FILED
Dec 15, 2015
Office of Appeal Hearings
Dept. of Children and Families

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

PETITIONER,

Vs.

APPEAL NO. 15F-07928

CASE NO.

FLORIDA DEPARTMENT
OF CHILDREN AND FAMILIES
CIRCUIT: 09 Orange
UNIT: 66292

RESPONDENT.
_______________________________/

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing telephonically in the above-referenced matter on October 27, 2015 at 1:00 p.m.

APPEARANCES

For the petitioner: pro se

For the respondent: Clara Ford. ACCESS Supervisor

STATEMENT OF ISSUE

The petitioner is appealing the respondent's action to enroll her in the Medically Needy (MN) Program with a share of cost (SOC). Petitioner is seeking full Medicaid. The petitioner carries the burden of proof by the preponderance of evidence.

PRELIMINARY STATEMENT

By notice dated September 1, 2015, the respondent notified the petitioner that she was enrolled in the MN Program with a $741.00 SOC beginning July 2015.

Petitioner submitted one exhibit, entered as Petitioner Exhibit "1". Respondent submitted five exhibits, entered as Respondent Exhibits "1" through "5". The record was held open until close of business on November 6, 2015 for submission of additional evidence from the respondent. On November 6, 2015, additional evidence was received and entered as Respondent Exhibit "6". The record closed on November 6, 2015.

FINDINGS OF FACT

1. On July 31, 2015, petitioner submitted an application for Adult Medicaid Assistance. Petitioner listed herself ([redacted]) and her husband ([redacted]). On the application, petitioner reported she was disabled and the only source of income was her Social Security Disability (SSDI) benefits of $941.00 that would begin on August 2015. The petitioner's husband is not aged (65 or older), blind or disabled.

2. To be eligible for full Medicaid benefits, an individual must meet specific technical, income and resource requirements. The petitioner met the technical factors; the next step is to review the household income.

3. The respondent calculated the petitioner's total countable income as $921.00, after a $20.00 unearned income disregard was subtracted from her $941.00 SSDI benefits. The income limit for an aged/disabled individual to receive full Medicaid is $864.00. Therefore, petitioner's countable income ($921.00) exceeded the income limit.

4. The respondent enrolled the petitioner in the MN Program with a SOC. To determine the SOC amount, the respondent determined the Medically Needy Income Level (MNIL) for a household size of one was $180.00, this amount was subtracted from

the countable monthly income of $921.00, resulting in a SOC amount of $741.00. The respondent calculated the petitioner's SOC amount as follows:

TOTAL UNEARNED INCOME:	941.00	COUNTABLE EARNED INCOME:	.00
PARENT"S DEEMED INCOME: +	.00	COUNTABLE UNEARNED INCOME: +	921.00
MISC. INCOME DISREGARDS: -	.00	MEDICALLY NEEDY DISREGARD: -	.00
UNEARNED INCOME DISREGARD: -	20.00	TOTAL COUNTABLE INCOME: =	921.00
COUNTABLE UNEARNED INCOME: =	921.00		
		INCOME STANDARD:	.00
SELF-EMP. ADJ. GROSS EARN.:	.00		
ADDITIONAL EARNED INCOME: +	.00		
MISC. INCOME DISREGARDS: -	.00	TOTAL COUNTABLE INCOME:	921.00
REM. UNEARNED INC. DISREGARD: -	.00	MNIL: -	180.00
EARNED INCOME DISREGARD: -	.00	SHARE OF COST: =	741.00
1/2 REMAINING DISREGARD: -	.00		
BLIND WORK EXPENSES: -	.00	MED. INSURANCE PREMIUM: -	.00
COUNTABLE EARNED INCOME: =	.00	RECURRING MED. EXPENSES: -	.00
		REMAINING SOC: =	741.00

AG HAS PASSED THE SSI-RELATED MEDICAID ELIGIBILITY DETERMINATION BUDGET

5. On September 1, 2015, the respondent sent the petitioner a Notice of Case Action notifying her enrollment in the MN Program with a SOC beginning July 2015 based on her household income. However, evidence presented by the respondent shows petitioner was scheduled to receive her first SSDI payment for July 2015 around August 2015. The award letter from Social Security Administration (SSA) explained the following:

We are writing to let you know that you are entitled to monthly disability benefits from Social Security beginning June 2015.

