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

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OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES

[redacted]

APPEAL NO. 14F-11030
15F-00256
15F-02324

PETITIONER,

Vs.

CASE NO. [redacted]

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 04 Duval
UNIT: 88370

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on February 12, 2015 at 10:22 a.m.

APPEARANCES

For the Petitioner: The petitioner was present and represented herself.

For the Respondent: Viola Dickinson, Economic Self-Sufficiency Specialist II for the Department of Children and Families.

STATEMENT OF ISSUE

The petitioner is appealing the Department's action on October 29, 2014 to determine a Food Assistance Program (FAP) benefit allotment in the amount of $16.

Also at issue is the respondent's action to continue the petitioner's enrollment in the Medically Needy program with a decreased estimated monthly share of cost in the amount of $1220.

The petitioner is also appealing the Department's action to deny her application for benefits under the Qualifying Individual 1 (QI1) program as her income exceeded the income eligibility standard.

PRELIMINARY STATEMENT

The record was held open until 5:00 p.m. on February 20, 2015 to allow the petitioner and the respondent to submit additional evidence. Evidence was received and entered as the Petitioner Exhibit 1 and the Respondent Exhibit 3.

FINDINGS OF FACT

1. On October 24, 2014, the petitioner (age 50) completed an application to recertify for FAP and Medicaid benefits. Petitioner is disabled.

2. The Department included in the Food Assistance budget the petitioner's gross monthly Social Security income in the amount of $1525. The petitioner was eligible for FAP benefits as she met the gross income standard in the amount of $1946 for a household size of one person. The $155 standard deduction and $69.90 excess medical expense was deducted from the total gross income to result in $1326.10 adjusted net income. The adjusted net income was multiplied by .50 to result in a $663.05 shelter standard. The petitioner's mortgage in the amount of $935 and the $337 standard utility allowance (SUA) resulted in $1310 total shelter. The shelter

standard in the amount of $663.05 was subtracted from the total shelter costs to result in a $646.95 excess shelter deduction. The excess shelter deduction was subtracted from the adjusted net income to result in $679.15 FAP adjusted net income. The FAP adjusted net income was multiplied by 30 percent to result in a benefit reduction in the amount of $204. The maximum FAP benefit is $194 for a one person household size. The monthly benefit allotment was subtracted by the $204 benefit reduction to result in a monthly FAP benefit in the amount of $0. Program policy states that single person households who are eligible for FAP benefits are entitled to a minimum monthly allotment in the amount of $16.

3. The total income included in the budget for the petitioner's Medically Needy enrollment was $1525. The $20 unearned income disregard was subtracted from the total gross income which resulted in a countable income of $1505. The Department subtracted the medically needy income limit (MNIL) in the amount of $180 for a household size of one to result in an estimated share of cost in the amount of $1325. The share of cost was further reduced by the Medicare premium in the amount of $104.90 to result in an estimated amount of $1220.

4. The total income included in the budget for the petitioner's QI-1 coverage was $1525. The $20 unearned income disregard was subtracted from the total gross income which resulted in a countable income of $1505. The Department determined that the petitioner was ineligible for the QI-1 program as the income exceeded the QI-1 income standard for an individual in the amount of $1313 (in effect at the time of denial).

5. The petitioner does not agree that she is eligible to receive only $16 in FAP benefits. The petitioner believes she is entitled to additional FAP benefits. The petitioner argues that she has cancer and needs unprocessed and fresh foods. The petitioner argues that $16 is not enough to purchase the foods that she needs. She stretches the $16 she receives in FAP benefits. She is behind on her bills. She spends her money on household items. The petitioner does not dispute the income or shelter costs included in the Department's calculations. The petitioner believes her out-of-pocket medical expenses are approximately $25 each month and her copayments average $30 each month.

6. The petitioner argues that she is entitled to full-coverage Medicaid as she was determined to be disabled. The petitioner contends that she needs Medicaid in order for her to receive transportation services because she requires medication that limits her vision. The petitioner argues that she does not have the $6 to pay for the Jacksonville Transportation Authority (JTA) to transport her to her doctor's appointments. Her physicians are unable to treat her unless the system shows that she is eligible for full-coverage Medicaid. She did not request to receive Medicare and $104.90 is being taken out of her Social Security check each month. The petitioner is not receiving any waiver services. She is being told that even if she meets the monthly share of cost amount, physicians will not see her because she does not have full-coverage Medicaid. Petitioner believes her case should be looked at differently as she believes she is not receiving all the benefits to which she is entitled.

