

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

FILED

Nov 30, 2015

Office of Appeal Hearings
Dept. of Children and Families



APPEAL NO. 15F-05610

PETITIONER,
Vs.

CASE NO. [REDACTED]

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 02 Leon
UNIT: 88113

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing telephonically in the above-referenced matter on September 29, 2015 at 3:06pm.

APPEARANCES

For the Petitioner:



Managing Partner



Processing Manager



processor

For the Respondent:

Christine Frier, Northwest ACCESS Program Office,
Senior Human Services Program Specialist.

STATEMENT OF ISSUE

Petitioner is appealing the Department's action of May 26, 2015 denying Institutional Care Program (ICP) benefits between October 2014 and May 2015. The petitioner carries the burden of proof by the preponderance of evidence.

PRELIMINARY STATEMENT

The Department submitted evidence on August 10, 2015, which was entered as Respondent Exhibit 1. The Department submitted additional information on September 25, 2015. This was entered as Respondent Exhibit 2. The petitioner submitted evidence on September 29, 2015, which was entered as Petitioner Exhibit 1.

The record was held open until October 23, 2015. The Department submitted additional information on October 20, 2015. This was entered as Respondent Exhibit 3. The petitioner requested an additional seven days to review and respond to the supplemental evidence. The deadline for petitioner's response was extended to October 30, 2015. The petitioner submitted a written response to the Department's supplemental evidence on October 29, 2015. This was entered as Petitioner Exhibit 2.

FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following findings of fact are made:

1. The petitioner was admitted to [REDACTED] on March 26, 2013 following a brief hospital stay.
2. At the time of admission to the [REDACTED] the petitioner was already receiving Institutional Care Program (ICP) Medicaid.
3. The petitioner had an Income Trust established in 2010. The Trustee for the income trust was a law firm.

4. During the recertification completed in April 2014, the Department discovered that the deposits into the petitioner's income trust ceased sometime between March 2013 and April 2014.

5. [REDACTED] filed an application for Medicaid on October 15, 2014. On the last page of the application a note stated, "QIT and Proof of funding to be submitted, Applying for UMED for June/July August, and September. (facility bills with application verification docs" *[sic]*

6. The Department found the petitioner's income was diverted from the Income Trust sometime after his admission to [REDACTED] to a patient trust account at the facility. A statement of this account shows the petitioner's income was utilized to meet his needs in the facility.

7. The petitioner's ICP Medicaid was closed effective May 31, 2014.

8. The petitioner is [REDACTED] years old.

9. The petitioner's monthly income consists of a [REDACTED] pension of \$917, Social Security retirement (SS) of \$1,396, and an annuity of \$177.53 for a total gross income of \$2,490.53.

10. The parties do not dispute the petitioner's income is over the income limit for ICP Medicaid. The parties disagree on the availability of the income to the petitioner.

11. [REDACTED] explained to the Department in October 2014 that the petitioner's health conditions at the time of admission to [REDACTED] in 2013 rendered him as incapacitated and unable make decisions or communicate with staff regarding his

income, assets or resources. [REDACTED] asserts the petitioner has no family to assist him with his finances.

12. The Department pointed out that the facilities' admission record (Respondent Exhibit 1, page 18) lists the petitioner's contacts as a son and three daughters, two of whom reside in [REDACTED] where the facility is located.

13. [REDACTED] further submitted a Certificate of Incapacity to the Department on October 27, 2014 showing a physician's medical opinion of, "It is my medical opinion that there is no reasonable probability that the resident/patient will recover competency to make health care decisions." The Certificate of Incapacity is dated May 1, 2013.

14. [REDACTED] also submitted a letter to the Department on January 26, 2015 from [REDACTED]. The purpose of this letter was to notify the Department of the petitioner's inability to sign any documents or provide any documentation to assist with his application for ICP Medicaid. The letter states the petitioner has no Attorney in Fact or guardian to assist with the ICP application or finances.

15. The Department issued a Notice of Case Action on November 17, 2014 denying the petitioner's application for Medicaid citing "We did not receive proof of the value of assets" and "No appropriate placement" as the reasons for denial.

16. [REDACTED] submitted another application for ICP Medicaid for the petitioner on November 20, 2014.

17. The Department issued a Notice of Case Action on December 23, 2014 denying the petitioner's application as "Fail – financial consent not received for all

required individuals”, “We did not receive proof of the value of assets”, and “We did not receive all information needed to determine eligibility.”

18. ██████ filed a new application for ICP Medicaid for the petitioner on December 31, 2014.

19. The Department issued a Notice of Case Action on February 2, 2014 denying the December 2014 application, as “We did not receive proof of the value of assets”.

20. ██████ submitted an application for ICP Medicaid for the petitioner on February 4, 2015.

21. The Department issued a Notice of Case Action on March 9, 2015 denying the February 2015 application, as “We did not receive proof of the value of assets”.

22. ██████ filed a new application on April 1, 2015 for ICP Medicaid for the petitioner.

