount or type of Financial Assistance, Medical Assistance, Social Services, or Food Stamp Program Benefits, or where action on a claim for such assistance or services is unreasonably delayed...

17. Fla. Admin. Code R 65-2.056 Basis of Hearings, states:

The Hearing shall include consideration of:

- (1) Any Agency action, or failure to act with reasonable promptness, on a claim of Financial Assistance, Social Services, Medical Assistance, or Food Stamp Program Benefits, which includes delay in reaching a decision on eligibility or in making a payment, refusal to consider a request for or undue delay in making an adjustment in payment, and discontinuance, termination or reduction of such assistance.
- (2) Agency's decision regarding eligibility for Financial Assistance, Social Services, Medical Assistance or Food Stamp Program Benefits in both initial and subsequent determination, the amount of Financial or Medical Assistance or a change in payments.
- (3) The Hearing Officer must determine whether the department's decision on eligibility or procedural compliance was correct at the time the decision was made. The hearings are de novo hearings, in that, either party may present new or additional evidence not previously considered by the department in making its decision.

18. Fla. Admin. Code 65-2.046 Time Limits in Which to Request a Hearing states:

- (1) The appellant or authorized representative must exercise the right to appeal within 90 calendar days in all programs. Additionally, in the Food Stamp Program, a household may request a fair hearing at any time within a certification period to dispute its current level of benefits. The time period begins with the date following:
 - (a) The date on the written notification of the decision on an application.
 - (b) The date on the written notification of reduction or termination of program benefits.
 - (c) The date of the Department's written notification of denial or a request or other action which aggrieves the petitioner when that denial or action is other than an application decision or a decision to reduce or terminate program benefits.
- (2) The time limitation does not apply when the Department fails to send a required notification, fails to take action of a specific request or denies a request without informing the appellant. If the notice is not mailed on the day it is dated, the time period commences on the date it is mailed.
- (3) This amendment is to be effective March 1, 1979.

19. The above authorities explain applicants may request a hearing within 90 calendar days from the date of the notice that is mailed notifying the applicant of the action taken by the Department. Or at any time within a FA certification period. In this case,

petitioner did not receive a notice regarding FA from the Department. And petitioner last received FA in 2014; therefore, he does not have a FA certification period.

MEDICAID ISSUE

20. Fla. Admin. Code R. 65A-1.702 Special Provisions explains the Buy-In Programs and in 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. (This is coverage for individuals who would be eligible for QMB or SLMB coverage except their income exceeds limits for those programs.)...

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

(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...

(b) For QMB, income must be less than or equal to the federal poverty level...

(g) For SLMB, income must be greater than 100 percent of the federal poverty level but equal to or less than 120 percent of the federal poverty level...

(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...

22. The Department's Program Policy Manual, CFOP 165-22, Appendix A-9, sets forth the following the following income standards for an individual:

QMB \$ 981

SLMB	\$1,177
QI1	\$1,325

23. Petitioner argued that he is a World War II veteran and his VA money should not be counted as income; because he was informed by the IRS that VA income is not taxed.

24. Federal regulation at 20 C.F.R. § 416.1121 define different types of unearned income as follows:

Some types of unearned income are—

(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**... (emphasis added)

25. Additionally, the Department's Program Policy Manual, CFOP 165-22, (Policy Manual) passage 1840.0900 BENEFITS (MSSI, SFP) defines VA and SS as unearned income:

Section 1840.0900 (inclusive) discusses types of benefits payable to individuals and their treatment as unearned income, including benefits such as:

1. Social Security payments;
2. private benefit income such as annuities, pensions, retirement, or disability (other than SSA);
3. **veterans payments**; (emphasis added)
4. Agent Orange benefits;
5. workers' compensation;
6. railroad retirement;
7. unemployment benefits;
8. striker support;
9. severance pay; or
10. death benefits.

26. In accordance with the above authority and policy manual, the Department included petitioner's \$836.13 VA and \$1,221 SS unearned income, totaling \$2,057.13 as petitioner's household income.

27. Federal regulation at 20 C.F.R. § 416.1124(c) (12) establishes a \$20 disregard for “the first \$20 of any unearned income in a month”. Respondent deducted \$20 from petitioner’s \$2,057.13 income and arrived at \$2,037.13 countable income.

HEARING OFFICER’S CONCLUSION

28. The evidence submitted establishes that the petitioner did not submit a FA application and is not currently receiving FA benefits. Additionally, petitioner’s Medicaid/Medicare Buy-In application does not indicate that he was also applying for FA benefits.

29. In careful review of the cited authorities and evidence, the undersigned is dismissing petitioner’s FA issue as non-jurisdictional.

30. The evidence also establishes that petitioner receives \$836.13 VA income and \$1,221 SS income.

31. Also in careful review of the evidence and cited authorities, the undersigned concludes the respondent was correct in denying petitioner Medicaid QI1 benefits due to exceeding the income limit.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the FA appeal is dismissed as non-jurisdictional and the Medicaid QI1 appeal is denied. The respondent’s action on Medicaid QI1 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 19 day of January , 2016,

in Tallahassee, Florida.



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