7. The Department explained all of its programs are income-based and do not look at the disability of the individual to determine FAP benefit allotment. The Department contends that its single individual policy allows the petitioner to receive the $16 FAP benefit allotment, as she would otherwise be ineligible. The FAP benefits are meant as a supplement to income.

8. The Department received evidence of the petitioner's additional out-of-pocket medical expenses, post-hearing, and included expenses in an updated budget (Petitioner Exhibit 1). Her additional out-of-pocket medical expenses in the amount of $22 did not change the benefit amount (Respondent Exhibit 3).

CONCLUSIONS OF LAW

9. 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 § 409.285, Fla. Stat.

10. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code § 65-2.056.

11. In accordance with Fla. Admin. Code § 65-2.060 (1), the burden of proof was assigned to the petitioner.

The FAP benefit allotment will be addressed first:

12. The Department's Program Policy Manual, 165-22, 0210.0102 Program Overview (FS), explains the purpose of the program and states:

> Assistance groups are authorized benefits electronically through Electronic Benefits Transfer (EBT), which they use to purchase food at retail stores authorized by the United States Department of Agriculture (USDA). Food stamps are intended to supplement other assistance group income. The amount of benefits received is based on the assistance group's size and financial circumstances.

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

> (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** (emphasis added), 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....
> Allowable medical costs are:
> (i) Medical and dental care....
> (ii) Hospitalization or outpatient treatment...
> (iii) Prescription drugs when prescribed by a licensed practitioner authorized under State law and other over-the-counter medication (including insulin) when approved by a licensed practitioner or other qualified health professional.....
> (iv) Health and hospitalization insurance policy premiums.
> (v) Medicare premiums...
> (4) Dependent care...
> (5) Optional child support deduction...
> (6) Shelter costs-(i) Homeless shelter deduction...
> (ii) Excess shelter deduction...
> (A) Continuing charges for the shelter occupied by the household, including rent...

(B) Property taxes, State and local assessments, and insurance on the structure itself…
(C) The cost of fuel for heating; cooling; electricity or fuel used for purposes other than heating or cooling;
(D) The shelter costs for the home if temporarily not occupied by the household…

14. The Department's Integrated Manual, 165-22, section 2610.0106.02 "Minimum Benefits (FS)" states in part, "Recurring months: Issue a minimum of eight percent of the maximum benefit for a one-person assistance group to one or two person assistance groups who are eligible." Also see 7 C.F.R. 273.10 (e)(2)(ii)(B).

15. The Department published Transmittal C-13-10-0007 on October 11, 2013 informing, "The AG is eligible for the minimum monthly food assistance benefit allotment if the assistance group meets all regular eligibility requirements and: • The AG has income less than or equal to the 200% gross income limit…"

16. The Department's Program Policy Manual, 165-22, Appendix A-1 sets forth the "Minimum Allotment for 1 or 2 Member Household" as $16.

17. The above authorities explain that expenses such as the standard deduction, rent, and the cost to heat and cool the home may be allowed as deductions from income. Out-of-pocket medical expenses incurred by an elderly or disabled household member in excess of $35 may also be allowed as an excess medical deduction. In this case, the petitioner is considered disabled for this program; the household would be eligible for a medical deduction once it exceeds $35 per month. The findings show that the petitioner has out-of-pocket medical expenses in the amount of $69.90. The petitioner reported during the hearing that she has additional out-of-pocket medical

expenses in the $25 for prescriptions and $30 for copayments. The Department received verification of additional out-of-pocket medical costs in the amount of $22; however, it determined that the petitioner's FAP benefit allotment did not increase as a result of the additional costs.

18. The petitioner argues that the amount of her FAP benefit allotment is not enough to purchase the foods that are necessary for her medical condition. The controlling Food Assistance federal authority cited above provides for "excess medical deductions" and specifically excludes a deduction for special diets.

19. After careful review of the Department's budget calculation, the undersigned concludes that the Department included all allowable deductions and costs in the Food Assistance Program. Based on the petitioner's income, expenses, and the above authorities, the Department correctly determined the FAP benefit allotment in the petitioner's case. Because petitioner met the 200% gross income limit and she is a one person household she qualifies for the minimum allotment of $16.

