

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. 16F-00017
APPEAL NO. 16F-01120

PETITIONER,

Vs.

CASE NO. 

FLORIDA DEPARTMENT
OF CHILDREN AND FAMILIES
CIRCUIT: 15 Palm Beach
UNIT: 88242

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on February 2, 2016, at 1:34 p.m.

APPEARANCES

For Petitioner:



For Respondent:

Corrie Driscoll, supervisor

STATEMENT OF ISSUE

At issue is whether the respondent's action to deny the petitioner's application for Food Assistance (FA) benefits is correct. The petitioner carries the burden of proof in the FA appeal by a preponderance of the evidence.

The petitioner is also appealing the termination of full Medicaid and the enrollment of her two children in the Medically Needy Program with an estimated share

of cost. She is seeking full Medicaid. The burden of proof was originally assigned to the petitioner but after review, the burden of proof was reassigned to the Department.

PRELIMINARY STATEMENT

The respondent submitted one exhibit which was entered into evidence and marked as Respondent's Composite Exhibit 1. The petitioner submitted one exhibit which was entered into evidence and marked as Petitioner's Exhibit 1. The record was held open until February 9, 2016, for the respondent to provide the Medicaid budget. The Department provided one additional exhibit which was entered into evidence and marked as Respondent's Exhibit 2. The petitioner also provided one additional exhibit which was accepted, entered into evidence and marked as Petitioner's Exhibit 2. The record was closed on February 9, 2016.

FINDINGS OF FACT

1. On December 16, 2015, the petitioner completed a recertification application for FA benefits. The application listed the household members as the petitioner (age 36) and her two children (ages 1 and 5). She reported rent of \$800 and electricity of \$100. She also reported she was employed at [REDACTED] and was paid on a monthly basis.
2. The petitioner provided per paystubs as verification of her income. The Department updated her case with the income and expenses and did not find eligibility for FA benefits.
3. The Department calculated petitioner's gross monthly earned income as \$3,601.25 by adding paystubs dated October 30, 2015 of \$1,400 and November 13, 2015 of \$1,950, dividing by two and then multiplying by conversion factor of 2.15 to

determine the monthly income. The Department compared it to the gross income limit for three persons of \$3,349 and found the petitioner's gross monthly income was more than the monthly gross income allowed for her assistance group size.

4. On December 30, 2015, the Department mailed the petitioner a Notice of Case Action informing her that her application from December 2015 was denied. The reason for the denial was that her income was too high for the program (Respondent's Composite Exhibit 1).

5. The Department added the petitioner's two paystubs to get her monthly gross income of \$3,350 in Medicaid budget. The respondent determined the petitioner's household income exceeded the income limit for full Medicaid benefits and enrolled her in the Medically Needy Program with a share of cost (SOC).

6. The respondent performed the following budget calculations when it determined the petitioner's estimated SOC. It used her income of \$3,350 and subtracted the Medically Needy Income Limit of \$486 for a household size of three, resulting to \$2,864 as her children's SOC.

7. By notice dated December 30, 2015, the Department notified the petitioner that Medicaid benefits for her two children would end on January 31, 2016. On the same notice the Department informed her that her two children were enrolled in the Medically Needy program with an estimated SOC of \$2,864.

8. At the hearing, the petitioner explained she works as an adjunct teacher and is paid according to the classes she is contracted to teach. The Department used her paystubs dated October 30, 2015 of \$1,400 and November 13, 2015 of \$1,950 to determine her FA eligibility. The petitioner does not agree with the respondent's

calculation of her income. She argued the Department inflated her income as she only earned \$24,750 for the year 2015 and provided her W2 showing \$24,750 as the gross income for 2015.

9. The hearing officer finds that the petitioner's is paid on a biweekly basis as the paychecks she provided states, "Pay Number: Bi weekly 22" and "Pay Number: Bi weekly 23." The paycheck number 22 covers the period October 10, 2015 through October 23, 2015 and paycheck number 23 covers the period October 24, 2015 through November 06, 2015.

10. The Department explained the petitioner's children already received a full year of Medicaid benefits therefore they are not eligible for any additional months of Medicaid.

CONCLUSION OF LAW

11. 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.

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

The Food Assistance benefits will be addressed first.

13. The Code of Federal Regulations 7 C.F.R. § 273.9 define income and states, in part:

(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 standards for the Food Stamp Program...

(b) *Definition of income...*

(1) Earned income shall include: (i) All wages and salaries of an employee...

14. Pursuant to the above authority, the petitioner's monthly earned income must be included in the determination of her FA benefits.

15. The FAP standards for gross income and net income and deductions appear in the Department's Program Policy Manual CFOP-165-22 (Policy Manual), at Appendix A-1. Effective October 2015, the maximum gross income for a three person assistance group is \$3,349.

