

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

FILED

NOV 16 2015

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES



APPEAL NO. 15F-07920
APPEAL NO. 15F-08780

PETITIONER,

Vs.

CASE NO. 

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 15 Palm Beach
UNIT: 88701

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on October 19, 2015 at 11:30 a.m. All parties appeared telephonically from different locations.

APPEARANCES

For the Petitioner:



For the Respondent:

Corrie Driscoll, supervisor

STATEMENT OF ISSUE

At issue is the amount of Food Assistance Program (FAP) benefits the petitioner was approved to receive as his benefits were reduced. The Department carries the burden of proof in the FAP appeal.

The petitioner is also appealing the denial of full Medicaid and enrollment in the Medically Needy Program with an estimated share of cost (SOC). He is seeking full Medicaid. The petitioner carries the burden of proof in the Medicaid appeal.

PRELIMINARY STATEMENT

The Department presented five exhibits at the hearing which were entered into evidence and marked as Respondent's Exhibits 1 through 5. The petitioner presented one exhibit which was entered into evidence and marked as Petitioner's Composite Exhibit 1. The record was held open until October 24, 2015, for the respondent to provide the Medicaid budget and the Notice of Case Action for the Medicaid benefits.

The respondent submitted a Medicaid budget and a Notice of Case Action for Medicaid benefits which were accepted, entered evidence and marked as Respondent's Exhibit 6. The record was closed on October 24, 2015.

FINDINGS OF FACT

1. The petitioner was receiving \$194 in FAP benefits in a prior certification. There was no income budgeted in the petitioner's FAP budget in that certification period.
2. On June 1, 2015, the petitioner submitted an application for SSI Related Medicaid benefits.
3. On June 1, 2015, the petitioner began receiving Supplemental Security Income (SSI) of \$733 and effective June 30, 2015, the SSI ended and he started receiving Social Security Disability Income (SSDI) of \$926 effective July 1, 2015. The Department updated the petitioner's case record with his SSDI and reauthorized FAP and Medicaid benefits. The petitioner's FAP benefits decreased. The reason given for the decrease was his unearned income increased.

4. To determine the FAP benefits for July 2015, the respondent counted the petitioner's gross monthly income of \$926. It subtracted \$155 resulting in a total adjusted income of \$771. The shelter cost of \$600 was added to the utility standard of \$36 to get the total shelter/utility cost of \$636. Fifty percent of the adjusted net income (\$385.50) is the standard shelter. This was subtracted from the total shelter/utility, resulting in \$250.50. This was subtracted from the adjusted income (\$771) resulting in \$520.50 as the Food Assistance adjusted income. The maximum net income limit for a household size of one is \$973. As the petitioner's net income was lower than the maximum net income limit, the respondent proceeded to calculate the benefit reduction. The Food Assistance adjusted income of \$520.50 was multiplied by 30%, to get the benefit reduction of \$157 (rounded up). This was subtracted from the maximum FAP amount of \$194 resulting in \$37.

5. On June 29, 2015, the Department determined Medicaid eligibility for the petitioner's June 1, 2015 application.

6. On June 11, 2015, the respondent sent the petitioner a Notice of Case Action informing him that his Food Assistance benefits will decrease from \$194 to \$37 effective July 1, 2015.

7. To determine the petitioner's SSI- Related Medicaid benefits, the respondent determined the petitioner's gross income of \$926. The respondent compared it to the income limit for one person which is \$864 and found the petitioner exceeded the income limit for full Medicaid benefits. The petitioner does not have Medicare Part A or Medicare Part B. The respondent proceed to enroll him in the Medically Needy Program with a share of cost (SOC) based on his income.

8. The respondent performed the following budget calculations when it determined the petitioner's estimated SOC. It determined the petitioner's monthly gross income was \$926. A \$20 unearned income disregard was subtracted resulting to \$906 as the petitioner's countable income. The Medically Needy Income Limit of \$180 for household size of one was subtracted resulting to \$726 as the petitioner's SOC.

