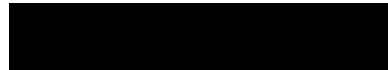


Feb 09, 2016

STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGSOffice of Appeal Hearings
Dept. of Children and FamiliesAPPEAL NO. 15F-10321
16F-00808

PETITIONER,

Vs.

FLORIDA DEPARTMENT
OF CHILDREN AND FAMILIES
CIRCUIT: 17 Broward
UNIT: 88249RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing telephonically in the above-referenced matter on February 2, 2016, at 1:00 p.m. All parties appeared telephonically from different locations.

APPEARANCES

For the Petitioner:



For the Respondent: Eric Eckhardt, economic self-sufficiency supervisor.

STATEMENT OF ISSUE

At issue is whether the Department issued the correct amount of Food Assistance Program benefits (FAP) to the petitioner. Additionally, whether the Department's is correct enrolling petitioner's 3-year old child in the Medically Needy Program. The petitioner carries the burden of proof by the preponderance of evidence for both Programs.

PRELIMINARY STATEMENT

Pamela Vance, Hearing Officer with the Office of Appeal Hearings, appeared as an observer.

The petitioner did not provide any evidence for the undersigned to consider. The respondent submitted eight (8) exhibits, which were marked as Respondent's Exhibits 1 through 8.

The record was left open for one additional day through February 3, 2016 for the respondent to provide additional information to the undersigned for review. The evidence was timely received, entered into evidence, and marked as Respondent's Exhibits 9 through 12. The record then closed on February 3, 2016.

FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following Findings of Fact are made:

1. Prior to the action under appeal, the petitioner had been receiving FAP and Medicaid Program benefits for his child only. The household consisted of three members: the petitioner, his wife and their 3 year-old daughter. His shelter obligation was \$1,620.
2. On November 13, 2015, the petitioner submitted a web application requesting additional Medicaid benefits. The petitioner's household now consists of himself, his wife and their two mutual children, ages 3 & 0 [REDACTED]. There are no disabled members in the household. The petitioner is subject to both the gross and the net income tests and is subject to a shelter cap, and is not allowed excess medical expenses.

3. Petitioner and his wife are here on work visas (E-1 visas). The E-1 visa is a nonimmigrant visa which allows foreign nationals to get employment in the United States. The petitioner and his wife are not refugees or asylees and are not eligible for any assistance. Their mutual children are United States citizens and are the only ones receiving benefits. Petitioner's household has medical insurance coverage through his employment. The petitioner did not report any household expenses on his application.

4. The FAP budgeting process involves deducting some standard deductions as well as some of the recipients' actual expenses. Rent or mortgage is an allowable deduction as well as a standard deduction for utilities (SUA) and excess medical expenses. Effective December 2015, the petitioner's rental obligation is \$1,260. The deductions originally used to determine the eligibility effective January 2016 included the monthly rent of \$630 and the standard utility allowance (SUA) of \$345.

5. Petitioner received earned income of \$1,846.15 biweekly and provided the Department with verification. The Department used a conversion factor of 2.15 to arrive at a total monthly gross earned income of \$3,969.22. This amount was divided by four and the result multiplied by 2 to arrive \$1,984.62 as countable prorated amount.

6. From the gross countable income of \$1,984.62, a 20% (\$396.92) earned income deduction; and a \$155 standard deduction were subtracted to arrive at the \$1,432.70 adjusted income, 50% of which becomes shelter standard (\$716.35). With shelter/utility costs \$975 (\$1,260 shelter/2 and \$345 SUA), petitioner was allowed \$258.65 excess shelter deduction, resulting in the Food stamp Adjusted income downward adjusted to \$1,174.05.

7. This amount (\$1,174.05) was compared to the maximum net monthly income of \$1,328 (for a household with two eligible members). A 30% benefit reduction occurred in the amount of \$353, resulting in the petitioner's household being approved for \$16 n Food Assistance. The Department used the same methodology and gross countable income of \$1,620 to approve \$129 in FAP benefits for December 2015, see Respondent's Exhibits 1 through 8.

8. The petitioner was seeking full Medicaid for his children. Petitioner is the only one employed, therefore his wife and their children are considered his tax dependents for Medicaid purposes. To begin the budgeting process, the Department added the petitioner's two paychecks to arrive at \$3,692.30. This amount is considered as modified adjusted gross income (MAGI) for the household. To determine Medicaid eligibility for the children, the household MAGI of \$3,692.30 was compared to the income limit for each child based on their individual age group in a household size of four.

9. The Department determined the newborn's eligibility for full Medicaid benefits because the household income was below the income limit (\$4,042) for children under one year in a standard filing unit size of four. As the income exceeded the maximum limit (\$2,688) for children ages 1 through 5, the 3-year old child was found ineligible. As the 3-year-old child was determined ineligible for full Medicaid, the respondent enrolled the child in the Medically Needy (MN) Program.

