

Feb 04, 2016

Office of Appeal Hearings  
Dept. of Children and FamiliesSTATE OF FLORIDA  
DEPARTMENT OF CHILDREN AND FAMILIES  
OFFICE OF APPEAL HEARINGS

APPEAL NO. 15F-10056

PETITIONER,

Vs.

CASE NO. FLORIDA DEPT OF  
CHILDREN AND FAMILIES  
CIRCUIT: 04 Duval  
UNIT: 88264RESPONDENT.  

---

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on November 19, 2015 at 2:50 p.m.

**APPEARANCES**

For the Petitioner: The petitioner was present and represented himself.

For the Respondent: Viola Dickinson, Economic Self-Sufficiency Specialist II for the Department of Children and Families (DCF).

**ISSUE**

The petitioner is appealing the Department's action on September 16, 2015 to continue his enrollment in the Medically Needy (MN) program with an estimated monthly share of cost (SOC) of \$1243.

The petitioner held the burden of proof in this case.

### **PRELIMINARY STATEMENT**

Appearing as an observer was Pamela Vance, hearing officer for Office of Appeal Hearings.

The record was held open until 5:00 p.m. on December 1, 2015 to allow the respondent and the petitioner to submit additional evidence. Evidence was received and entered as the Respondent Exhibits 3-4 and the Petitioner Exhibits 2-3.

### **FINDINGS OF FACT**

1. On August 26, 2015, the petitioner completed an application to recertify for Medicaid for himself. The petitioner receives \$1180 in Social Security income and \$373.27 in pension benefits. The petitioner pays alimony to a former spouse in the amount of \$500 each month. On September 16, 2015, the Department notified the petitioner that he was enrolled in the MN program with an estimated monthly SOC in the amount of \$1243.

2. The Department calculated the MN budget by including the petitioner's gross monthly Social Security income in the amount of \$1180 and his pension income in the amount of \$373.27, for a total gross income of \$1553.27. The total gross income was subtracted by the unearned income disregard in the amount of \$20 to result in \$1533.27 total countable income. The total countable income was subtracted by the Medically Needy income limit (MNIL) in the amount of \$180 to result in a monthly SOC in the amount of \$1353.27. The Department also subtracted the Medicare premium in the amount of \$109.90 for a remaining SOC in the amount of \$1243.

3. The petitioner does not dispute the income included in the Department's calculations. The petitioner argues that he pays \$500 each month in alimony payments. The petitioner believes that since the alimony is included as income in calculating benefit levels, it should be included as a deduction to reduce his income so that he can be eligible for full-coverage Medicaid. The petitioner argues that he also pays \$275 each month to an assistant who assists him with: "personal laundry, meal preparation, food shopping, cleaning, driving to doctors' appointments", as he is visually-impaired (Petitioner Exhibit 4).

4. The petitioner argues that he is unable to receive the "extra help" with his prescriptions, which he needs to be able to obtain the insulin necessary to treat his diabetes.

5. The Department explained that alimony payments are included as income but cannot be used as a deduction to reduce income according to its policy. The Department explained that the expense paid to provide personal care services cannot be allowed as a deduction for the MN program; only for its waiver programs. The Department explained that in order for the petitioner to be eligible for Medicaid, he would have to meet the income limit in the amount of \$864 for an individual.

6. The petitioner does not receive any waiver services at this time. The petitioner was denied for the QI1 program due to exceeding the income limit; this denial is not under appeal.

### **CONCLUSIONS OF LAW**

7. 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.

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

9. Federal Regulations at 20 C.F.R. § 416.1123, "How we count unearned income", states in part:

(b) Amount considered as income. We may include more or less of your unearned income than you actually receive...(2) We also include more than you actually receive if amounts are withheld from unearned income because of a garnishment, or to pay a debt or other legal obligation, [*sic*]...

