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OCT 20 2009

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

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DEPT. OF CHILDREN & FAMILIES

PETITIONER,
Vs.

APPEAL NO. 09F-03793

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 05 Marion
UNIT: ICP

CASE NO. 1309612960

RESPONDENT.
_____ /

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned-hearing officer on September 15, 2009, at 2:40 p.m., in Wildwood, Florida. The petitioner was not present. Present representing the petitioner was _____ attorney at law. The Department was represented by Joyce Miller, District 13 legal counsel. Present as witnesses for the Department were Sandra Maxwell, ACCESS processor and Barbara Hagins, economic self sufficiency specialist.

The hearing was scheduled for August 4, 2009. However, at the request of the petitioner, a continuance was granted.

ISSUE

At issue is whether the Department correctly denied the petitioner's request for Institutional Care Program (ICP) Medicaid benefits for April 2009 and May 2009 based on excess income.

The petitioner held the burden of proof.

FINDINGS OF FACT

1. The petitioner was a resident of

Florida a skilled nursing facility. The petitioner passed away during June 2009. On April 27, 2009, the petitioner's authorized representative submitted an application on behalf of the petitioner for ICP benefits.

2. At the time of the application, the petitioner's gross monthly income was Social Security benefits of \$1,235, and a pension of \$1,048.27 per month. The petitioner's total gross monthly income was \$2,283.27. The petitioner's total gross monthly income exceeded the income standard for ICP of \$2,022 for an individual, by \$261.27. Therefore, he was not eligible to receive ICP Medicaid unless he established an income trust and funded the trust each month.

3. The petitioner established an income trust and the Department approved the income trust. On the above application, the authorized representative stated that \$200 of the petitioner's income was being deposited into the income trust. On May 6, 2009, the Department interviewed the petitioner's representative who informed the Department that \$300 per month was being deposited into the income trust account in order to bring the petitioner's total countable income below the income standard of \$2,022. During the interview, the Department made the petitioner's representative

aware that at least \$261.27 needed to be deposited into the income trust each month to bring the petitioner's income below the ICP income standard.

4. Subsequent to the interview, the petitioner's representative provided the Department with bank statements showing that \$250 deposits were made into the income trust on March 4, 2009, April 7, 2009 and May 4, 2009. The deposits were not sufficient to bring the petitioner's countable income below the ICP income standard. Therefore, the Department denied the petitioner's application for ICP Medicaid for the months of April 2009 and May 2009 due to excess income. A deposit of \$261.27 was made into the income trust on June 4, 2009. The amount of the June 2009 deposit was sufficient to bring the petitioner's countable income below the ICP income standard. Therefore, the Department approved ICP Medicaid for June 2009.

5. On June 4, 2009, the Department denied the petitioner's ICP application for April 2009 and May 2009 because his gross income exceeded the income limit in the ICP.

CONCLUSIONS OF LAW

Fla. Admin. Code 65A-1.702(15) "Trusts" in part states:

(a) The department applies trust provisions set forth in 42 U.S.C. § 1396p(d).

(b) Funds transferred into a trust or other similar device established other than by a will prior to October 1, 1993 by the individual, a spouse or a legal representative are available resources if the trust is revocable or the trustee has any discretion over the distribution of the principal. Such funds are a transfer of a resource or income, if the trust is irrevocable and the trustee does not have discretion over distribution of the corpus or the client is not the beneficiary. No penalty can be imposed when the transfer occurs beyond the 36-month look back period. Any disbursements which can be made from the trust to the individual or to someone else on the individual's behalf shall be considered available income to the individual.

Any language which limits the authority of a trustee to distribute funds from a trust if such distribution would disqualify an individual from participation in government programs, including Medicaid, shall be disregarded.

(c) Funds transferred into a trust, other than a trust specified in 42 U.S.C. § 1396p(d)(4), by a person or entity specified in 42 U.S.C. § 1396p(d)(2) on or after October 1, 1993 shall be considered available resources or income to the individual in accordance with 42 U.S.C. § 1396p(d)(3) if there are any circumstances under which disbursement of funds from the trust could be made to the individual or to someone else for the benefit of the individual. If no disbursement can be made to the individual or to someone else on behalf of the individual, the establishment of the trust shall be considered a transfer of resources or income.

Fla. Admin. Code 65A-1.713 in part states:

SSI-Related Medicaid Income Eligibility Criteria.

(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 paragraph 65A-1.702(15), F.A.C.

The Department's ACCESS Florida Program Policy Manual 165-22, Appendix A-9 sets forth the ICP income limit for an individual at \$2,022. Appendix A-10 sets forth the federal benefit rate at \$674. Three hundred percent of the federal benefit rate at the time of the application at issue was \$2,022.

The Department's ACCESS Florida Program Policy Manual 165-22, Section 1840.0110 in part states:

Income Trusts (MSSI)

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.

The eligibility specialist must forward all income trusts to their Region or Circuit Program Office for review and submission to the District Legal Counsel (DLC) for a decision on whether the trust meets the criteria to be a qualified income trust. Refer to Appendix A-22.1, "Guidance for Reviewing Income Trusts," for instructions on processing income trust cases.

The individual (or their legally authorized representative) must deposit sufficient income into the income trust account in the month in which the income is received to reduce their countable income (the income outside the trust) to within the program income standard. The individual must make the deposit each month that eligibility is requested. This may require the individual to begin funding an executed income trust account prior to its official approval by the District Legal Counsel.

The petitioner's representative argued that there was sufficient money in the trust account to make up for the shortage in the deposits that were made during April 2009 and May 2009. Therefore, the Department should not have denied ICP benefits for April 2009 and May 2009

Based on the above authorities, the individual (or their legally authorized representative) must deposit sufficient income into the income trust account in the

month in which the income is received to reduce their countable income (the income outside the trust) to within the program income standard. The individual must make the deposit each month that eligibility is requested.

The above rule provides for the establishment of an income trust by an Institutional Care Program applicant in order to reduce monthly income below the state income limitations.

The findings show that at the time of the application, the petitioner had an income trust and that the petitioner's representative was aware that a portion of the petitioner's income had to be deposited each month into the trust account to reduce the petitioner's countable income to within the program income standard. During April 2009 and May 2009, \$250 was deposited into the petitioner's trust account. The amount deposited was not enough to reduce the petitioner's countable income to within the program income standard. Therefore, the petitioner's countable income of \$2,033.27 (\$2,283.27 minus \$250) was available to be counted in the eligibility determination process for April 2009 and May 2009. As the countable income of \$2,033.27 exceeded the Department's income limitation of \$2,022, the petitioner was not eligible to receive Institutional Care Program Medicaid for the months of April 2009 or May 2009. Therefore, the Department correctly denied Institutional Care Program benefits for those months.

DECISION

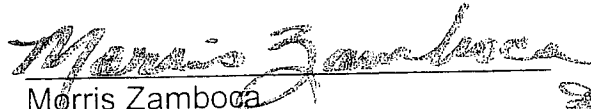
The appeal is denied. The Department's action is affirmed.

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 indigency 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 20th day of October, 2009,

in Tallahassee, Florida.


Morris Zamboza
Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
850-488-1429

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