

Feb 19, 2016

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

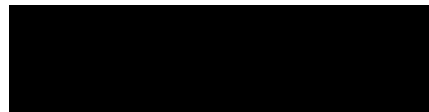
Office of Appeal Hearings
Dept. of Children and Families



APPEAL NO. 15F-09716

PETITIONER,

Vs.



FLORIDA DEPARTMENT
OF CHILDREN AND FAMILIES
CIRCUIT: 09 Orange
UNIT: 66032

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing telephonically in the above-referenced matter on December 29, 2015 at 8:30 a.m.

APPEARANCES

For the petitioner:  pro se

For the respondent: Nydia Galarza, ACCESS Supervisor

STATEMENT OF ISSUE

Petitioner is appealing the respondent's action to enroll him in the Medically Needy (MN) Program with a share of cost (SOC). Petitioner is seeking full Medicaid. The petitioner carries the burden of proof by the preponderance of evidence.

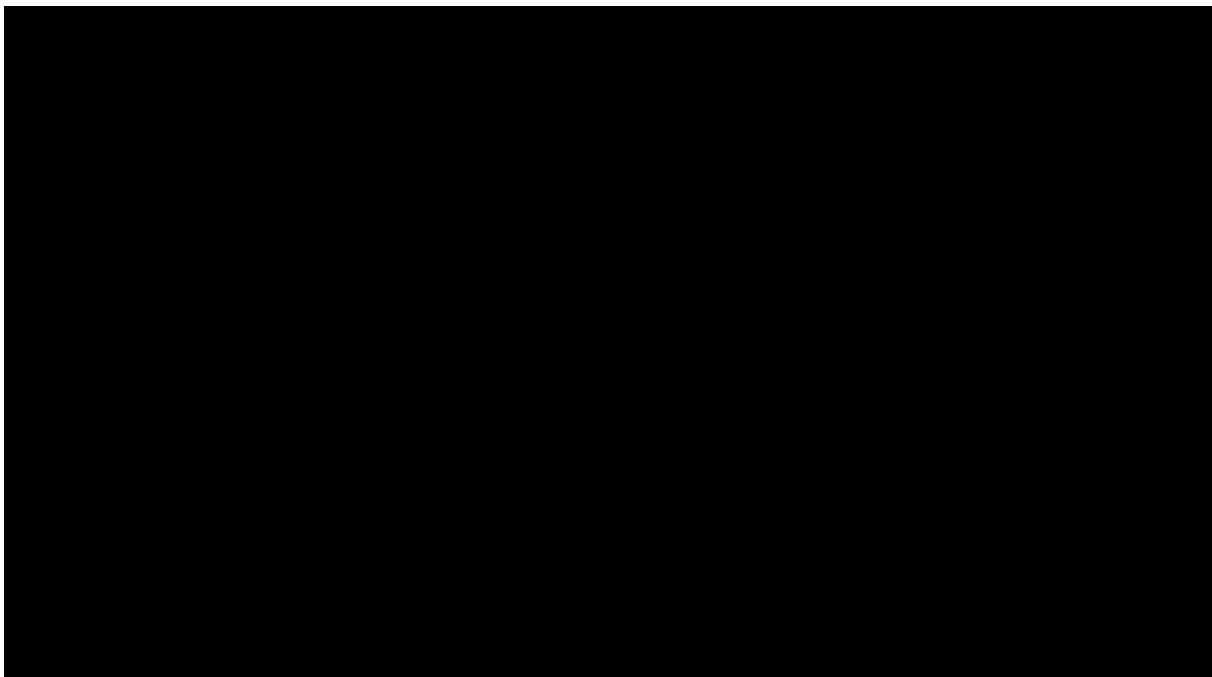
PRELIMINARY STATEMENT

By notice dated November 13, 2015, the respondent notified the petitioner that his enrollment in the MN Program with a \$543.00 SOC remained the same beginning November 2015.

Petitioner did not submit any exhibits. Respondent submitted one exhibit, entered as Respondent Exhibit "1". The record was held open until close of business on January 7, 2016 for additional evidence from the respondent. On December 29, 2015, additional evidence was received and entered as Respondent Exhibit "2". The record closed on January 7, 2016.