Your Benefits

The following chart shows your benefit amount(s) before any deductions or rounding. The amount you actually receive may differ from your full benefit amount. When we figure how much to pay you, we must deduct certain amounts, such as Medicare premiums and worker's compensation offset. We must also round down to the nearest dollar.

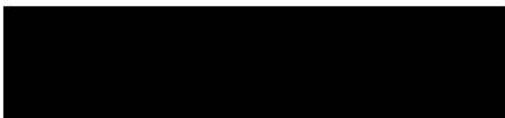
Beginning Date	Benefit Amount	Reason
June 2015	$941.70	Entitlement began

What We Will Pay

- The day of the month you receive your payments depends on your date of birth.

We are paying you beginning August 2015.

- You will receive $941.00, which is the money you are due for July 2015.
- After that, you will receive $941.00 each month.



We are writing to you about your Social Security benefits.

What You Should Know

As you requested on or about July 31, 2015 we changed your direct deposit information. We will send your Social Security payments to the new financial institution or account you selected.

You should keep the old account open until we send a payment to the new account. It usually takes us 1 to 2 months to change where we send payments.

Please let us know right away if your address changes so we can send any future letters to your new address. Also let us know if you change the bank account where we send your payments.

What We Will Pay And When

- You will receive $941.00 for August 2015 around September 9, 2015.

6. Respondent included the petitioner's SSDI benefits in the Medicaid budget beginning July 2015.

7. Petitioner presented unpaid medical bills for date of services from March 16, 2014, through May 15, 2015. Overall unpaid amount owed was $5,474.34. During the

hearing, petitioner reported that she has recurring out of pocket medical expenses that average to $120.00 per month.

8. Respondent explained the medical bills are allowable medical expenses to meet the SOC. Recurring medical expenses when verified can be used to reduce the SOC.

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 R. 65-2.056.

11. Fla. Admin. Code R. 65A-1.710, SSI-Related Medicaid Coverage Groups, states in part:

> The Department covers all mandatory coverage groups and the following optional coverage groups:
> (1) MEDS-AD Demonstration Waiver. A coverage group for aged and disabled individuals (or couples), as provided in 42 U.S.C. § 1396a(m).
> ...
> (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.

12. Fla. Admin. Code R. 65A-1.713 defines the income limits for SSI-Related Medicaid programs:

> (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 Demonstration Waiver, income cannot exceed 88 percent of the federal poverty level after application of exclusions specified in subsection 65A-1.713(2), F.A.C.

...

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

13. The Department's Program Policy Manual (Policy Manual), CFOP 165-22, passage 2640.0500, Share of Cost (MSSI) sets forth:

> The eligibility specialist must determine eligibility for Medically Needy any time the assistance group's assets and/or income exceeds the appropriate categorical asset/income limits. The eligibility specialist determines whether the assistance group's assets are within the Medically Needy asset limits and whether the assistance group members meet the technical factors. If the Medically Needy asset limit is met and the assistance group meets all technical factors, the eligibility specialist determines the amount of countable income and computes a budget using the MNIL which is the same for both family and SSI-Related Medicaid coverage groups (refer to Appendix A-7).
> If income is equal to or less than the MNIL, there is no share of cost and the individual is eligible. Medicaid is authorized for individuals who are eligible without a share of cost.
> If income is greater than the MNIL, share of cost is determined for appropriate members. Appropriate members are enrolled but cannot be eligible until the share of cost is met.

14. The Code of Federal Regulations 20 C.F.R. § 416.1124 defines unearned Income that is not counted in SSI – Related Medicaid programs:

> (C)(12) The first $20 of any unearned income in a month other than income in the form of in-kind support and maintenance received in the household of another (see §416.1131) and income based on need. Income based on need is a benefit that uses financial need as measured by your income as a factor to determine your eligibility.

15. The Policy Manual, CFOP 165-22, passage 2640.0508, Proof of Medical Expenses - MN (MSSI):

> The following are verification requirements for allowable medical expenses to be counted toward share of cost.

