

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

PETITIONER,
Vs.

APPEAL NO. 09F-03735

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

CASE NO. 1289658391

RESPONDENT.
_____ /

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on August 5, 2009, at 3:40 p.m., in Jacksonville, Florida.

The petitioner was not present. The petitioner was represented by his nieces,

and The Department was represented by Gloria Jackson,

ACCESS supervisor.

The record was held open for 14 days, until August 19, 2009 for the submission of additional evidence which was received and entered as Petitioner's Composite Exhibit 10 and Respondent's Composite Exhibit 9.

ISSUE

The petitioner's representatives are appealing denial of Institutional Care Program (ICP) Medicaid benefits for the months of December 2008 and January 2009. The petitioner held the burden of proof.

FINDINGS OF FACT

1. The petitioner (age 75) was admitted into the [redacted] on November 1, 2008. On October 24, 2008, an application for ICP Medicaid benefits was submitted to the Department on the petitioner's behalf.

2. On October 31, 2008, the case was pended for, among other things, verification of most current three months bank statements for the each of the petitioner's four bank accounts. The information was due November 13, 2008.

3. In March 2009, the Department approved the application for ICP Medicaid effective February 2009 forward. The Department determined that the petitioner was ineligible for Medicaid for the months of December 2008 and January 2009 due to countable assets in excess of the applicable \$2000 asset limit.

4. The Department explained that at the time of application, the combined balance of the petitioner's four bank accounts totaled \$36,000; after account consolidation and allowable spend downs, the petitioner had one active bank account. Documentation provided by the family shows that at the end of December 2008, the bank balance was \$6280.73 and at the end of January 2009, the balance was \$4819.42. February 2009 was the first month that the bank balance was less than \$2000. When questioned about allowable deductions such as income deposits, burial funds and outstanding checks, the Department explained that the petitioner's income consisted of Social Security (\$1379.10 in 2008 and \$1461.10 in 2009) and pension income from the petitioner's former employer. Only the Social Security income is deposited directly into the petitioner's banking account. The petitioner's niece receives the pension check and uses it to pay for monthly incidental expenses on the petitioner's

behalf. The Department asserted that after excluding the Social Security Income for December 2008 and January 2009, the remaining respective asset values of \$4901.63 and \$3358.32 still exceed the applicable \$2000 asset limit. Regarding the allowable \$2500 exclusion for a burial fund, the Department explained that the petitioner already owns a pre-paid burial contract, and is therefore not eligible for the burial fund exclusion. Regarding deductions for outstanding checks, the Department explained that there was no evidence that checks were outstanding at the time of the eligibility determination.

5. The petitioner's family does not dispute the aforementioned account balances for December 2008 and January 2009, however, they explained that at the time of the application in October 2008, the balance was less than \$2,000 after the spend down and paying privately for the petitioner's stay in the nursing facility for the month of November 2008. The family went on to explain that they were advised by the nursing home not to use any additional funds until the Department completed the application as it may impact the petitioner's eligibility. As the months of November 2008 through February 2009 passed without a determination, the petitioner's \$1000 (+) monthly Social Security income deposit caused the bank balance to exceed the \$2000 asset limit. The family argued that no one from the Department explained the ICP Medicaid criteria; they did not know that the petitioner's Social Security income should be paid to the facility every month as his patient responsibility. The family argued that while waiting for a Medicaid determination they also did not pay several of the petitioner's monthly expenses such as lodge fees for a social club, outstanding medical bills from various doctors and his premium for a third party insurance. The family completed a

worksheet which shows that if the monthly expenses detailed above were deducted, the petitioner's countable bank balance for the months of December 2008 and January 2009 would have been approximately \$1911. The family believes that is was a lack of communication on the part of the Department which lead to the confusion and the resulting ineligibility and therefore the denial should be reversed. The Department stipulated that the application was processed by written communication only in accordance with its policy. The Department explained that it is not permitted to give advice to applicants, but staff is available to answer questions. The Department has no record of the family inquiring about using the petitioner's Social Security income to pay his monthly expenses during the application process.

