

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



APPEAL NO. 11F-00850

PETITIONER,

Vs.

CASE NO. 1020853972

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES (DCF)
CIRCUIT: 09 Orange
UNIT: ICP

RESPONDENT.

_____ /

FILED
May 6, 2011
OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN AND FAMILIES

FINAL ORDER

Pursuant to notice, the undersigned telephonically convened an administrative hearing in the above-referenced matter on March 9, 2011, at 11:05 a.m.

APPEARANCES

For the Petitioner: [REDACTED] [REDACTED] case manager, and her assistant, [REDACTED]

For the Respondent: Reginald Schofield, ACCESS supervisor.

STATEMENT OF ISSUE

At issue was whether SSI (supplemental security income) - Related Medicaid Institutional Care Program (ICP) denial was correct based on absence of income verification.

PRELIMINARY STATEMENT

Before the hearing, all matters resolved except for one problem regarding income verification from another country. The respondent continued to stand behind a Notice of Case Action dated February 3, 2011, denying eligibility due to “did not verify unearned income.” The petitioner appealed timely. Respondent's Exhibit 1 and Petitioner's Exhibit 1 were received in evidence.

FINDINGS OF FACT

1. The petitioner applied for SSI-Related Medicaid ICP coverage on January 3, 2011. At that time, she claimed income from four sources. She was assisted by the advocate who participated in the hearing on her behalf.

2. The respondent requested more information about income as part of the eligibility review. The respondent sent the petitioner a letter giving a deadline of January 24, 2011 for providing information. By hearing date, all incomes were satisfactorily verified from adequate source information except for a [REDACTED] pension called [REDACTED]

3. The petitioner's information indicated the [REDACTED] Pension was deposited to her bank account in differing amounts each month, with amounts in excess of \$500. Foreign exchange rates presumably affected the pension deposit amounts.

4. The respondent did not accept the American bank deposit information as adequate income verification. The respondent said that verification from the income source was needed in order for the respondent to make an accurate eligibility decision.

5. The petitioner thought she attempted to verify the income from the source. On her behalf, telephone queries were attempted by her advocate, but all efforts were unsuccessful due to language and telephone system barriers.

6. The petitioner's representative submitted pages 56 and 57 A to show correspondence about verification efforts. The December 28, 2010 letter that was written (described as an effort to attain verification for the ICP application) to [REDACTED] said: "I am writing to inform you that I have recently changed my address. Attached is my information along with my new address. I am requesting for medical purposes information on the amount I am to receive along with how long my pension is to last." [REDACTED] did not respond to that letter with income verification. There was no other documented query for income verification from the [REDACTED]. There was no indication of further income verification follow-up efforts by the advocate.

7. The petitioner did not provide the respondent with income verification from the source. The petitioner's representative noted that the respondent had been helpful during the application process. She further commented that past ICP applications (not handled by her) had not disclosed full income information. She described the verification process, going through the [REDACTED] system, as very difficult and cumbersome.

8. The respondent urged the petitioner to reapply so the problem could be fully remedied. The respondent's representative said reapplication could occur while the appeal was underway. The respondent further noted that eligibility had a three month retroactive option and that if eligibility were demonstrated, then eligibility could be authorized for the three months retroactive to the new date of application. The

petitioner's representative was concerned that the appeal hearing process would somehow be an obstacle to the new application. The respondent's representative reassured her that such would not impede the eligibility study and a retroactive determination.

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 proceeding is a de novo proceeding pursuant to Fla. Admin. Code § 65-2.056. This order is the final administrative decision of the Department of Children and Families under § 409.285, Fla. Stat. In accordance with Fla. Admin. Code § 65-2.060 (1), the burden of proof was assigned to the petitioner.

10. Income is a significant eligibility factor for adult Medicaid in the SSI – related programs such as ICP. Federal regulations at 20 C.F.R. inform:

§ 416.1100 Income and SSI eligibility.

You are eligible for supplemental security income (SSI) benefits if you are an aged, blind, or disabled person who meets the requirements described in subpart B and who has limited income and resources. Thus, the amount of income you have is a major factor in deciding whether you are eligible for SSI benefits and the amount of your benefit. We count income on a monthly basis.

...

§ 416.1121 Types of unearned income.

Some types of unearned income are—

(a) Annuities, pensions, and other periodic payments. This unearned income is usually related to prior work or service. It includes, for example, private pensions, social security benefits, disability benefits, veterans benefits, worker's compensation, railroad retirement annuities and unemployment insurance benefits.

§ 416.1123 How we count unearned income.

(a) When we count unearned income.