For Medicare premiums the individual's statement may be accepted (including coinsurance charges).
For other health insurance premiums proof is needed of the amount and frequency of the premium. Acceptable evidence is the insurance policy, canceled check, receipt, pay stub or verbal verification from the agent.
For paid medical services bills (includes coinsurance payments) proof is needed of the date of the payment, amount of payment and an estimate of third party liability/TPP, if applicable. Acceptable evidence is the paid bill, receipt, canceled check, written statement from doctor or verbal verification from the provider. (For TPP, verbal verification is not acceptable.)
Exception: The individual's statement for bus charges may be accepted. The individual's statement of a TPL/TPP estimate may be accepted if no other verification is available.
For unpaid medical expenses less than one year old from a hospital, nursing home or provider other than pharmacy ($100 or more), proof is needed of the date of service, total bill and the TPL estimate. Acceptable evidence is a provider's statement and bill or statement of account.
For other unpaid medical services less than one year old proof is needed of the amount due and the date of service. Acceptable evidence is a bill, statement of account, insurance statement showing uncovered services or verbal verification from the provider.
For unpaid medical services one year old or older proof is needed that the individual continues to have the responsibility for payment, the amount due and date of service. Acceptable evidence is a statement of account that is not more than 30 days old and shows the date of service and amount due.

16. The Policy Manual, CFOP 165-22, passage 2640.0509, Proof That an Unpaid Bill is Still Owed (MSSI):

For an unpaid bill to be counted as an allowable medical expense and used to reduce the assistance group's share of cost, the assistance group must be held responsible for payment by the provider. The older an unpaid bill, the more likely that the provider will have "written off" the amount as a bad debt, and therefore no longer expects to be paid. When an individual has an unpaid bill, the eligibility specialist must determine if the individual still owes the unpaid bill, as follows:
1. When the unpaid bill is under one year old, the eligibility specialist will accept the individual's statement that the bill is/is not still owed.
2. When the unpaid bill is one year old or older, the eligibility specialist will require the individual to provide proof that the unpaid bill is still owed.
Only the unpaid portion not previously used to meet share of cost can be counted.

17. The Policy Manual, CFOP 165-22, passage 2240.0611, Couple/Both Request Medicaid (MSSI):

> The following policy is applicable only to MEDS-AD, QMB, SLMB, QI-1, EMA, Protected Medicaid, Medically Needy and Working Disabled Programs.
> If an eligible individual is living with an eligible spouse, the income standard for two must be used. Eligibility as a couple must be determined using both spouses' income and assets.
> Income is not allocated to family members or dependents.
> If an eligible individual is living with their ineligible spouse, the income and assets must be deemed from the spouse who is not eligible for or requesting assistance. If there is not enough income to be deemed, the income standard for one must be used. If there is enough income to deem, the individual must first pass the individual test for one. If they pass the individual income test, they must also pass the couple standard using deemed income from the spouse. Regardless of the income standard used, the asset standard for a couple must be used.

18. Fla. Admin. Code R. 65A-1.716 (2), Income and Resource Criteria, sets forth the MNIL for one person at $180.00. The petitioner's spouse would not be eligible for Medicaid because he is not aged or disabled. Therefore, the eligibility was based on a household size of one, the petitioner.

19. The above authority explains that to be eligible for full Medicaid, income cannot exceed 88 percent of the federal poverty level. The Medically Needy Program provides coverage for individuals who do not qualify for full Medicaid due to income.

20. The SOC is determined by subtracting the MNIL from the individual's total countable income. For the petitioner, the determination of the SOC is her monthly SSDI ($941.00) less a $20.00 unearned income disregard, less the MNIL of $180.00, which resulted in her share of cost of $741.00 effective July 1, 2015 and ongoing. However, petitioner's first SSDI payment did not begin until August 2015. The petitioner did not receive any SSDI income in July 2015.

21. After careful review of the cited authorities and evidence, the undersigned hereby remands the matter back to the Department to reduce the petitioner's SOC to $0.00 for July 2015, due to no income received in the month of the application. Once a determination is complete, the respondent is to notify the petitioner of the outcome with a new notice that includes appeal rights.

22. The undersigned also concludes that the Department correctly enrolled the petitioner in the MN Program and calculated her SOC as $741.00 effective August 2015.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is in partially granted and partially denied. It is denied in that petitioner is not eligible for full Medicaid and partially granted in that petitioner's SOC for July 2015 is reduced from $741.00 to $0.00. The appeal is remanded back to the respondent to take corrective action as specified in the Conclusions of Law.

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 15 day of December, 2015,

in Tallahassee, Florida.

Cassandra Perez
Hearing Officer
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Copies Furnished To: [redacted] Petitioner
Office of Economic Self Sufficiency