9. By notice dated June 30, 2015, the respondent notified the petitioner his estimated share of cost was \$726 effective July 2015 and ongoing.

10. On September 16, 2015, the petitioner requested a hearing to have his FAP benefits reviewed and to challenge his enrolment in the Medically Needy Program with an estimated SOC.

11. At the hearing, the petitioner reported his household expenses as follows: rent expense of \$600, telephone and internet of \$150, medications of \$37.87, bus pass \$20, and toiletries of \$20. The petitioner confirmed that his water and electricity were included in his rent.

12. The respondent updated the petitioner's case with his medical expenses. Upon updating, the petitioner's medical expenses his FAP benefits increased by \$2 effect November 2015. The respondent did not provide a Notice of Case Action to confirm the \$2 increase in FAP benefits.

13. The petitioner did not dispute that he receives \$926 in SSDI. He argues that he cannot purchase medication and buy food with that little amount of money.

CONCLUSION OF LAW

14. 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 § 409.285, Fla. Stat.

15. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code R. 65-2.056.

The FAP benefits issue will be addressed first.

16. Federal regulation C.F.R. § 273.9 addresses income/allowable deductions budgeting in the FAP in part and states:

(a) Income eligibility standards. Participation in the Program shall be limited to those households whose incomes are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet.

(b) Definition of income...

(2) Unearned income shall include, but not be limited to: ...

(ii) Annuities; pensions; retirement, veteran's, or disability benefits; worker's or unemployment compensation including any amounts deducted to repay claims for intentional program violations as provided in §272.12; old-age, survivors, or social security benefits...

17. Federal regulation 7 C.F.R. § 273.9(d) sets forth the specific deductions allowable in the calculation of the final Food Assistance Program benefit allotment.

These **potential allowable deductions** are limited to include only: (1) standard deduction, (2) earned income deduction, (3) excess medical deduction, (4) dependent care deduction, (5) child support deduction, (6) standard utility allowance, and shelter expenses.

18. The respondent must follow these federal budgeting guidelines when determining eligibility. It also directs the Department to consider Social Security Disability Income, as unearned income that must be included in the eligibility determination.

19. The federal regulation 7 C.F.R. § 273.10 (e) addresses "Calculating net income and benefit levels" as follows:

(1) Net monthly income (i)...

(A) Add the gross monthly income earned by all household members and the total monthly unearned income of all household members, minus income exclusions, to determine the household's total gross income...

(C) Subtract the standard deduction.

(D) If the household is entitled to an excess medical deduction as provided in §273.9(d)(3), determine if total medical expenses exceed \$35. If so, subtract that portion which exceeds \$35.

(H) Total the allowable shelter expenses to determine shelter costs, unless a deduction has been subtracted in accordance with paragraph (e)(1)(i)(G) of this section. Subtract from total shelter costs 50 percent of the household's monthly income after all the above deductions have been subtracted. The remaining amount, if any, is the excess shelter cost, compute the shelter deduction according to paragraph (e)(1)(i)(I) of this section.

(I) Subtract the excess shelter cost up to the maximum amount allowed for the area (unless the household is entitled to the full amount of its excess shelter expenses) from the household's monthly income after all other applicable deductions. Households not subject to a capped shelter expense shall have the full amount exceeding 50 percent of their net income subtracted. The household's net monthly income has been determined.

(2) Eligibility and benefits...

(ii)(A)...the household's monthly allotment shall be equal to the maximum food stamp allotment for the household's size reduced by 30% of the household's net monthly income...

20. The Department's Program Policy Manual (Policy Manual) CFOP 165-22, section 2410.0346 states, "The telephone standard (refer to Appendix A-1) is available to assistance groups who have only a telephone expense."

21. The above-cited regulation describes the eligibility process and defines deductions. The telephone standard and the petitioner's rent expense make up the petitioner's total shelter cost. The petitioner was credited with a standard deduction and

an excess shelter deduction (which included the telephone standard). There is no indication the petitioner was eligible for any other deductions.