23. The petitioner’s daughter was appointed Plenary Guardian for him on April 7, 2015. This daughter is listed on the petitioner’s admission record.

24. The Department issued a Notice of Case Action on May 4, 2015 denying the petitioner’s application, as “We did not receive proof of the value of assets”.

25. The Department has opened the petitioner’s ICP coverage effective May 1, 2015.

26. ██████ is seeking Medicaid benefits for the petitioner from October 2014 through April 2015.

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CONCLUSIONS OF LAW

33. 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.

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

35. Fla. Admin. Code § 65A-1.710 SSI-Related Medicaid Coverage Groups defines Institutional Care Program (ICP) as follows: “(2) Institutional Care Program (ICP). A coverage group for institutionalized aged, blind or disabled individuals (or couples) who would be eligible for cash assistance except for their institutional status and income as provided in 42 C.F.R. §§ 435.211 and 435.236. Institutional benefits include institutional provider payment or payment of Medicare coinsurance for skilled nursing facility care.”

36. The Department’s ACCESS Program Policy Manual (165-22) Appendix 9 “Eligibility Standards for SSI-Related Programs” effective July 2014 shows the Income Limit for an individual for ICP Medicaid at \$2,163. Effective January 2015 the Income Limit increased to \$2,199.

37. Fla. Admin. Code § 65A-1.713 “SSI-Related Medicaid Income Eligibility Criteria” (1)(d) states: “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.”

38. Fla. Admin. Code § 65A-1.702 “Special Provisions” states:

(15) Trusts.

(a) The department applies trust provisions set forth in 42 U.S.C. § 1396p(d).

(b) Funds transferred into a trust or other similar device established other than by a will prior to October 1, 1993 by the individual, a spouse or a legal representative are available resources if the trust is revocable or the trustee has any discretion over the distribution of the principal. Such funds are a transfer of a resource or income, if the trust is irrevocable and the trustee does not have discretion over distribution of the corpus or the client is not the beneficiary. No penalty can be imposed when the transfer occurs beyond the 36 month look back period. Any disbursements which can be made from the trust to the individual or to someone else on the individual’s behalf shall be considered available income to the individual. Any language which limits the authority of a trustee to distribute funds from a trust if such distribution would disqualify an individual from participation in government programs, including Medicaid, shall be disregarded.

(c) Funds transferred into a trust, other than a trust specified in 42 U.S.C. § 1396p(d)(4), by a person or entity specified in 42 U.S.C. § 1396p(d)(2) on or after October 1, 1993 shall be considered available resources or income to the individual in accordance with 42 U.S.C. § 1396p(d)(3) if there are any circumstances under which disbursement of funds from the trust could be made to the individual or to someone else for the benefit of the individual. If no disbursement can be made to the individual or to someone else on behalf of the individual, the establishment of the trust shall be considered a transfer of resources or income.

(d) The trustee of a qualified income trust, qualified disabled trust or pooled trust shall provide quarterly statements to the department which identify all deposits to and disbursements from the trust for each month.

(e) Undue Hardship. A period of ineligibility shall not be imposed if the department determines that the denial of eligibility based on counting funds in an irrevocable trust according to provisions in paragraphs 65A-1.702(12)(b) and (c), F.A.C., would work an undue hardship on the individual. Undue hardship exists when application of a trust policy would deprive an individual of food, clothing, shelter or medical care such that their life or health would be endangered. This can be caused by legal restrictions or illegal actions by a trustee. All efforts by the individual,

spouse or representative to access the resources or income must be exhausted before this exception applies.

39. The findings show the petitioner has income of [REDACTED] pension of \$917, Social Security retirement (SS) of \$1,396, and an annuity of \$177.53 for a total gross income of \$2,490.53. The undersigned concludes the Department correctly included all of the petitioner's income. This amount exceeds the limit for ICP eligibility without a Qualified Income Trust (QIT) properly executed and funded.

40. The petitioner previously had a properly executed and funded income trust which allowed for ICP eligibility. The findings show this changed when the petitioner's income was no longer deposited into the trust and was diverted to the facility instead. The undersigned concludes once the QIT was no longer funded, the petitioner lost eligibility for ICP Medicaid due to being over the income limit.

41. The fact the petitioner had a Qualified Income Trust (QIT) previously, acknowledges the petitioner's total monthly gross income exceeded the ICP income limit. The undersigned concludes for the petitioner to be eligible for ICP Medicaid, the petitioner could fund a QIT sufficiently to reduce his countable income. Although the Department's denial notices show denials for "failure to verify assets", it does not change the fact that there was no QIT funded for the months of October 2014 through April 2015 causing petitioner to exceed the ICP income limit.

42. Federal Regulations found at 20 C.F.R. § 416.1201 "Resources; general" states in relevant part:

(a) Resources; defined. For purposes of this subpart L, resources means cash or other liquid assets or any real or personal property that an

individual (or spouse, if any) owns and could convert to cash to be used for his or her support and maintenance.

