

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

[REDACTED]

APPEAL NO. 11F-02784

PETITIONER,

Vs.

CASE NO. 1358539740

FLORIDA DEPT OF CHILDREN AND FAMILIES
CIRCUIT: 17 Broward
UNIT: 88139

RESPONDENT.

_____ /

FILED
Aug 24, 2011
OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN AND FAMILIES

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on July 1, 2011, at 9:40 a.m., in [REDACTED], Florida.

APPEARANCES

The petitioner was not present. He was represented by his wife, [REDACTED].

The respondent was represented by [REDACTED] Florida access specialist

ISSUE

The petitioner is appealing the respondent's determination of the patient responsibility of \$570.50 in the Institutional Care Program.

PRELIMINARY STATEMENT

On April 25, 2011, the petitioner requested a hearing on the respondent's determination of the patient responsibility of \$570.50 in the Institutional Care Program.

FINDINGS OF FACT

1. The petitioner is a resident of a nursing home in [REDACTED], Florida, and his wife, [REDACTED] lives in the community. She asserted at the hearing that he is in Hospice care.
2. The petitioner's gross monthly income is \$1,604.60 retirement benefits from the [REDACTED] and \$266.00 from Social Security, for a total of \$1,870.60.
3. Included in the maintenance need allowance budget is \$1,022.00 shelter costs, minus a 30% of the minimum monthly maintenance income allowance (MMMIA), which is \$522.00, and this equals an excess shelter cost of \$470.90. Added to this is the MMMIA of \$1,839.00, which equals a total of \$2,309.90. Subtracted from this is the community spouse's gross monthly income of \$1,083.00, for a community spouse income allowance of \$1,226.90.
4. The petitioner's spouse's gross monthly income included in the budget is Social Security of \$838.00, plus earned income from Kelly Services of \$125.00, plus retirement income from a Merrell Lynch account of \$120.00, for a total of \$1,083.00.

5. Included in the patient responsibility budget is the petitioner's total gross monthly income of \$1,870.00 minus a personal needs allowance of \$35.00, and minus a \$1,1226.90 maintenance need allowance, for a patient responsibility of \$570.50.

CONCLUSIONS OF LAW

6. The Department of Children and Families, Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties, pursuant to § 409.285, Fla. Stat. This order is the final administrative decision of the Department of Children and Families under Fla. Stat. § 409.285.

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

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

9. In the Institutional Care Medicaid Program, in accordance with Fla. Admin. Code § 65A-1.716(5):

(c) Spousal Impoverishment Standards

1. State's Resource Allocation Standard. The amount of the couple's total countable resources which may be allocated to the community spouse is equal to the maximum allowed by 42 U.S.C. § 1396r-5.

2. State's Minimum Monthly Maintenance Income Allowance (MMMIA). The minimum monthly income allowance the department recognizes for a community spouse is equal to 150 percent of the federal poverty level for a family of two.

3. Excess Shelter Expense Standard. The community spouse's shelter expenses must exceed 30 percent of the MMMIA to be considered excess shelter expenses to be included in the maximum income allowance: MMIA

× 30% = Excess Shelter Expense Standard. This standard changes July 1 of each year.

4. Food Stamp Standard Utility Allowance: \$198.

5. Cap of Community Spouse Income Allowance. The MMMIA plus excess shelter allowance cannot exceed the maximum amount allowed under 42 U.S.C. § 1396r-5. This standard changes January 1 of each year.

10. The Department determined a community spouse income allowance of \$1,1226.90, and a patient responsibility of \$570.50 in the Institutional Care Program.

11. Included in the budgets is the petitioner's monthly gross income of \$1,604.60 retirement benefits from the [REDACTED] and \$266.00 from Social Security, for a total of \$1,870.60.

12. Also included in the budgets is the petitioner's spouse's gross monthly income of Social Security of \$838.00, plus earned income of \$125.00, plus retirement income of \$120.00, for a total of \$1,083.00, and a shelter cost of \$1,022.90.

13. The petitioner's wife asserted at the hearing that she no longer has earned income and retirement income. As of the time of the hearing, proof of this was not submitted into evidence, and was not provided to the respondent.

14. When the petitioner's wife submits to the Department proof of changes in her income, then the community spouse income allowance, and the patient responsibility amounts may change. After careful consideration, it is concluded that the respondent's determination is upheld.

DECISION

Based upon the foregoing Findings of Fact, and Conclusions of Law, this appeal is denied and the Department'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.

Stuart Imberman
Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
850-488-1429

Copies Furnished To: [REDACTED], Petitioner
10 DPOES: [REDACTED]
[REDACTED]