22. In accordance with the federal regulations, the Food Assistance standards for income and deductions appear in the Policy Manual, at Appendix A-1. The 200% Federal Poverty level (FPL) for a household size of one prior to October 2015 was \$1,605. A one-person assistance group's net income limit was \$973, the standard deduction was \$155 and the standard utility allowance was \$337. Effective October 2015, the 200% Federal Poverty level (FPL) for a household size of one is \$1,619. A one-person assistance group's net income limit is \$981, the standard deduction is \$155 and the phone standard is \$36. The same reference shows the maximum FAP benefits for one person as \$194 effective October 2014.

23. The undersigned determined the petitioner's FAP for November 2015 and ongoing to include his medical expenses. To determine the FAP benefits for November 2015 and ongoing, the undersigned used the petitioner's SSDI income of \$926 and subtracted a standard deduction of \$155 and an excess medical expense of \$2, which resulted in a total adjusted income of \$768. The excess medical deduction was determined by subtracting the medical standard of \$35 from the petitioner total medical expenses of \$37.87. The shelter cost of \$600 was added to the phone standard of \$36 to get the total shelter/utility cost of \$636. Fifty percent of the adjusted net income (\$384.07) is the standard shelter. This was subtracted from the total shelter/utility, resulting in \$251.94. It was then subtracted from the adjusted income (\$768.13) resulting in \$516.20 as the Food Assistance adjusted income. It was compared to the maximum net income limit for household size of one. As the petitioner's Food

Assistance adjusted net income was lower than maximum net income standard, the undersigned proceeded to calculate the benefit reduction. The Food Assistance adjusted income of \$516.20 was multiplied by 30%, to get the benefit reduction of \$155 (rounded up). This was subtracted from the maximum FAP amount of \$194 resulting in \$39 as the petitioner's monthly FAP benefits. The FAP amount increased by \$2 as stated by the respondent at the hearing.

24. After considering the evidence, the testimony, and the appropriate authorities cited above, the hearing officer determined the petitioner's FAP for July 2015 through October 2015 of \$37 is correct. The undersigned also determined the petitioner's FAP benefits for November 2015 of \$39 is correct. The hearing officer concludes the petitioner is not eligible for any additional FAP benefits based on the income and expenses presented and the controlling authorities.

Medicaid Benefits will now be addressed

25. The Department determined the petitioner's Medicaid benefits under the SSI Related Program.

26. Fla. Admin. Code R. 65A-1.701, Definitions, states in part:

(20) MEDS-AD Demonstration Waiver: Medicaid coverage group for aged or disabled individuals who meet all SSI-related Medicaid non-financial eligibility criteria, whose resources do not exceed the limit in the Medically Needy Program, whose income is at or below 88 percent of the federal poverty level and are not receiving Medicare or if receiving Medicare are also eligible for Medicaid covered institutional care services, hospice services or home and community based services.

27. The above authority explains that the MEDS-AD (full Medicaid for an aged or disabled person) has an income limit of 88% of the federal poverty level and in addition to meeting that limit the person must not have Medicare.

28. The Department's Program Policy Manual (Policy Manual), CFOP 165-22 at Appendix A-9, lists the MEDS-AD income limit as \$864 for an individual effective July 2015.

29. The above controlling authorities explain the full Medicaid coverage group (MEDS-AD Demonstration Waiver) in the SSI-Related Program is for individuals whose income is below the federal poverty level and are not receiving Medicare. The MEDS-AD income limit for an individual is \$864. The petitioner does not have Medicare benefits but his income of \$926 exceeds the income limit for full Medicaid benefits therefore, eligibility is not found for full Medicaid benefits. The undersigned further concludes Medically Needy eligibility must be explored for the petitioner.

The Medically Needy share of cost will now be addressed

30. Fla. Admin. Code R. 65A-1.701 (30) defines Share of Cost (SOC) as:

Share of Cost (SOC): SOC represents the amount of recognized medical expenses that a Medically Needy enrolled individual or family must incur each month before becoming eligible to receive Medicaid benefits for medical expenses incurred during the remainder of the month.