We count unearned income at the earliest of the following points: when you receive it or when it is credited to your account or set aside for your use. We determine your unearned income for each month. We describe exceptions to the rule on how we count unearned income in paragraphs (d), (e) and (f) of this section.

(b) Amount considered as income. We may include more or less of your unearned income than you actually receive.

(1) We include more than you actually receive where another benefit payment (such as a social security insurance benefit) (see § 416.1121) has been reduced to recover a previous overpayment. You are repaying a legal obligation through the withholding of portions of your benefit amount, and the amount of the debt reduction is also part of your unearned income. ...

(2) We also include more than you actually receive if amounts are withheld from unearned income because of a garnishment, or to pay a debt or other legal obligation {sic}, or to make any other payment such as payment of your Medicare premiums.

In view of the federal requirements, it is necessary to know what the income is and what types of deductions (if any) occur and whether the state should include “more or less of your unearned income than you actually receive...” Source information becomes critical.

11. Fla. Admin. Code 65A-1.701 addresses “Definitions” applicable to the adult Medicaid programs and section (15) informs “Income...For SSI-related programs refer to 20 C.F.R. § 416.1100 et al. and Rule 65A-1.713, F.A.C.” The respondent wanted to receive relevant income information from an appropriate source. Section 65A-1.702 further addresses “Special Provisions” and informs “(2) Date of Eligibility. ... The date of eligibility includes the three months immediately preceding the month of application (called the retroactive period).” The respondent explained that one way to remedy the problem was for the petitioner to reapply promptly, provide (or adequately attempt to provide) the needed information, establish eligibility, and then eligibility could be

retroactive if all other factors of eligibility were met. The petitioner was concerned that the appeal process would be an obstacle. There is no rule or regulation that should cause the hearing to be an obstacle to an eligibility determination.

12. Fla. Admin. Code 65A-1.205 says in relevant part:

(c) If the eligibility specialist determines during the interview or at any time during the application process that the applicant must provide additional information or verification, or that a member of the assistance group must comply with Child Support Enforcement or register for employment services, the eligibility specialist must give the applicant written notice to provide the requested information or to comply, allowing ten calendar days from request or the interview, whichever is later. For all programs, verifications are due ten calendar days from the date of written request or the interview, or 30 days from the date of application, whichever is later. ... If the applicant does not provide required verifications or information by the deadline date the application will be denied, unless the applicant requests an extension or there are extenuating circumstances justifying an additional extension. The eligibility specialist makes the decision of whether to grant the request for extension. When the applicant provides all required information or verification, the eligibility specialist determines eligibility for the public assistance programs. If the eligibility criteria are met, benefits are authorized.

This rule does not provide remedy for this problem at this time. There was no finding of “extenuating circumstances” or extension requests regarding verification efforts. The document sent to the pension source was insufficient to address the verification requirement. It was sent with assistance and under the auspices of an advocate who knew of the need for adequate verification.

13. Consistent with state and federal administrative guidance, the ACCESS Florida Program Policy Manual 165-22 informs that

1840.0123 Verification of Income (MSSI, SFP)
Income must be verified and documented by the source.
A verbal statement from a suitable source as to the amount of income, amount and types of any deductions, frequency of receipt, and date of anticipated increases can be accepted when documentation is not

available. Examination of a check or bank deposit is not sufficient for verification, because these do not necessarily include deductions.

This policy is a reasonable interpretation of the controlling authorities, in view of the federal explanation that income may be counted as either “more or less” than a person receives. The amount that is deposited is not necessarily a reliable indicator of what the income is at the source of that income. This situation is also complicated by the fluctuations in the exchange rates.

14. These problems can, however, be remedied. If there were a prompt new application and a more meaningful income verification effort, it is possible that verification will be adequate, eligibility will be established, and the respondent will be able to authorize retroactive eligibility. The petitioner could inform the Department of any problems, and could request deadline extensions if obstacles are encountered after viable efforts. Rule provides for “extenuating circumstances” and “extension” of time. At this point, it is not concluded there were extenuating circumstances or request for deadline extension. Correspondence sent to the [REDACTED] pension fund would not necessarily have achieved adequate verification as it may not have been sufficiently germane to the concern. It is concluded that encouraging reapplication is reasonable. However, it is also concluded that ICP Medicaid denial was reasonable and justified at the time.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is denied and the respondent's action is affirmed.

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.

J W Alper
Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
Office: 850-488-1429
Fax: 850-487-0662
Email: Appeal_Hearings@dcf.state.fl.us

Copies Furnished To: [REDACTED] Petitioner
District 7 ACCESS Cassandra Johnson