16. The Code of Federal Regulations at 7 C.F.R. § 273.10 explains income calculation and conversion in the Food Assistance Program and states in part:

(c) *Determining income—(1) Anticipating income.* (i) For the purpose of determining the household's eligibility and level of benefits, the State agency shall take into account the income already received by the household during the certification period and any anticipated income the household and the State agency are reasonably certain will be received during the remainder of the certification period. If the amount of income that will be received, or when it will be received, is uncertain, that portion of the household's income that is uncertain shall not be counted by the State agency. For example, a household anticipating income from a new source, such as a new job or recently applied for public assistance benefits, may be uncertain as to the timing and amount of the initial payment. These moneys shall not be anticipated by the State agency unless there is reasonable certainty concerning the month in which the payment will be received and in what amount. If the exact amount of the income is not known, that portion of it which can be anticipated with reasonable certainty shall be considered as income. In cases where the receipt of income is reasonably certain but the monthly amount may fluctuate, the household may elect to income average. Households shall be advised to report all changes in gross monthly income as required by §273.12. .

(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.

Nonrecurring lump-sum payments shall be counted as a resource starting in the month received and shall not be counted as income...

17. The Policy Manual at section 2410.0201 addresses Prospective Budgeting (FS)

and states:

Prospective budgeting is a method by which eligibility and benefit levels are based on the assistance group's composition and income circumstances, as they exist in the month for which assistance group's composition and income circumstances, as they exist in the month for which benefits are being calculated. This can be either a current or future month. When budgeting prospectively for a future month, the estimated anticipated income and circumstances may be based on what occurred in prior months if those months are considered representative of the assistance group's continued situation. Prospective budgeting may also be based on the amount the individual can anticipate to receive. When a budget is completed for a month that has already passed, the actual income and circumstances are used. A past month is defined as any month prior to the month of the interview. All assistance groups are subject to prospective budgeting.

18. The Policy Manual at section 2410.0204, Determining Monthly Income (FS)

states:

Several factors are involved in determining a gross amount of monthly income to be budgeted. These are:

1. anticipating and projecting income,
2. averaging income, and
3. converting the income to a monthly amount.

Once an average amount of income is computed, several factors must be considered to arrive at the gross amount of monthly income. These factors are:

1. When income is received more often than monthly, it will be converted to a monthly amount.
2. When averaging income, use the most recent consecutive four weeks or the best available information when it is representative of the individual's future earnings.

19. The petitioner was paid on a biweekly basis. The Department also argued that since the petitioner was paid on a biweekly basis her income is to be converted to monthly income using the biweekly factor of 2.15 in order to anticipate her ongoing monthly income.

20. Pursuant to the above authorities, the respondent converted the petitioner's biweekly income to monthly income by adding the two bi-weekly checks, then dividing the sum by two, and then multiplying the sum by 2.15. The undersigned concludes the Department correctly calculated petitioner's monthly gross earned income amount. Since the petitioner's earned income is above the monthly gross earned income limit, she is ineligible for FA benefits.

Medicaid Benefits will now be addressed

21. Federal Medicaid Regulations 42 C.F.R. § 435.218 Individuals with MAGI-based income above 133 percent FPL (Federal Poverty Level) states in part:

(a) *Basis*. This section implements section 1902(a) (10) (A) (ii) (XX) of the Act.

(b) *Eligibility*—(1) *Criteria*. The agency may provide Medicaid to individuals who:

(i) Are under age 65;

(ii) Are not eligible for and enrolled for mandatory coverage under a State's Medicaid State plan in accordance with subpart B of this part;

(iii) Are not otherwise eligible for and enrolled for optional coverage under a State's Medicaid State plan in accordance with section 1902(a)(10)(A)(ii)(I) through (XIX) of the Act and subpart C of this part, based on information available to the State from the application filed by or on behalf of the individual; and

(iv) Have household income that exceeds 133 percent FPL but is at or below the income standard elected by the agency and approved in its Medicaid State plan, for the applicable family size.

(2) *Limitations*. (i) A State may not, except as permitted under an approved phase-in plan adopted in accordance with paragraph (b)(3) of this section, provide Medicaid to higher income individuals described in

paragraph (b)(1) of this section without providing Medicaid to lower income individuals described in such paragraph.

(ii) The limitation on eligibility of parents and other caretaker relatives specified in § 435.119(c) of this section also applies to eligibility under this section.

22. Family-Related Medicaid income criteria is set forth in 42 C.F.R. 435.603 and states:

(a) (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.

(3) In the case of determining ongoing eligibility for beneficiaries determined eligible for Medicaid coverage to begin on or before December 31, 2013, application of the financial methodologies set forth in this section will not be applied until March 31, 2014 or the next regularly-scheduled renewal of eligibility for such individual under §435.916 of this part, whichever is later.

(b) *Definitions.* For purposes of this section—

Child means a natural or biological, adopted or step child.

Code means the Internal Revenue Code.

