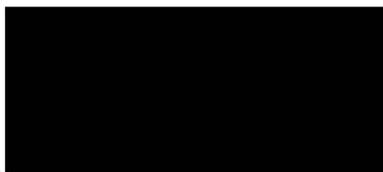


Dec 30, 2015

Office of Appeal Hearings
Dept. of Children and FamiliesSTATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

APPEAL NO. 15F-08586

PETITIONER,

Vs.

CASE NO. FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 17 Broward
UNIT: 88249RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing telephonically in the above-referenced matter on November 10, 2015, at 12:03 p.m., in Fort Lauderdale, Florida.

APPEARANCESFor the Petitioner:  petitioner's husband.

For the Respondent: Ashley Brunelle, economic self-sufficiency specialist supervisor.

STATEMENT OF ISSUE

At issue is the denial of full Medicaid benefits for the petitioner and enrollment in the Medically Needy Program with an estimated share of cost (SOC) effective October 2015. The petitioner carries the burden of proof by the preponderance of evidence.

PRELIMINARY STATEMENT

On October 9, 2015, the petitioner requested a hearing to challenge the Department's action of enrolling his wife in the Medically Needy Program. The petitioner is seeking full Medicaid and/or a lower SOC.

During the hearing, the petitioner did not provide any evidence for the undersigned to consider. The Department's 11 exhibits were accepted into evidence and marked as Respondent's Exhibits 1 through 11 respectively.

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. On June 8, 2015, the petitioner's wife submitted an online application for Food Assistance and Family-Related Medicaid benefits for her household. On that application (ACCESS # [REDACTED]), she reported five members in her household: herself, her husband and their three mutual children: [REDACTED], [REDACTED] and [REDACTED]. She reported that her household was receiving Social Security benefits. Petitioner reported the following expenses: rent \$1,400 and electricity \$220. Petitioner's [REDACTED]-year-old daughter [REDACTED] does not reside at home and was not listed on the application, see Petitioner's Exhibit 4.
2. The petitioner is disabled. His gross monthly Social Security disability (SSD) income is \$1,352.10. He is eligible for Medicare benefits, but is responsible for his Medicare Part B premiums (\$104.90). His monthly SSD benefit after deduction is \$1,247. Petitioner's wife and their two minor children each receives \$225 monthly, see Petitioner's Exhibit 8. Petitioner's household incomes and expenses are not in dispute.

3. The respondent processed the application with a household of six (3 adults and 3 children) and, based on the information provided, approved full Medicaid benefits for the minors. Petitioner and his wife were enrolled in the Medically Needy Program with a SOC.

4. On July 9, 2015, the Department sent a Notice of Case Action to the petitioner informing her that her June 8, 2015 FAP application was approved and that her Medically Needy Share of Cost would increase to \$1,190 effective August 1, 2015, see Respondent Exhibit 2.

5. The medical conditions of Family-Related Medicaid recipients are not a factor for eligibility. The petitioner's wife suffers from serious allergies, but has never applied for disability through the Social Security Administration (SSA). She does not have any outstanding medical bills.

6. Originally, the Department considered six (6) members in the Family-Related Medicaid standard filing unit (SFU), including F. C.

7. Household's gross household income of \$2,078.10 was derived by adding F.C's \$500 earned income to the couple's Social Security benefits. To determine Medicaid eligibility for the adults, the household income of \$2,078.10 was compared to the income limit for an adult with a household size of six, \$487. As the income exceeded the maximum limit, they were found ineligible for full Medicaid benefits.

8. As the wife was determined ineligible for full Medicaid, the respondent enrolled her in the Medically Needy (MN) Program. To determine the estimated SOC the Medically Needy Income Level (MNIL) of \$783 (for a standard filing unit size of six) was subtracted from the \$2,078.10 gross monthly household income, resulting to the

petitioner estimated SOC of \$1,295. It was further reduced by a \$104.90 medical insurance premium, resulting in \$1,190 remaining SOC, see Respondent's Exhibit 5.

9. The case was reviewed and F.C. was removed from the household. In the corrected budget, five (5) members were considered in SFU.

10. Petitioner's gross household income of \$1,576.90 was derived by adding together the couple's Social Security benefits. To determine Medicaid eligibility for the adults, the household income of \$1,576.90 was compared to the income limit for an adult with a household size of five, \$426. As the income exceeded the maximum limit, they were found ineligible for full Medicaid benefits. Petitioner's is only challenging his wife's SOC.

11. To determine the wife's estimated SOC the respondent, the Medically Needy Income Level (MNIL) of \$684 for a standard filing unit size of five was subtracted from the \$1,576.90 gross monthly household income, resulting to the wife's estimated SOC of \$892. It was further reduced by a \$104.90 medical insurance premium, resulting in \$787 remaining SOC, see Respondent's Exhibit 6. No Notice of Case Action was sent to the petitioner informing him of the respondent's most recent action.

