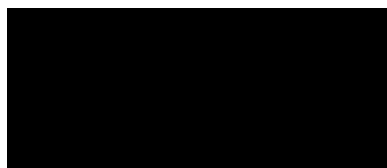


Feb 01, 2016

Office of Appeal Hearings
Dept. of Children and Families

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



APPEAL NO. 15F-9104

PETITIONER,

Vs.



FLORIDA DEPARTMENT
OF CHILDREN AND FAMILIES
CIRCUIT: 16 MONROE
UNIT: 66302

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on December 28th, 2015 at 8:37 a.m.

APPEARANCES

For the Petitioner:



For the Respondent: Odalys Perez, Economic Self-Sufficiency Specialist.

STATEMENT OF ISSUE

The petitioner is appealing the respondent's denial of Institutionalized Care Program (ICP) Medicaid for the months of April 2015 through July 2015. The petitioner carries the burden of proving his position by a preponderance of the evidence.

PRELIMINARY STATEMENT

Petitioner's Exhibits 1 through 4 were moved into evidence.

Respondent's Exhibits 1 through 3 were moved into evidence. The respondent submitted additional documents from June and July 2015, but was unable to develop these on the record; therefore, the documents could not be moved into evidence or considered.

No Notice of Case Action addressing the matter under appeal was submitted into evidence. The petitioner filed an appeal to challenge the respondent's position in the matter on October 30th, 2015. Absent evidence to the contrary, the appeal is considered to have been filed timely.

FINDINGS OF FACT

1. The petitioner (born in 1953) has been a resident of [REDACTED] since August 2013.

2. The petitioner had been a recipient of Institutionalized Care Program Medicaid benefits since the time of admission. ICP Medicaid covers the cost of nursing home residence. The respondent contends that these benefits were erroneously authorized (and subsequently terminated) during 2014 due to underreported income on the petitioner's application. The respondent asserts that the petitioner's total income of \$2,504 exceeded the ICP Medicaid income limit for one person of \$2,199. Therefore, in order to remain eligible for ICP Medicaid, the petitioner would have been required to establish a Qualified Income Trust account, to be funded monthly in an amount to be determined by the respondent.

3. There was no dispute from either party that the petitioner's income exceeded the limit for ICP Medicaid.

4. On April 30th, 2015, the petitioner submitted a new application for Institutionalized Care Program (ICP) Medicaid benefits.

5. On May 12th, 2015, the respondent issued a Notice of Case Action to the petitioner informing him that in order to complete the application process, the following information, in full and verbatim, was necessary:

Please complete and sign the Authorization to Disclose Information Form
Please complete and sign the Informed Consent Form
Please complete and sign the Affidavit for Designated Representative Form

Please send the verifications of the gross civil services received during 2014 (never provided before) and for 2015.

We requested a new Income trust legal instrument since Dept 2014, never provided neither *[Sic]*. The last 3 months of the PTF acct 1212 and the income trust acct properly funded. Due date: 05/21/15. *[Sic.]* Thanks.

The notice provides a deadline of May 22nd, 2015 (contrary to May 21st, 2015, as indicated above.) The notice also provides the various means available by which to provide the requested information. The notice further advises that failure to provide the information would result in the respondent's inability to determine the petitioner's eligibility, and that his application could be denied or benefits could end.

6. The respondent asserted that during the time that the application was in pending status, the petitioner did not supply the information requested, but instead, sent a copy of a letter from an attorney explaining how to establish a QIT account.

7. The petitioner submitted into evidence as Petitioner's Exhibit 2 a Consumer Account Application from [REDACTED] indicating that the petitioner applied for a Qualified Income Trust on April 30th, 2015. How the petitioner applied for this QIT prior to the respondent's date of request on the same date of his application for ICP benefits, and prior to the respondent's May 22nd, 2015 request, was not clear.

8. The respondent contends that over the next two months, the requested information in the above-cited notice was received only in pieces, and no action could be taken until July 2015, at which time the QIT paperwork was forwarded to the Department's Office of Legal Counsel for final approval. The paperwork was approved; however, the final page of the paperwork, which included all signatures necessary to execute the trust, was not received until August 3rd, 2015. (See Respondent's Exhibit 3, final page.) Therefore, August 2015 was the first month that ICP benefits could be approved.

9. The petitioner explained that he only assumed his current position as administrator for the facility in July 2015, and therefore, could not address any events that took place prior to that time. The petitioner also explained that the facility has seen a heavy turnover of social workers, business managers, and administrators over the past several months and as a result, many unresolved issues, including this one, "slipped through the cracks." The petitioner asserts that despite the circumstances, the facility provided its services, and is now seeking payment for the months in question.

CONCLUSIONS OF LAW

10. The Department of Children and Families Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties, pursuant to §120.80, Fla. Stat. This order is the final administrative decision of the Department of Children and Families under § 409.285, Fla. Stat.