The enrollment in the Medically Needy program will be addressed:

20. Federal Regulations at 42 C.F.R. 435.608 and Fla. Admin. Code 65A-1.702 requires a Medicaid applicant to apply for any annuities, pensions, retirement and disability benefits (Medicare) to which they are entitled as a condition of eligibility. The exception is if the applicant can show good cause for not doing so.

21. . Fla. Admin. Code 65A-1.701, Definitions, states in part:

> (20) MEDS-AD Demonstration Waiver: Medicaid coverage group for aged or disabled individuals who meet all SSI-related Medicaid non-financial eligibility criteria, whose resources do not exceed the limit in the Medically

> Needy Program, whose income is at or below 88 percent of the federal poverty level **and are not receiving Medicare or if receiving Medicare are also eligible for Medicaid covered institutional care services, hospice services or home and community based services.** (emphasis added)
> (30) 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.

22. The above authority explains that the MEDS-AD Medicaid coverage (full Medicaid) is only for individuals who do not receive Medicare. The exception is if a Medicare recipient also receives Medicaid covered institutional care services, hospice services or home and community based services. Petitioner does not fit into this exception. The Department next computed petitioner's share of cost in the Medically Needy Program.

23. Fla. Admin. Code section 65A-1.710 "SSI-Related Medicaid Coverage Groups" states in part:

> (5) Medically Needy Program. A Medicaid coverage group, as allowed by 42 U.S.C. §§ 1396a and 1396d, for aged, blind or disabled individuals (or couples) who do not qualify for categorical assistance due to their level of income or resources. The program does not cover nursing facility care, intermediate care for the developmentally disabled services, or other long-term care services.

24. 20 C.F.R. §416.1124 (c)(12) sets forth the income deduction of $20 for all adult-related (or SSI-related) Medicaid coverage groups.

25. Fla. Admin. Code 65A-1.713 "SSI-Related Medicaid Income Eligibility Criteria" states in part, "(2) (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."

26. The Medically Needy income levels are set forth in the Fla. Admin. Code at 65A-1.716 :

> (1) The monthly federal poverty level figures based on the size of the filing unit...
> (2) Medicaid income and payment eligibility standards and Medically Needy income levels are by family size as follows...
> Size...1 Level $180...

27. Based on the findings and the above controlling authorities, the undersigned concludes the Department's action to enroll the petitioner in the Medically Needy program for the aged and disabled was correct. The petitioner also has Medicare and does not meet the specifics to receive full coverage Medicaid as a Medicare recipient and therefore, does not qualify for full Medicaid.

The QI1 denial will now be addressed:

28. Fla. Admin. Code § 65A-1.709 "SSI-Related Medicaid Coverage" states, "SSI-related Medicaid provides medical assistance to eligible individuals who are aged, blind or disabled in accordance with Titles XVI and XIX of the Social Security Act and Chapter 409, F.S."

29. The above authority sets forth that the SSI-Related Medicaid program provides medical assistance to those who are aged or disabled according to the Social Security Act.

30. Fla. Admin. Code § 65A-1.713 "SSI-Related Medicaid Income Eligibility Criteria" 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:
> ...
> (j) For a Qualified Individual 1 (QI1), income must be greater than 120 percent of the federal poverty level, but equal to or less than 135 percent of the federal poverty level. QI1 is eligible only for payment of the Part B Medicare premium through Medicaid.

31. The above authority explains that an individual must have income that is within the income limits established by the federal and state law as well as the Medicaid State plan. An individual must have income greater than 120% of the poverty level but equal to or less than 135% of the federal poverty level to be eligible for QI-1. QI-1 only allows payment of the Part B Medicare premium through Medicaid.

32. The Department's Program Policy Manual 165-22, Appendix A-9 sets forth the income standards for an individual effective July 2014 is $1313 for the QI-1 program. The income standards are a percentage of the Federal Poverty Level as explained above. Beginning 2015 the income limit is $1325. Petitioner's gross income minus $20 leaves $1505.

33. Based on the above authorities, the undersigned concludes that the Department's action to deny the petitioner's application for the QI1 program was correct. Petitioner's income exceeds the income limit to allow eligibility.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the petitioner's FAP and Medicaid appeals are 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 petitioner is responsible for any financial obligations incurred as the Department has no funds to assist in this review.

DONE and ORDERED this 13th day of March, 2015,

in Tallahassee, Florida.

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