

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

FILED

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OFFICE OF APPEAL HEARINGS  
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-03311

PETITIONER,

Vs.

CASE NO. 1290718539

FLORIDA DEPARTMENT OF  
CHILDREN AND FAMILIES  
CIRCUIT: 04 Duval  
UNIT: 88368

RESPONDENT.

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**FINAL ORDER**

Pursuant to notice, an administrative hearing convened before the undersigned hearing officer on July 22, 2009, at 3:30 p.m. in Jacksonville, Florida. The petitioner's wife, \_\_\_\_\_ and daughter, \_\_\_\_\_ represented him. Rycha Redden, ACCESS supervisor, represented the Department.

**ISSUE**

At issue is the action taken by the Department to deny Institutional Care Program (ICP) Medicaid benefits for September 2008 – December 2008 because the petitioner's income exceeded the Program requirements. The petitioner held the burden of proof.

**FINDINGS OF FACT**

1. The petitioner was a resident at \_\_\_\_\_ from September 2008 until his death on January 27, 2009. Applications for ICP benefits were submitted to the Department on the petitioner's behalf August 4, 2008, December 12, 2008 and February 10, 2009. Each of the applications was denied (September 26, 2008, February 3, 2009 and February 28, 2009 were the respective denial dates).
2. In an effort to understand the case status, the petitioner's wife and daughter made a visit to the local service center in March 2009. The Department explained that the petitioner's income exceeded the ICP program limit. The Department explained further that for an applicant whose income exceeds the ICP limit, a Qualified Income Trust (QIT) must be established. The QIT allows an applicant to become eligible for ICP Medicaid by placing the excess income into the QIT account each month that Medicaid is received. The petitioner's 2008 monthly income consisted of \$1420 social security benefits and \$593.05 pension. His total monthly income of \$2013.16 exceeded the \$1911 ICP income limit effective January 2008 – December 2008. Absent a funded QIT, the petitioner was not eligible for ICP Medicaid.
3. The family asserted that the Department never informed them of the QIT requirement. The family further asserted that they received no communication of any kind from the Department after the September 2008 denial letter was issued. The Department admitted that the petitioner's family was never notified regarding the necessity of a QIT; the petitioner's record contains no mention of the QIT requirement prior to a case note (commonly known as CLRC) dated December 29, 2008 which reads "Mailed letter to N.H. (nursing home) requesting last 3 months b/stmn (bank

statements) on all 4 b/accounts (bank accounts). One might be a Q.I.T. acct.” The Department also admitted that all the notices for the December 2008 and February 2009 applications (intended for the petitioner’s wife) were erroneously sent to the nursing home and subsequently were returned (over time) marked as undeliverable. The Department acknowledged that no interview was conducted during any of the applications; they were processed through written communication only. The March 2009 meeting was the first time the Department actually spoke to the family.

4. The family explained that in January 2009, after months of unreturned phone calls or voicemails boxes which were full (and therefore, no message could be left), they decided to consult an elder law attorney regarding ICP Medicaid. It was the attorney who told them that the petitioner’s income exceeded the ICP program limit. This same attorney established and funded a QIT on the petitioner’s behalf on January 20, 2009. The family submitted the QIT verification during the March 2009 face to face meeting with the Department (as they had received no response to the February 10, 2009 application). Subsequent to the March 2009 meeting, the Department determined that the petitioner was eligible for ICP Medicaid January 2009 but was not eligible for ICP Medicaid September 2008 – December 2008 because the QIT was not funded.

5. The petitioner’s family disagrees with the Department’s denial of ICP benefits for the months of September 2008 - December 2008 because they were never notified by the Department that a QIT was required; they had to hire an attorney to discover this information. The family asserted that the evidence proves that as soon as they became aware of the necessity of a QIT, they complied and would have done so in August 2008 had the Department notified them of the requirement.

### CONCLUSIONS OF LAW

The Florida Administrative Code (F.A.C.) 65A-1.713, SSI-Related Medicaid Income Eligibility Criteria, states in part:

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

The Department's Integrated Public Assistance Policy Manual, passage 1840.0110 Income Trusts (MSSI) states:

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-8 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 advise the individual that they cannot qualify for Medicaid institutional care services or HCBS for any month in which their income is not placed in an executed income**

**trust account in the same month in which the income is received.**

(This may require the individual to begin funding an executed income trust account prior to its official approval by the District Legal Counsel.)

(Emphasis added)

The above cited F.A.C. rule shows that countable income may not exceed 300% of the federal benefit rate to be eligible for ICP benefits. The Department's Integrated Policy Manual, 165-22, Appendix A-9, effective January 2008, sets forth that amount as \$1911. This income limit typically increases each January with the increase in the Federal Poverty Level.

An application for ICP Medicaid was submitted in August 2008; the Findings show that the petitioner's income exceeded the ICP income limit. Florida Administrative Code 65A-1.713 permits the establishment of a QIT to potentially create ICP eligibility by reducing countable income to an amount below the income standard. A qualified income trust was created by the petitioner's wife on January 20, 2009 upon the advice of counsel. The Findings of Fact show the Department never notified the family of the QIT requirement. According to the Department's policy manual in effect August 2008 – March 2009, the respondent has an affirmative duty to advise the petitioner of the federal benefit rate to be eligible for ICP benefits. (The undersigned notes that manual was updated in April 2009 and the language requiring the Department to notify ICP applicants of the QIT requirement was removed.)

A decision by the Fourth District Court of Appeal (DCA) *Forman v. State of Florida Department of Children & Families*, 4D06-1770 (Fla. 4<sup>th</sup> DCA 2007) is similar to

this appeal and addresses the respondent's requirement to advise ICP applicants and states in part:

The obligation imposed upon DCF by passage 1840.0110 of the policy manual is similar to that created by 45 C.F.R. §206.10(a)(2)(i) in *Buckley* and *Pond*. Leftow set up an account to transfer the entire proceeds of her mother's pension check to Manor Care. ... Had she known the specifics of the income trust, she would have complied with that requirement. Because Forman was erroneously deprived of benefits as a result of the failure of the DCF specialist to comply with the policy manual, the order denying benefits is reversed, and the case is remanded for further proceedings consistent with this opinion.

Since the petitioner was not informed by the Department of the requirement to set up and fund the income trust, the denial of ICP benefits for September 2008 - December 2008 must be reversed. The respondent is ordered to re-determine ICP eligibility on relevant factors other than income for the months at issue, September 2008 - December 2008.

#### DECISION


The appeal is granted. The respondent's action to deny benefits based upon income is not upheld. The respondent is ordered to re-determine ICP eligibility for the months of September 2008 - December 2008 considering the petitioner to be within the ICP Program income limits for those months. The respondent is to send written notification to the petitioner's family and facility as soon as the determination is made. The respondent is to take corrective action within 10 days of the date of this order.

**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 12<sup>th</sup> day of August, 2009,

in Tallahassee, Florida.

  
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