10. To determine petitioner's estimated SOC the Medically Needy Income Level (MNIL) of \$585 (for a standard filing unit size four) was subtracted from \$3,692.30, the

gross monthly household income, resulting to the child estimated SOC of \$3,107, see Respondent's Exhibits 9 through 12.

11. On December 2, 2015, the Department sent the petitioner a Notice of Case Action informing him of its actions. On December 17, 2015, the petitioner timely requested an appeal to challenge the FAP benefits level. The Medicaid appeal was requested during the February 2, 2016 hearing.

12. The respondent explained that the FAP benefit level is based on petitioner's wages and the expenses at the time of action. The respondent explained that the 3-year old child is not eligible for full Medicaid because the household income exceeds the Family-Related Medicaid income limit for the household size and that her SOC was directly related to the household gross income. He explained that whenever incomes are received more often than monthly in the FAP, the Department is required to use the conversion factor of 2.15 (if received biweekly), 4.3 (if received weekly), or 2 (if received semimonthly). For Medicaid however, weekly incomes are multiplied by 4 and biweekly incomes are multiplied by 2. The respondent explained that December 2015 budget was incorrect because only \$1,620 was counted as opposed to \$1,984.62 in January 2016, resulting in more FAP benefits for that month. The respondent further explained that the petitioner's 3-year old is enrolled in the Medically Needy Program because she failed to meet the income guideline for Family-Related Medicaid.

13. The petitioner did not dispute the income amount used by the Department in the eligibility process. He acknowledged that he understands the benefits provided by the respondent are income-based, but believes that it is not fair for him and his wife not to be included. Petitioner's contends that by having E-1 visas, they should have more

privileges than a regular nonimmigrants and be included in the benefits. During the hearing, petitioner reported \$160 for car insurance and \$210 for car notes and requested that his prior eligibility period be reviewed by the undersigned.

CONCLUSIONS OF LAW

14. 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.

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

The Food Assistance issue will be addressed first.

16. 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. Households which contain an elderly or disabled member shall meet the net income eligibility (sic) standards for the Food Stamp Program. Households which do not contain an elderly or disabled member shall meet both the net income eligibility standards and the gross income eligibility standards for the Food Stamp Program. Households which are categorically eligible as defined in §273.2(j)(2) or 273.2(j)(4) do not have to meet either the gross or net income eligibility standards. The net and gross income eligibility standards shall be based on the Federal income poverty levels established as provided in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

(b) Definition of income...

(1) Earned income shall include:

(i) All wages and salaries of an employee...

(d) *Income deductions.* Deductions shall be allowed only for the following household expenses:

(1) *Standard deduction*—

- (2) Earned income deduction.
- (3) Excess medical deduction. That portion of medical expenses in excess of \$35 per month, excluding special diets, incurred by any household member who is elderly or disabled as defined in §271.2. Spouses or other persons receiving benefits as a dependent of the SSI or disability and blindness recipient are not eligible to receive this deduction but persons receiving emergency SSI benefits based on presumptive eligibility are eligible for this deduction....(emphasis added)
- (4) Dependent care.
- (5) Optional child support deduction.
- (6) Shelter costs—
 - (ii) Excess shelter deduction. Monthly shelter expenses in excess of 50 percent of the household's income after all other deductions in paragraphs (d)(1) through (d)(5) of this section have been allowed(ii) Excess shelter deduction. Monthly shelter expenses in excess of 50 percent of the household's income after all other deductions in paragraphs (d)(1) through (d)(5) of this section have been allowed. If the household does not contain an elderly or disabled member, as defined in § 271.2 of this chapter, the shelter deduction cannot exceed the maximum shelter deduction limit established for the area...
 - (A) Continuing charges for the shelter occupied by the household, including rent,
 - (iii) Standard utility allowances...
 - (A) With FNS approval, a State agency may develop the following standard utility allowances (standards) to be used in place of actual costs in determining a household's excess shelter deduction.

17. The respondent must follow these federal budgeting guidelines when determining eligibility. The regulation directs the Department to use gross income when determining eligibility.

18. Federal regulations at 7 C.F.R. § 273.10, in relevant part states:

- (c) (2) Income only in month received. (i) Income anticipated during the certification period shall be counted as income only in the month it is expected to be received, unless the income is averaged. Whenever a full month's income is anticipated but is received on a weekly or biweekly basis, the State agency shall convert the income to a monthly amount by multiplying weekly amounts by 4.3 and biweekly amounts by 2.15, use the State Agency's PA conversion standard, or use the exact monthly figure if it can be anticipated for each month of the certification period.

19. Petitioner is employed and gets paid biweekly. The Department correctly converted his biweekly income to monthly amounts using the 2.15 conversion standard. The undersigned could not find a more favorable outcome than the income conversion done by the Department.