10. The Department's Program Policy Manual (Policy Manual), CFOP 165-22, passage 1840.0705 Alimony (MSSI, SFP) states in part:

Alimony is court ordered payment by a spouse or former spouse to an individual. An individual's countable income cannot be reduced because the court has ordered part of that income to be paid to a spouse. Court ordered support received by the spouse is unearned income. This applies even if the individual is institutionalized.

11. The above authorities instruct that even income which is withheld from unearned income to pay a legal obligation, including alimony payments, is counted as income. In petitioner's case, alimony payments are being deducted from his Social Security income. Therefore, the undersigned concludes that the Department was

correct to not reduce the petitioner's gross income due to alimony being deducted from his Social Security income.

12. The Policy Manual, passage 2440.0300 INCOME DISREGARDS (MSSI, SFP) introduces the types of income disregards as earned income disregard, standard disregard, student earned income, work expenses of the blind, ordinary and necessary expenses, optional deduction, and unearned income overpayment.

13. The Policy Manual, passage 2440.0322 Standard Disregard (MSSI) states in relevant part:

This policy applies to MEDS-AD, MN, QMB, SLMB, QI-1, Working Disabled, Protected Medicaid and EMA. A \$20 per month standard disregard applies to any type (earned or unearned) of income other than income which is provided on the basis of need.

14. The Policy Manual, passage 2440.0370 Ordinary and Necessary Expenses (MSSI, SFP) explains in part:

Ordinary and necessary expenses which are deducted from the amount of unearned gross income are excluded. These are expenses incurred in obtaining income as the fees and costs necessary to establish entitlement or gain access to income. For example, attorney fees and medical examination fees connected with the filing of a lawsuit after an accident may be deducted from the settlement amount received.

15. The Policy Manual, passage 2440.0371 Optional Deductions (MSSI, SFP) states in relevant part:

There are deductions, which are withheld at the source from an individual's income that must be included in the amount of unearned income counted. Examples of optional deductions include:

1. premium for Part B Medicare from a Social Security benefit...

16. The findings show that the petitioner pays a friend \$275 each month to assist him with his cooking and cleaning. The above authorities allow as a deduction to income an earned income disregard, a \$20 standard disregard, exclusion of student earned income, work expenses for the blind, ordinary and necessary expenses disregard, and overpayments. However, the authorities do not reference an expense related to assistance with daily living activities to be allowed as a deduction to income. Therefore, the undersigned concludes that the Department is correct to not include the expenses paid to assist the petitioner in cooking and cleaning services.

17. Fla. Admin. Code § 65A-1.701, Definitions, states in part:

(20) MEDS-AD Demonstration Waiver: Medicaid coverage group for aged or disabled individuals who meet all SSI-related Medicaid non-financial eligibility criteria, whose resources do not exceed the limit in the Medically Needy Program, whose income is at or below 88 percent of the federal poverty level and are not receiving Medicare or if receiving Medicare are also eligible for Medicaid covered institutional care services, hospice services or home and community based services.

18. The Policy Manual, Appendix A-9, effective July 2015, lists the MEDS-AD income limit as \$864 for an individual.

19. The above controlling authorities explains that the full coverage Medicaid coverage group (MEDS-AD Demonstration Waiver) in the SSI-related Programs is for individuals whose income is below the federal poverty level and are not receiving Medicare, or if receiving Medicare are eligible for Medicaid covered institutional care services (ICP), hospice services, or community based services. The MEDS-AD income limit for an individual is \$864. The findings show that the petitioner is receiving Medicare but is not receiving ICP, hospice, or community based services. Therefore,

the undersigned concludes that petitioner does not qualify for full coverage Medicaid.

20. The Fla. Admin. Code § 65A-1.716 sets forth the Medically Needy income levels and states :

(1) The monthly federal poverty level figures based on the size of the filing unit...

(2) Medicaid income and payment eligibility standards and Medically Needy income levels are by family size as follows...  
Size...1    Level    \$180...

21. In this case, the petitioner's Social Security and pension incomes exceed the MEDS-AD income guidelines. As a result, the Department enrolled him in the MN program and assigned a SOC based on his gross income of \$1553.27. After the deductions of the MNIL for one of \$180, the \$20 general exclusion, and the \$109.90 Medicare premium, the remaining SOC was \$1243.