31. Fla. Admin. Code R. 65A-1.710, SSI-Related Medicaid coverage Groups, states in part:

(5) Medically Needy Program. A Medicaid coverage group, as allowed by 42 U.S.C. §§ 1396a and 1396d, for aged, blind or disabled individuals (or couples) who do not qualify for categorical assistance due to their level of income or resources.

32. The above authority explains the Medically Needy Program is a coverage group for aged, blind or disabled individuals who do not qualify for full Medicaid due to the level of income.

33. Fla. Admin. Code R. 65A-1.702 (13) Determining Share of Cost (SOC). The SOC is determined by deducting the Medically Needy Income Level from the individual's or family's income.

34. Federal Regulations at 20 C.F.R. § 416.1124 (c) (12), Unearned Income we do not count, states in part, "The first \$20 of any unearned income in a month..."

35. Income budgeting is set forth in Fla. Admin. Code R. 65A-1.713. It states:

(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:

(h) For Medically Needy, income must be less than or equal to the Medically Needy income standard after deduction of allowable medical expenses...

(4) (c) Medically Needy. The amount by which the individual's countable income exceeds the Medically Needy income level, called the "share of cost", shall be considered available for payment of medical care and services. The department computes available income for each month eligibility is requested to determine the amount of excess countable income available to meet medical costs. If countable income exceeds the Medically Needy income level the department shall deduct allowable medical expenses in chronological order, by day of service. Countable income is determined in accordance with subsection 65A-1.713(2), F.A.C. To be deducted the expenses must be unpaid, or if paid, must have been paid in the month for which eligibility is being determined or incurred and paid during the three previous calendar months to the month for which eligibility is being determined but no earlier than the three retroactive application months. The paid expense may not have been previously deducted from countable income during a period of eligibility. Medical expenses reimbursed by a state or local government not funded in full by federal funds, excluding Medicaid program payments, are allowable deductions. Any other expenses reimbursable by a third party are not allowable deductions. Examples of recognized medical expenses include:

1. Allowable health insurance costs such as medical premiums, other health insurance premiums, deductibles and co-insurance charges; and,
2. Allowable medical services such as the cost of public transportation to obtain allowable medical services; medical services provided or prescribed by a recognized member of the medical community; and personal care services in the home prescribed by a recognized member of the medical community.

36. Fla. Admin. Code R. 65A-1.716 (2), Income and Resource Criteria, sets forth the Medically Needy Income Level for one person at \$180.

37. The above rule states the SOC is determined by subtracting the Medically Needy Income Level from the family's income. For the petitioner, the determination of the SOC is the monthly income of \$926 less a \$20 disregard, less the MNIL of \$180, which resulted in a share of cost of \$726 effective July 2013 and ongoing. Eligibility for a lower SOC is not found.

38. The Policy Manual at passage 2440.0102, Medically Needy Income Limits (MSSI) states:

When the assistance group has met the technical eligibility criteria and the asset limits, it is enrolled. There is no income limit for enrollment. The assistance group is income eligible (entitled to Medicaid) once income is less than or equal to the Medically Needy Income Level (MNIL) or medical bills equal the amount by which his income exceeds the MNIL. Once medical bills are equal to this surplus income, referred to as share of cost, the assistance group is eligible.

The eligibility specialist must determine eligibility for Medically Needy any time the assistance group's income exceeds the income limits for another full Medicaid Program.

39. A review of the rules did not find any exceptions to the income limits. The undersigned concludes the Department correctly followed its policy in determining the SOC. The undersigned concludes the respondent's actions to deny full-coverage Medicaid and enroll the petitioner in the Medically Needy Program with a monthly share of cost in the amount of \$726 was a correct action.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the petitioner's appeal for FAP benefit is denied as the Department had already determined

the petitioner was eligible for \$39 effective November 2015 and the benefit amount prior was correct.

The appeal is denied for full Medicaid benefits and the respondent's action is upheld.

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 16th day of November, 2015,

in Tallahassee, Florida.

Christiana Gopaul-Narine

Christiana Gopaul-Narine *AD*

Hearing Officer

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