12. The respondent explained that the petitioner is not eligible for full Medicaid because her household income exceeds the Family-Related Medicaid income limit for the household size. She explained that FC was removed from the case and the SOC recalculated, resulting in the wife being enrolled in the Medically Needy Program with a reduced SOC effective October 2015. The new SOC was not made retroactive from the month of application.

13. The petitioner did not dispute the facts presented by the respondent. He asserted that his wife is in poor health and needs constant medical care. He acknowledged that he understands the benefits provided by the respondent are income-based, but believes that it is not fair for his wife who suffers from [REDACTED]. The petitioner maintains his wife cannot meet her share of cost on a monthly basis without going to the emergency room. Petitioner asserts he has no money left after expenses, therefore his wife cannot afford any medical care.

14. As of the date of this hearing, the petitioner is aware of the reduced SOC. He is requesting full Medicaid benefits, or a lower SOC for his wife. Petitioner declined retroactive SOC adjustment from date of application, stating it does not change anything if not full Medicaid.

CONCLUSIONS OF LAW

15. 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.

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

17. The petitioner's wife did not report to be disabled. Her eligibility was considered under the Department's Family-Related Medicaid coverage category.

18. The Family-Related Medicaid income criteria is set forth in 42 C.F.R 435.603.

(a) Basis, scope, and implementation. (1) This section implements section 1902(e)(14) of the Act.

(2) Effective January 1, 2014, the agency must apply the financial methodologies set forth in this section in determining the financial eligibility of all individuals for Medicaid, except for individuals identified in paragraph (j) of this section and as provided in paragraph (a)(3) of this section.

(d) Household income—(1) General rule. Except as provided in paragraphs (d)(2) through (d)(4) of this section, household income is the sum of the MAGI-based income, as defined in paragraph (e) of this section, of every individual included in the individual's household.

19. Federal regulation 42 C.F.R. § 435.603 Application of modified gross income (MAGI) (f) defines a Household for Medicaid and states:

(3) Rules for individuals who neither file a tax return nor are claimed as a tax dependent. In the case of individuals who do not expect to file a Federal tax return and do not expect to be claimed as a tax dependent for the taxable year in which an initial determination or renewal of eligibility is being made, or who are described in paragraph (f)(2)(i), (f)(2)(ii), or (f)(2)(iii) of this section, the household consists of the individual and, if living with the individual—

(i) The individual's spouse;

(ii) The individual's natural, adopted and step children under the age specified in paragraph (f)(3)(iv) of this section; and

(iii) In the case of individuals under the age specified in paragraph (f)(3)(iv) of this section, the individual's natural, adopted and step parents and natural, adoptive and step siblings under the age specified in paragraph (f)(3)(iv) of this section.

(iv) The age specified in this paragraph is either of the following, as elected by the agency in the State plan—

(A) Age 19; or

(B) Age 19 or, in the case of full-time students, age 21.

...

(5) For purposes of paragraph (f)(1) of this section, if, consistent with the procedures adopted by the State in accordance with §435.956(f) of this part, a taxpayer cannot reasonably establish that another individual is a tax dependent of the taxpayer for the tax year in which Medicaid is sought, the inclusion of such individual in the household of the taxpayer is determined in accordance with paragraph (f)(3) of this section.

20. The Department's Program Policy Manual CFOP 165-22 (the Policy Manual), at 2230.0400 Standard Filing Unit (MFAM) states:

For tax filers, the Standard Filing Unit (SFU) is the tax filing group for the tax year in which eligibility is being determined. Eligibility is determined by

each individual using the tax filing group's income. Individuals cannot receive Medicaid benefits under more than one coverage group, but can have their income included in more than one SFU.

For individuals who neither file a federal tax return nor are claimed as a tax dependent (non-filers), the Standard Filing Unit consists of the individual and, if living with the individual, their spouse, their natural, adopted, and step children under age 19, or 19 and 20 if in school full-time.

21. In accordance with the above controlling authorities, the Medicaid household group is the petitioner, his wife and their 3 children (five members). The findings show the Department determined the wife's eligibility with a household size of six (6) and most recently with a household of five (5) for Medicaid. The undersigned concludes the Department correctly determined the petitioner's household size as five for Medicaid eligibility purposes.

22. Federal regulations at 42 C.F.R. § 435.603 Application of modified gross income (MAGI) (d) defines Household Income:

(1) General rule. Except as provided in paragraphs (d)(2) through (d)(4) of this section, household income is the sum of the MAGI-based income, as defined in paragraph (e) of this section, of every individual included in the individual's household.

(2) Income of children and tax dependents. (i) The MAGI-based income of an individual who is included in the household of his or her natural, adopted or step parent and is not expected to be required to file a tax return under section 6012(a)(1) of the Code for the taxable year in which eligibility for Medicaid is being determined, is not included in household income whether or not the individual files a tax return.