22. A review of the rules did not find any exceptions to the income limits. The undersigned concludes the Department correctly followed its policy in counting the petitioner's gross income prior to any alimony payment deductions. The undersigned concludes that the respondent's action to enroll him in the Medically Needy Program with an estimated monthly share of cost in the amount of \$1243, was a correct action.

23. The petitioner raised an issue during the hearing related to not being eligible for extra help, or Low Income Subsidy (LIS) program, to assist him in obtaining his prescriptions. The undersigned does not have jurisdiction over the LIS eligibility. However, Medicaid eligibility does affect eligibility for the LIS program.

24. The Department published Transmittal No. P-05-07-0019 on July 12, 2005 which explains the Medicare Part D Low Income Subsidy Program and states in part:

The Medicare Prescription Drug, Improvement and Modernization Act (MMA) of 2003 created a prescription drug benefit called Part D that will be available starting January 1, 2006. Enrollment in Part D is voluntary and is available to all Medicare beneficiaries. The MMA also created a Low Income Subsidy (LIS) Program to help individuals with limited income and assets cover a portion of the costs associated with the new Medicare Part D benefit.

The Social Security Administration (SSA) has primary responsibility for the LIS eligibility determination; however, states are required to assist applicants applying for the LIS Program both by accepting the LIS application and forwarding it to SSA for an eligibility determination, or when specifically requested, determining eligibility for the LIS Program. States are also responsible for screening LIS applicants for Medicare Savings Programs/buy-in (QMB, SLMB, QI1). Economic Self Sufficiency (ESS) staff must be prepared to handle both state and federal applications for the LIS using the guidelines provided in this memorandum...

#### IMPACT ON OTHER BENEFITS

The Medicare Part D benefit and LIS Program may affect other programs as listed below:

- Food Stamps and Medically Needy: Portions of medical expenses covered by Medicare Part D or the LIS Program are not counted as expenses in a food stamp budget or when tracking bills for Medically Needy. Premiums, co-pays and deductibles paid by the client will be allowable medical expenses as allowed for in current policy.

25. The Department published Transmittal No. P-05-03-0006, March 22, 2005

which states in part:

Medicare beneficiaries who qualify for full Medicaid or who are otherwise eligible for the buy-in programs (QMB, SLMB, and QI1) will be entitled to a Low Income Subsidy (LIS) to cover payment of the Part D premium and will only have to pay a small co-payment, similar to their current coverage under Medicaid. LIS benefits are also available to those with incomes up to 150% FPL and assets up to \$10,000...Benefits available to this group through the LIS will vary depending on the individual's income and asset level.



26. Also addressing the LIS eligibility is a Departmental Question and Answer #199 which states, "Medicare recipients enrolled in the Medically Needy Program who meet their share of cost are Medicaid eligible and will automatically qualify for Extra Help With Medicare Prescription Drug Plan Costs (previously known as the Low Income Subsidy (LIS))."

27. According to the above authorities, Q11 eligibility or other Medicaid eligibility would automatically give LIS eligibility. Medicare recipients enrolled in the MN program and who meet their share of cost are Medicaid eligible and will automatically be eligible for the LIS program. In the petitioner's case, the findings show that he receives Medicare but is ineligible for the Q11 program; he is enrolled in the MN program. To assist the petitioner in his eligibility for the LIS program during the months he has met his monthly SOC, the Department may wish to furnish petitioner with a printout from the Medicaid file showing a history of his Medicaid eligibility dates as this affects his LIS eligibility.

### **DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, this appeal is denied. The LIS issue is non-jurisdictional.

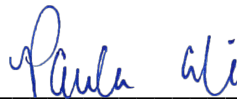
### **NOTICE OF RIGHT TO APPEAL**

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 04 day of February, 2016,

in Tallahassee, Florida.



---

Paula Ali  
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