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

(1) Net monthly income. (i) To determine a household's net monthly income, the State agency shall:

(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. Net losses from the self-employment income of a farmer shall be offset in accordance with Sec. 273.11(a)(2)(iii).

(B) Multiply the total gross monthly earned income by 20 percent and subtract that amount from the total gross income; or multiply the total gross monthly earned income by 80 percent and add that to the total monthly unearned income, minus income exclusions.

(C) Subtract the standard deduction.

(D) If the household is entitled to an excess medical deduction as provided in Sec. 273.9(d)(3), determine if total medical expenses exceed \$35. If so, subtract that portion which exceeds \$35.

...

(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. If there is no excess shelter cost, the net monthly income has been determined. If there is excess shelter cost, compute the shelter deduction according to paragraph (e)(1)(i)(I) of this section.

(I) Subtract the excess shelter cost up to the maximum amount allowed for the area (unless the household is entitled to the full amount of its excess shelter expenses) from the household's monthly income after all other applicable deductions. Households not subject to a capped shelter expense shall have the full amount exceeding 50 percent of their net income subtracted. The household's net monthly income has been determined.

21. The above-cited regulation describes the eligibility process and defines deductions and shows the steps in determining net income. The petitioner was credited with an earned income deduction, a standard deduction, and an excess shelter deduction from his gross income to equal his net income. No excess medical expenses were allowed. There is no indication that petitioner was eligible for any other deductions.

22. The Department's Policy Manual, CFOP 165-22, (The Policy Manual) at passage 2610.0410 considers an ineligible noncitizen as technically ineligible to participate in the FAP Program. Passage 2230.0400 addresses Technically Ineligible Individuals and states:

Technically Ineligible Individuals

Technically ineligible individuals fail a technical factor of eligibility. The technically ineligible individual may not be included in the household when food stamp benefits are determined. Treat the income, assets and expenses of technically ineligible individuals as follows:

1. Prorate the income of the ineligible individual and count all but the ineligible members share toward the eligibility of the remaining household members for individuals who fail to meet SSN requirements, are ineligible noncitizens, are serving child support sanctions, or have received all time limited months as an ABAWD. Exclude the income of the ineligible student;
2. Count the assets in their entirety for all technically ineligible individuals except the ineligible student. Exclude the assets of the ineligible student;
3. The 20% earned income deduction is allowed; and
4. Expenses billed to the technically ineligible member but paid entirely with the eligible member's income because the ineligible member has no income, count in full in the budget. If the expense is billed to the technically ineligible member, but paid for with the eligible member's income and the ineligible member's income, prorate the expense in the budget. If the expense is billed to and paid entirely by the technically ineligible member, prorate the expense in the budget; and

5. When the SFU contains a technically ineligible member, do not prorate the appropriate utility standard in the budget. Allow the full SUA, BUA, or Phone Standard if the dwelling is eligible for a standard.

23. In this instant case, the Department prorated the husband's income and included the appropriate portion in its calculation. He was allowed the 20% earned income deductions, and only half the rental expense. He received the full standard utility allowance.

24. The Food Assistance standards for income and deductions appear in the Policy Manual at Appendix A-1. Effective October 1, 2014, the maximum FAP benefit for a household size of two is \$357 and the Standard Utility Allowance is \$337. Effective October 1, 2015, a two-person assistance group net income limit was \$1,650 at the time of action, and the standard utility allowance is \$345. The maximum FAP benefits remains \$357 and the minimum benefits \$16.

25. The undersigned review the prior eligibility period and found no mathematical errors. Additional FAP benefits was not found.

26 After considering the evidence, testimony, and the appropriate authorities cited above, the hearing officer concludes that the respondent's action to approve \$16 in Food Assistance benefits for the petitioner effective January 2016 is correct. The petitioner received \$129 in December 2015, the undersigned reviewed the budget and could not conclude that the petitioner was eligible for any additional benefits based on the income and expenses presented and the above-cited rules. The petitioner has failed to meet his burden that he is eligible for any Food Assistance.

The Medically Needy issue will now be addressed.

27. The Family-Related Medicaid income criteria is set forth in 42 C.F.R 435.603. It states:

(a) Basis, scope, and implementation. (1) This section implements section 1902(e)(14) of the Act.

(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.

(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.

28. Federal regulation 42 C.F.R. § 435.603 Application of modified gross income (MAGI) (f) defines a Household for Medicaid. It states:

(3) Rules for individuals who neither file a tax return nor are claimed as a tax dependent. In the case of individuals who do not expect to file a Federal tax return and do not expect to be claimed as a tax dependent for the taxable year in which an initial determination or renewal of eligibility is being made, or who are described in paragraph (f)(2)(i), (f)(2)(ii), or (f)(2)(iii) of this section, the household consists of the individual and, if living with the individual—

(i) The individual's spouse;

(ii) The individual's natural, adopted and step children under the age specified in paragraph (f)(3)(iv) of this section; and

(iii) In the case of individuals under the age specified in paragraph (f)(3)(iv) of this section, the individual's natural, adopted and step parents and natural, adoptive and step siblings under the age specified in paragraph (f)(3)(iv) of this section.

