

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

[REDACTED]

APPEAL NO. 11F-05216

PETITIONER,

Vs.

CASE NO. 1367343330

FLORIDA DEPT OF CHILDREN AND FAMILIES
CIRCUIT: 20 Collier
UNIT: 88281

RESPONDENT.

_____ /

FILED
Sep 21, 2011
OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN AND FAMILIES

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on August 24, 2011, at 10:30 a.m.

APPEARANCES

For the Petitioner: [REDACTED], designated representative

For the Respondent: [REDACTED] economic self-sufficiency specialist I

ISSUE

The petitioner is appealing the respondent's action to deny Institutional Care Program (ICP) benefits for April 2011 as the petitioner income exceeded the Program income eligibility standard.

PRELIMINARY STATEMENT

The respondent informed the petitioner that her ICP benefits were denied. On June 27, 2011, the petitioner timely requested a hearing.

The petitioner's representative and the respondent's representative appeared telephonically. Witnesses for respondent [REDACTED], ACCESS supervisor, appeared telephonically.

FINDINGS OF FACT

1. The petitioner is residing in a nursing facility. The petitioner's son and the petitioner attorney filed an application for ICP benefit on behalf of the petitioner in September 2010. An Irrevocable Income Cap Trust was established on September 29, 2010. The petitioner's son and the petitioner attorney opened an Income Trust account for the petitioner. The son deposited \$1,500 a month in the Income Trust account under the advisement of the petitioner's attorney.

2. In April 2011, the son contacted [REDACTED], as the application process for September 2010 application was not completed. [REDACTED] became the petitioner's designated representative.

3. The respondent denied the petitioner's ICP benefits for March 2011, April 2011 and June 2011.

4. The designated representative reapplied for ICP benefits on June 30, 2011. The petitioner's gross monthly income was \$3,819.35.

5. The respondent determined that the petitioner's gross monthly income exceed the income limit of \$2,022 by \$1,797. The respondent determined for the petitioner to be eligible for ICP benefits each month, the petitioner would need to fund the Income Trust account with \$1,797 each month. In respondent's review of the Income Trust account statement, the statement indicated that the Income Trust account was funded with \$1,500 in April 2011 and the account had a balance of \$3,595. The respondent

determined the Income Trust account was not adequately funded for April 2011. The respondent approved the petitioner for ICP Program benefits for March 2011, June 2011 and ongoing. The respondent denied ICP benefits for the month of April 2011.

6. The designated representative asserted as follows. There was \$8,995 in the Income Trust account in April 2011. The amount of \$5,400 was withdrawn, so that the Income Trust account would not be over the asset limit. There is considerable debt to the nursing home. She opined that the denial of ICP for April 2011 would be a hardship and undue stress for the petitioner.

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 Fla. Stat § 409.285. This order is the final administrative decision of the Department of Children and Families under Fla. Stat. § 409.285.

8. This proceeding is a de novo proceeding pursuant to Florida Administrative Code § 65-2.056.

9. As this is an application, the burden of proof was assigned to the petitioner in accordance with Florida Administrative Code § 65-2.060(1).

A. As to the issue of the denial of ICP benefits for April 2011.

10. The Florida Administrative Code at § 65A-1.702 set forth how the trust provisions are applied: "(14) Trusts. (a) The department applies trust provisions set forth in 42 U.S.C. §1396p(d)."

11. The Florida Administrative Code at 65A-1.713 sets forth the 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:

(a) For MEDS-AD, income cannot exceed 90 percent of the federal poverty level after application of exclusions specified in Rule 65A-1.713(2), F.A.C...

(d) For ICP, gross income cannot exceed 300 percent of the SSI federal benefit rate after consideration of allowable deductions set forth in Rule 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 Rule 65A-1.702(14)(a), 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, 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:

(c) 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.

(3) When Income Is Considered Available for Budgeting. The department counts income when it is received, when it is credited to the individual's account, or when it is set aside for their use, whichever is earlier...

(4) Income Budgeting Methodologies. To determine eligibility SSI budgeting methodologies are applied except where expressly prohibited by 42 U.S.C. § 1396, or another less restrictive option is elected by the state under 42 U.S.C. § 1396a(r)(2)...

(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. (emphasis added)

12. The designated representative's position is as follows. The issue is semantics. The respondent is defining the term "funded" to mean deposited. As there was \$3,595 in the Income Trust account in April 2011, the Income Trust account was funded April 2011.

13. The respondent's position is that the term "funded", as to have deposited the required amount in the Income Trust account each month.

14. The rule states that each month income placed in qualified income trusts is excluded from consideration in the determination of eligibility based on the individual's countable gross income. The rule does not state the balance in the Income Trust account can be used to reduce the countable gross income each month.

15. The petitioner has the burden of proof. The petitioner's gross monthly income is \$3,819.35. The income eligibility standard for ICP benefits is \$2,022. The portion of the petitioner's income from the month of April 2011 that should have been placed in the Income Trust account in April 2011 was \$1,797. The Income Trust account statement indicates that \$1,500 was placed in the account by the petitioner in April 2011. The petitioner has not met her burden of proof that \$1,797 was placed in the petitioner's Income Trust account in the month of April 2011.

16. As \$1,797 was not place in the petitioner's Income Trust account in the month of April 2011, the petitioner's total gross monthly income of \$3,819.35 was countable income in the eligibility determination for April 2011. The petitioner's gross monthly income of \$3,819.35 for the month of April 2011 exceeded the income eligibility standard for April 2011. Based upon the above cited authorities, the respondent's action, to deny ICP benefits for April 2011 was within the rules of the Program.

B. As to the issue of hardship.

17. The Florida Administrative Code at § 65A-1.712 defines hardship:

(3)(c)(5)...Undue hardship exists when imposing a period of ineligibility would deprive an individual of medical care such that their life or health would be endangered. Undue hardship also exists when imposing a

period of ineligibility would deprive the individual of food, clothing, shelter or other necessities of life.

17. As the petitioner is residing in a nursing home, she is currently being provided medical care, food, shelter, and other necessities of life by the nursing home. The hearing officer concludes that at this time the petitioner's has not demonstrated that the criterion for hardship has been met. The request to authorize ICP benefits for the month of April 2011 on basis of hardship is denied.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is denied.

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 _____ day of _____, 2011,
in Tallahassee, Florida.

Linda Jo Nicholson
Hearing Officer
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Copies Furnished To: [REDACTED], Petitioner
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[REDACTED] for the petitioner