(1) If the individual has the right, authority or power to liquidate the property or his or her share of the property, it is considered a resource. If a property right cannot be liquidated, the property will not be considered a resource of the individual (or spouse).

(2) Support and maintenance assistance not counted as income under §416.1157(c) will not be considered a resource.

(3) Except for cash reimbursement of medical or social services expenses already paid for by the individual, cash received for medical or social services that is not income under §416.1103 (a) or (b), or a retroactive cash payment which is income that is excluded from deeming under §416.1161(a)(16), is not a resource for the calendar month following the month of its receipt.

43. 42 C.F.R. § 435.945 "General Requirements" states in relevant part:

(b) The agency must request and use information relevant to verifying an individual's eligibility for Medicaid in accordance with §§435.948 through 435.956 of this subpart.

(c) The agency must furnish, in a timely manner, income and eligibility information, subject to regulations at part 431 subpart F of this chapter, needed for verifying eligibility to the following programs:

(1) To other agencies in the State and other States and to the Federal programs both listed in §435.948(a) of this subpart and identified in section 1137(b) of the Act;

...

(d) All State eligibility determination systems must conduct data matching through the Public Assistance Reporting Information System (PARIS).

(e) The agency must, as required under section 1137(a)(7) of the Act, and upon request, reimburse another agency listed in §435.948(a) of this subpart or paragraph (c) of this section for reasonable costs incurred in furnishing information, including new developmental costs.

(f) Prior to requesting information for an applicant or beneficiary from another agency or program under this subpart, the agency must inform the individual that the agency will obtain and use information available to it

under this subpart to verify income and eligibility or for other purposes directly connected to the administration of the State plan.

44. The petitioner's bank verifications were requested by the Department.

The undersigned concludes the request to the petitioner was an attempt to verify if the previous QIT was still being funded.

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

(2) Exclusions. The Department follows SSI policy prescribed in 20 C.F.R. § 416.1210 and 20 C.F.R. § 416.1218 in determining resource exclusions, with the exceptions in paragraphs (a) through (g) below, in accordance with 42 U.S.C. § 1396a(r)(2).

(a) Resources of a **comatose applicant (or recipient)** are excluded when there is no known legal guardian or other individual who can access and expend the resource(s). (emphasis added)

46. The Department's ACCESS Program Policy Manual (165-22) section 1640.0320 "Legally Incompetent Individuals" (MSSI, SFP) states:

Under the Florida Guardianship Law, only a guardian of the property is authorized to dispose of assets on behalf of a legally incompetent individual. Until a legal guardian is assigned, real property owned by a legally incompetent individual is not available.

Liquid assets (for example, patient fund accounts and checking accounts) are included as available if the individual has free access to the funds.

If a legal guardian must petition the court in order to dispose of the individual's property, the asset is still included for the individual. The fact that the guardian must petition the court does not make the property an unavailable asset. (emphasis added)

47. The Department's Policy Manual section 1640.0321 "Assets Unavailable – Circumstances Beyond Control (MSSI, SFP)" states:

Assets unavailable due to circumstances beyond the individual's control are not considered in the determination of eligibility.

The individual must present convincing evidence to prove the asset is unavailable to him due to circumstances beyond his control. The eligibility specialist will make an independent assessment of the availability based on the evidence presented. Additional guidance can be requested from the Region or Circuit Program Office, Circuit Legal Counsel, or Headquarters through the Region or Circuit Program Office.

48. The representative argued that petitioner's health issues, which rendered him incompetent, should be taken into consideration in the determination of his eligibility. [REDACTED] further asserted the eligibility determination should exclude all of the petitioner's resources. The above controlling authorities address restrictions on when assets can be considered unavailable. There was no evidence petitioner was in a comatose state; therefore, the assets could not be excluded from consideration under the Florida Administrative Code. The Department's Policy Manual regarding legally incompetent individuals specifically addresses liquid assets such as patient fund accounts and checking accounts. The petitioner was not declared legally incompetent until April 2015. [REDACTED] argued the petitioner was incompetent to handle his financial affairs. There was no argument that he had no access to his finances. The above controlling authorities also indicate that assets can be considered unavailable due to a circumstance beyond his control. However, the authorities make it clear that the petitioner's liquid assets are available if the individual has free access to the funds. The statement from the petitioner's physician states he is unable to handle his health care information. There is no evidence that he was unable to handle his financial affairs.

49. The undersigned can find no authority that excludes the petitioner's income from being included in the eligibility determination. The petitioner's income exceeded the limit established for ICP Medicaid. [REDACTED] took steps to

ensure the petitioner's income was available. The undersigned concludes although the Notice contained a faulty reason for denial, the petitioner remains ineligible based on his income exceeding the income limit.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the 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 petitioner is responsible for any financial obligations incurred as the Department has no funds to assist in this review.

DONE and ORDERED this 30 day of November, 2015,

in Tallahassee, Florida.



Melissa Roedel
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Copies Furnished To: [REDACTED] Petitioner

Office of Economic Self Sufficiency