11. This hearing was held as a de novo proceeding pursuant to Fla. Admin. Code R. 65-2.056.

12. Fla. Admin. Code Rule 65A-1.025, "Eligibility Determination Process" 1(a) states as follows:

The Department must determine an applicant's eligibility initially at application and if the applicant is determined eligible, at periodic intervals thereafter. It is the applicant's responsibility to keep appointments with the eligibility specialist and furnish information, documentation and verification needed to establish eligibility.

13. Fla. Admin. Code Rule 65A-1.205, "Eligibility Determination Process" 1(c) sets forth the time frame for an applicant to provide additional information:

If the eligibility specialist determines during the interview or at any time during the application process that the applicant must provide additional information...the eligibility specialist must give the applicant written notice to provide the requested information or to comply, allowing ten calendar days from request or the interview, whichever is later... If the applicant does not provide required verifications or information by the deadline date the application will be denied, unless the applicant requests an extension or there are extenuating circumstances justifying an additional extension.

14. The above citations explain that it is the petitioner's responsibility to provide requested verification to the Department.

15. Fla. Admin. Code Rule 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:

...

(d) For ICP, gross income cannot exceed 300 percent of the SSI federal benefit rate after consideration of allowable deductions set forth in subsection 65A-1.713(2), F.A.C. Individuals with income over this limit may qualify for institutional care services by establishing an income trust which meets criteria set forth in subsection 65A-1.702(15), F.A.C...

(2) Included and Excluded Income. For all SSI-related coverage groups the department follows the SSI policy specified in 20 C.F.R. 416.1100 (2007) (incorporated by reference) et seq., including exclusionary policies regarding Veterans Administration benefits such as VA Aid and Attendance, unreimbursed Medical Expenses, and reduced VA Improved pensions, to determine what counts as income and what is excluded as income with the following exceptions:

(a) In-kind support and maintenance is not considered in determining income eligibility.

(b) Exclude total of irregular or infrequent earned income if it does not exceed \$30 per calendar quarter.

(c) Exclude total of irregular or infrequent unearned income if it does not exceed \$60 per calendar quarter.

(d) Income placed into a qualified income trust is not considered when determining if an individual meets the income standard for ICP, institutional Hospice program or HCBS.

(e) Interest and dividends on countable assets are excluded, except when determining patient responsibility for ICP, HCBS and other institutional programs ...

(b) For institutional care, hospice, and HCBS waiver programs the department applies the following methodology in determining eligibility:

1. To determine if the individual meets the income eligibility standard the client's total gross income, excluding income placed in qualified income trusts, is counted in the month received. The total gross income must be less than the institutional care income standard for the individual to be eligible for that month.

16. The above authority explains that in order to be eligible for the ICP Medicaid, an applicant's gross income cannot exceed 300% of the federal benefit rate. However, if applicant's income exceeds the limit, he/she is able to establish and fund a QIT to qualify for ICP Medicaid benefits. Total gross income outside of the qualified income trust must be counted in the month received and must be less than the ICP income standard for the individual to be eligible for that month.

17. The Department's ACCESS Florida Program Policy Manual, 165-22, Appendix A-9 sets forth the ICP income limit for an individual at \$2,199 (effective April 2015.)

18. The ACCESS Florida Program Policy Manual, 165-22, Section 1840.0110 "Income Trusts (MSSI, SFP)" states:

The following policy applies only to the Institutionalized Care Program (ICP), institutionalized MEDS-AD, institutionalized Hospice, Home and Community Based Services (HCBS) and PACE. It does not apply to Community Hospice.

To qualify, an individual's gross income cannot exceed 300 percent of the SSI federal benefit rate (refer to Appendix A-9 for the current income standard). If an individual has income above the ICP income limit, they may become eligible for institutional care or HCBS if they set up and fund a qualified income trust. A trust is considered a qualified income trust if:

1. it is established on or after 10/01/93 for the benefit of the individual;
2. it is irrevocable;

3. it is composed only of the individual's income (Social Security, pensions, or other income sources); and
4. the trust stipulates the state will receive the balance in the trust upon the death of the individual up to an amount equal to the total medical assistance paid on their behalf. ...

19. As established in the Findings of Fact, there was no dispute from either party that the petitioner's total income of \$2,504 exceeded the limit of \$2,199 and that therefore, establishment of a QIT was necessary in order to remain eligible for this benefit. The evidence shows that the respondent requested that the petitioner provide verification of said QIT on May 12th, 2015, but was not provided in full until August 3rd, 2015. Therefore, the hearing officer affirms the respondent's position that eligibility for ICP Medicaid benefits cannot be established for April 2015 through July 2015.

DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, this appeal is denied. The respondent'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 indigence to waive those fees. The Department has no funds to assist in this review, and any financial obligations incurred will be the petitioner's responsibility.

DONE and ORDERED this 01 day of February, 2016,
in Tallahassee, Florida.



Justin Enfinger
Hearing Officer
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Tallahassee, FL 32399-0700
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Copies Furnished To: [REDACTED] Petitioner
Office of Economic Self Sufficiency
[REDACTED]