6. The Department was unable to produce a letter which notified the family that the application for ICP Medicaid was denied for the months of December 2008 and January 2009. The written decision from the Department addresses only the approval of ICP Medicaid for the month of February 2009 forward. After further review, the Department concluded that a written decision had not been issued for the months in question. Both parties agreed to hold the record open for 14 days; 7 days for the family to provide verification of any checks which were outstanding (at the time the bank statements were issued) for the months of December 2008 and January 2009 and 7 days for the Department to send written notification of its decision. On August 20, 2009, the undersigned hearing officer received written notification from the Department that the petitioner was found to be eligible for ICP Medicaid for the month of December 2008 after the deduction for outstanding checks. The Department determined that the petitioner was ineligible for ICP Medicaid for the month of January 2009 due to

countable assets in excess of the \$2000 asset limit. Two outstanding checks both dated January 21, 2009 in the amounts of \$64.20 and \$11.51 respectively were deducted from the countable asset value of \$3358.32; the adjusted countable asset value for January 2009 was \$3282.61.

CONCLUSIONS OF LAW

Fla. Admin. Code 65-2.060, Evidence, states:

1) The burden of proof, except where otherwise required by statutes, is on the party asserting the affirmative of an issue. The burden is upon the Department when the Department takes action which would reduce or terminate the benefits or payments being received by the recipient. The burden is upon the petitioner if an application for benefits or payments is denied. The party having the burden shall establish his/her position, by a preponderance of evidence, to the satisfaction of the hearing officer.

The above legal authority explains that as an applicant, the petitioner holds the burden of proof in this issue as there is not a presumption of eligibility.

Fla. Admin. Code 65-2.066, Final Orders, states in part:

(2) The Final Order shall be based exclusively on evidence and other materials introduced at the Hearing or material submitted after the Hearing upon agreement of all parties.

Fla. Admin. Code 65A-1.712, SSI-Related Medicaid Resource Eligibility Criteria, states in relevant part:

Resource Limits. If an individual's total resources are equal to or below the prescribed resource limits at any time during the month the individual is eligible on the factor of resources for that month. The resource limit is the SSI limit specified in Rule 65A-1.716, F.A.C.

Fla. Admin. Code 65A-1.716, Income and Resource Criteria states in part:

- (5) SSI-Related Program Standards.
- (a) SSI (42 U.S.C. §§ 1382 – 1383c) Resource Limits:

1. \$2000 per individual.
2. \$3000 per eligible couple or eligible individual with an ineligible spouse who are living together.

The legal authorities cited above set forth the applicable ICP asset limits.

The appeal was filed because the Department denied ICP Medicaid coverage for the petitioner for the months of December 2008 and January 2009. During the hearing, it was determined that the Department never made an eligibility determination for those months. Both parties agreed to hold the record open for 14 days to allow the Department to make an eligibility decision. The Department approved ICP Medicaid for the month of December 2008. Eligibility for this month is no longer in dispute. The Department denied ICP Medicaid for the month of January 2009. The findings show the petitioner was ineligible for ICP Medicaid for the month of January 2009 because his countable asset value of \$3282.61 exceeded the \$2000 ICP Medicaid limit for an individual.

The family argued that the Department did not explain the eligibility criteria for ICP Medicaid. The hearing officer found no authority which directs the Department to advise or instruct applicants on how to become eligible for benefits. The Department must determine asset value based on the amount of the asset and in accordance with the controlling authorities. Therefore, the undersigned concludes the Department's denial of ICP Medicaid for the month of January 2009 was in compliance with its policy.

DECISION

The appeal is denied for the reasons detailed in the above conclusions.

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 respondent has no funds to assist in this review, and any financial obligations incurred will be the petitioner's responsibility.

DONE and ORDERED this 10th day of September, 2009,

in Tallahassee, Florida.



Leslie Green
Hearing Officer
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Copies Furnished To