(ii) The MAGI-based income of a tax dependent described in paragraph (f)(2)(i) of this section who is not expected to be required to file a tax return under section 6012(a)(1) of the Code for the taxable year in which eligibility for Medicaid is being determined is not included in the household income of the taxpayer whether or not such tax dependent files a tax return.

(3) In the case of individuals described in paragraph (f)(2)(i) of this section, household income may, at State option, also include actually available cash support, exceeding nominal amounts, provided by the person claiming such individual as a tax dependent.

(4) Effective January 1, 2014, in determining the eligibility of an individual using MAGI-based income, a state must subtract an amount equivalent to 5 percentage points of the Federal poverty level for the applicable family size only to determine the eligibility of an individual for medical assistance under the eligibility group with the highest income standard using MAGI-based methodologies in the applicable Title of the Act, but not to determine eligibility for a particular eligibility group.

23. The Policy Manual at 2630.0108 Budget Computation (MFAM), states:

Financial eligibility for Family-Related Medicaid is determined using the household's Modified Adjusted Gross income (MAGI). The MAGI is the household's adjusted gross income as calculated by the Internal Revenue Service plus any foreign earned income and interest income exempt from tax.

In computing the assistance group's eligibility, the general formula is:

Step 1 - (Gross Unearned + Gross Earned) = (Total Gross Income).

Step 2 - Deduct any allowable income tax deductions (lines 23-35 from 1040). Deduct any allowable deductions for financial aid or self-employment to obtain the Modified Adjusted Gross Income.

Step 3 - Deduct the appropriate standard disregard. This will give the countable net income.

Step 4 - Compare the total countable net income to the coverage group's income standard.

If less than or equal to the income standard* for the program category, STOP, the individual is eligible. If greater than the income standard for the program category, continue to Step 5.

Step 5 - Apply a MAGI deduction (5% of the FPL based on SFU size).

If the 5% disregard would make the individual eligible, include the disregard. Otherwise the individual is ineligible for Medicaid.

Individuals determined ineligible for Medicaid will be enrolled in Medically Needy and referred, as appropriate, to Florida KidCare and/or the Federally Facilitated Marketplace (FFM).

24. The Eligibility Standards for Family-Related Medicaid Program appear in the Department's Program Policy Manual CFOP 165-22 (the Policy Manual), Appendix A-7. It indicates an Adult Income Limit of \$426 and a Standard Disregard of \$ 258 for Family-Related Medicaid Program with a family size of five.

25. In accordance with the above controlling authorities, the undersigned reviewed the Medicaid eligibility for the petitioner. Step 1: The total income counted in the

budget is \$1,576.90. Step 2: There are no deductions provided as there was no tax return. Step 3: The total income of \$1,576.90 less the standard disregard of \$258 is \$1,318.90. Step 4: The balance of \$1,318.90 is greater than the income limit of \$426 for the petitioner or his wife to receive full Medicaid. Step 5: With no MAGI disregard, the countable balance remains \$1,318.90. This amount was greater than the income limit of \$426. The undersigned concludes the wife is ineligible for Medicaid. The undersigned further concludes Medically Needy eligibility must be explored for her.

26. The Policy Manual at passage 2630.0502 Enrollment (MFAM) sets forth:

If an individual meets the Medically Needy Program's technical eligibility criteria, he is enrolled into the program. There is no income limit for enrollment. The individual is only eligible (entitled to Medicaid) when he has allowable medical bills that exceed the SOC.

The income for an enrolled assistance group need not be verified. Instead, an estimated SOC is calculated for the assistance group. If after bill tracking, it appears the assistance group has met his "estimated" SOC, the unverified income must be verified before the Medicaid can be authorized. An individual is eligible from the day their SOC is met through the end of the month.

27. The Policy Manual at passage 2630.0500 Share of Cost (MFAM) states:

The Share of Cost (SOC) refers to the amount of medical bills which an individual enrolled in the Medically Needy Program must incur in any given month before Medicaid coverage may be authorized.

Eligibility must be determined for Medically Needy any time the assistance group meets all technical factors but the income exceeds the appropriate income limit for Medicaid.

To calculate the share of cost, compare the countable net income to the Medically Needy Income Level based on the size of the standard filing unit. The difference is the assistance group's share of cost.

28. Effective January 2015, Appendix A-7 indicates that for a household of five, the MNIL is \$684.

29. To determine the SOC the respondent determined the petitioner's household monthly income to be \$1,576.90. The Medically Needy Income Level of \$684 for a standard filing unit size of five was subtracted resulting to the wife's estimated SOC of \$892. It was further reduced by a \$104.90 medical insurance premium, resulting in \$787 remaining SOC.

30. The hearing officer found no exception to this calculation. It is concluded that a more favorable share of cost could not be determined. Eligibility for full Medicaid was not found.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is denied. The respondent's most recent 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.

FINAL ORDER (Cont.)
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DONE and ORDERED this 30 day of December, 2015,
in Tallahassee, Florida.



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