(iv) The age specified in this paragraph is either of the following, as elected by the agency in the State plan—

(A) Age 19; or

(B) Age 19 or, in the case of full-time students, age 21.

...

(5) For purposes of paragraph (f)(1) of this section, if, consistent with the procedures adopted by the State in accordance with §435.956(f) of this part, a taxpayer cannot reasonably establish that another individual is a tax dependent of the taxpayer for the tax year in which Medicaid is sought,

the inclusion of such individual in the household of the taxpayer is determined in accordance with paragraph (f)(3) of this section.

29. The Policy Manual at 2230.0400 Standard Filing Unit (MFAM) states:

For tax filers, the Standard Filing Unit (SFU) is the tax filing group for the tax year in which eligibility is being determined. Eligibility is determined by each individual using the tax filing group's income. Individuals cannot receive Medicaid benefits under more than one coverage group, but can have their income included in more than one SFU.

For individuals who neither file a federal tax return nor are claimed as a tax dependent (non-filers), the Standard Filing Unit consists of the individual and, if living with the individual, their spouse, their natural, adopted, and step children under age 19, or 19 and 20 if in school full-time.

30. In accordance with the above controlling authorities, the Medicaid household group is the petitioner, his wife and their two children (four members). The findings show the Department determined the petitioner's eligibility with a household size of four to determine Medicaid eligibility for the 3-year old child. The undersigned concludes the Department correctly determined the petitioner's household size as four for Medicaid eligibility purposes.

31. Federal regulations at 42 C.F.R. § 435.603 Application of modified gross income (MAGI) (d) defines Household Income. It states:

(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.

32. The Policy Manual at 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 KidCare and/or the Federally Facilitated Marketplace (FFM).

33. The Policy Manual at Appendix A-7 indicates that for the Family Medicaid Income Limit as \$2,688 and a Standard Disregard of \$141 for Family-Related Medicaid Program with a family size of four. It also indicates the MNIL to be \$585.

34. In accordance with the above controlling authorities, the undersigned reviewed the Medicaid eligibility for the petitioner. Step 1: The total income counted in the budget is \$3,692.30. Step 2: There are no deductions provided as there was no tax return. Step 3: The total income of \$3,692.30 less the standard disregard of \$141 is \$3,551.30. Step 4: The balance of \$3,551.30 is greater than the income limit of \$2,688 for the 3-year old to receive full Medicaid. Step 5: With \$101 MAGI disregard applied, the countable balance remains \$3,450.30. This amount was greater than the income limit of \$2,688. The undersigned concludes that the petitioner's 3-year old child is ineligible for Medicaid. The undersigned further concludes Medically Needy eligibility must be explored for the child.

35. The Policy Manual at passage 2630.0502 Enrollment (MFAM) states:

If an individual meets the Medically Needy Program's technical eligibility criteria, he is enrolled into the program. There is no income limit for enrollment. The individual is only eligible (entitled to Medicaid) when he has allowable medical bills that exceed the SOC.

The income for an enrolled assistance group need not be verified. Instead, an estimated SOC is calculated for the assistance group. If after bill tracking, it appears the assistance group has met his "estimated" SOC, the unverified income must be verified before the Medicaid can be authorized. An individual is eligible from the day their SOC is met through the end of the month.

36. The Policy Manual at passage 2630.0500 Share of Cost (MFAM) states:

The Share of Cost (SOC) refers to the amount of medical bills which an individual enrolled in the Medically Needy Program must incur in any given month before Medicaid coverage may be authorized.

Eligibility must be determined for Medically Needy any time the assistance group meets all technical factors but the income exceeds the appropriate income limit for Medicaid.

To calculate the share of cost, compare the countable net income to the Medically Needy Income Level based on the size of the standard filing unit. The difference is the assistance group's share of cost.

37. Effective January 2015, Appendix A-7 indicates that for a household of four, the MNIL is \$585.

38. To determine the child's SOC the respondent determined the petitioner's household monthly to be \$3,692.30. The Medically Needy Income Level of \$585 for a standard filing unit size of four was subtracted resulting to the petitioner's daughter estimated SOC of \$3,107.

39. The hearing officer found that no exception to this calculation. It is concluded that a more favorable share of cost could not be determined. Eligibility for full Medicaid was not found.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeals are denied. The respondent's actions are upheld.

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 09 day of February, 2016,
in Tallahassee, Florida.



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