Family size means the number of persons counted as members of an individual's household. In the case of determining the family size of a pregnant woman, the pregnant woman is counted as herself plus the number of children she is expected to deliver. In the case of determining the family size of other individuals who have a pregnant woman in their household, the pregnant woman is counted, at State option, as either 1 or 2 person(s) or as herself plus the number of children she is expected to deliver....

(c) *Basic rule.* Except as specified in paragraph (i), (j), and (k) of this section, the agency must determine financial eligibility for Medicaid based on "household income" as defined in paragraph (d) 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.

(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.

23. The Policy Manual at section 2430.0204 addresses Determining Monthly Income (MFAM), and states:

The process of computing the amount of income to be considered in determining financial eligibility and the coverage group(s) is called “budgeting”. When determining financial eligibility, one or more budget calculations will be completed. The best estimate of the standard filing unit’s income and circumstances is used to determine eligibility. When determining eligibility benefits for a past month, the SFU’s actual income and circumstances are used. The income is compared to the appropriate income limit to determine the coverage group.

24. The Policy Manual at section 2430.0509, Income More Often than Monthly (MFAM), states:

The following procedure to calculate the average of earned or unearned income received in varying amounts more frequently than monthly is the same for all programs:

1. Add the gross income amounts for the past four weeks to get the total.
2. If income is received weekly, add four pay periods and divide by four to get the weekly average.
3. If income is received biweekly, add two pay periods and divide by two to get the biweekly average.
4. If income is received semimonthly, add two pay periods and divide by two to get the semimonthly average.

5. If income is received monthly, use the most recent month if representative.

The result of the above is called the averaged amount. With the exception of monthly amounts, the averaged amount described above must be converted to a monthly amount.

25. The above instructs the Department to add the two biweekly pay periods and divide by two to determine the biweekly average.

26. The Policy Manual at Appendix A-7 indicates the Family-Related Medicaid Income Limit for a child between ages one and five in a household size of three is \$2,227, the Standard Disregard is \$117, and the Medically Needy Income Limit (MNIL) is \$486 and the MAGI Disregard is \$84.

27. The Policy Manual at passage 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 Kid Care and/or the Federally Facilitated Marketplace (FFM).

28. In accordance with the above controlling authorities, the undersigned calculated eligibility for Medicaid for the petitioner's two children and did not find the children eligible for full Medicaid as the petitioner's modified adjusted gross income is more than the income limit of \$2,227, for a household of three. Step 1: The petitioner's two paychecks were added to get the modified adjusted gross income of \$3,350. Step 2: There are no deductions provided, as there was no tax return. Step 3: The total income of \$3,350 less the standard disregard of \$117 is \$3,233. Step 4: The total countable net income of \$3,233 was compared with the income standard for two of \$2,227. Step 5: Since it was greater than the income standard, the MAGI disregards of \$84 was subtracted, resulting to \$3,149. This was compared to the income limit of \$2,227 for full Medicaid. The petitioner's household income was greater than the income limit for full Medicaid. The undersigned concludes the petitioner's two children were ineligible for full Medicaid. The undersigned further concludes Medically Needy eligibility must be explored for the petitioner.

The Medically Needy share of cost will now be addressed

29. Fla. Admin. Code R. 65A-1.701 (30) defines Share of Cost (SOC) as, "Share of Cost (SOC): SOC represents the amount of recognized medical expenses that a Medically Needy enrolled individual or family must incur each month before becoming eligible to receive Medicaid benefits for medical expenses incurred during the remainder of the month".

30. The methods of determining the share of cost for Medically Needy Program benefits is set forth in the Fla. Admin. Code R. 65A-1.713. It states:

(1) (h) For Medically Needy, income must be less than or equal to the Medically Needy income standard after deduction of allowable medical expenses...

(4) (c) Medically Needy. The amount by which the individual's countable income exceeds the Medically Needy income level, called the "share of cost", shall be considered available for payment of medical care and services. The department computes available income for each month eligibility is requested to determine the amount of excess countable income available to meet medical cost...

31. The above cited authorities and policies address income standards and limits, calculating countable income, and income budgeting in the Family-Related Medically Needy Program.

32. The undersigned carefully reviewed the Department's determination of the children's share of cost budget and did not find any errors with the Department's calculation. The household's modified adjusted gross income of \$3,350, less the MNIL of \$486 resulted to the children's SOC of \$2,864.

33. The undersigned concludes the respondent's action to deny full Medicaid benefits and to enroll the petitioner in the Medically Needy Program was correct.

34. In careful review of the cited authorities and evidence, the undersigned concludes, the Department used the best available information to determine FA and Medicaid eligibility. The petitioner did not meet the burden of proof in establishing that the Department incorrectly denied FA benefits. The undersigned did not find the petitioner's children eligible for full Medicaid benefits or a lower share of cost.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, both appeals are denied and 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 23 day of February, 2016,

in Tallahassee, Florida.



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