FINDINGS OF FACT

1. Prior to the action under appeal, the petitioner (69) was receiving SSI-Related Medicaid MN benefits with a SOC of \$543.00 for himself only. On November 6, 2015, petitioner submitted an interim contact letter to recertify his MN, Food Assistance Program (FAP), and Qualified Medicare Beneficiaries (QMB) benefits. FAP and QMB benefits are not the issue.
2. The petitioner receives \$743.00 per month in Social Security Retirement (SSRE) benefits.
3. The respondent calculated the petitioner's total countable income as \$723.00, after a \$20.00 unearned income disregard was subtracted from his \$743.00 SSRE benefits. The income limit for an aged/disabled individual to receive full Medicaid is \$864.00. The petitioner's countable income is below this amount. However, petitioner is a Medicare recipient. Therefore, he remains only eligible for MN due to being a Medicare recipient.
4. The respondent determined the petitioner remained enrolled in the MN Program. To determine the SOC amount, the respondent determined the Medically Needy Income Level (MNIL) for a household size of one was \$180.00, this amount was subtracted from \$723.00. The respondent calculated the petitioner's SOC amount as follows:



5. Petitioner explained due to his age, he recently has experienced health issues and needs medical coverage to get the medical care he needs.

6. Medicare provides 80% coverage and QMB covers, in addition to the Medicare premiums; coinsurances and deductibles (20% balance remaining). Petitioner was encouraged to contact the Agency for Health Care Administration (AHCA) for coverage and payment under the QMB Program.

CONCLUSIONS OF LAW

7. 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.

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

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

The Department covers all mandatory coverage groups and the following optional coverage groups:

(1) MEDS-AD Demonstration Waiver. A coverage group for aged and disabled individuals (or couples), as provided in 42 U.S.C. § 1396a(m).

...

(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. The program does not cover nursing facility care, intermediate care for the developmentally disabled services, or other long-term care services.

10. Fla. Admin. Code R. 65A-1.713 defines the income limits for SSI-Related Medicaid programs:

(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:

(a) For MEDS-AD Demonstration Waiver, income cannot exceed 88 percent of the federal poverty level after application of exclusions specified in subsection 65A-1.713(2), F.A.C.

...

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

11. Fla. Admin. Code R. 65A-1.701(20) defines MEDS-AD Demonstration Waiver as:

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** [emphasis added] or if receiving Medicare are also eligible for Medicaid covered institutional care services, hospice services or home and community based services.

12. Florida Statutes § 409.904 sets forth the following regarding Medicaid:

Optional payments for eligible persons.—The agency may make payments for medical assistance and related services on behalf of the

following persons who are determined to be eligible subject to the income, assets, and categorical eligibility tests set forth in federal and state law...

(1) Subject to federal waiver approval, a person who is age 65 or older or is determined to be disabled, whose income is at or below 88 percent of the federal poverty level, whose assets do not exceed established limitations, **and who is not eligible for Medicare** [emphasis added]...

13. The Department's Program Policy Manual (Policy Manual), CFOP 165-22, passage 2040.0813.03, Technical Requirements for MEDS-AD (MSSI) states:

The individual must meet all of the following criteria:

1. Age or disability,
2. U.S. residency,
3. Citizenship,
4. Welfare enumeration,
5. Third party liability,
6. Application for other benefits they may be eligible to receive,
7. **Not be receiving Medicare** [emphasis added]...

14. According to the above regulations, an individual who receives Medicare is not eligible to receive full Medicaid. In this instance, the petitioner has Medicare benefits through Social Security Administration; therefore, he does not meet one of the technical requirements for full Medicaid.

15. The Policy Manual, passage 2640.0500, Share of Cost (MSSI) sets forth:

The eligibility specialist must determine eligibility for Medically Needy any time the assistance group's assets and/or income exceeds the appropriate categorical asset/income limits. The eligibility specialist determines whether the assistance group's assets are within the Medically Needy asset limits and whether the assistance group members meet the technical factors. If the Medically Needy asset limit is met and the assistance group meets all technical factors, the eligibility specialist determines the amount of countable income and computes a budget using the MNIL which is the same for both family and SSI-Related Medicaid coverage groups (refer to Appendix A-7).

If income is equal to or less than the MNIL, there is no share of cost and the individual is eligible. Medicaid is authorized for individuals who are eligible without a share of cost.

If income is greater than the MNIL, share of cost is determined for appropriate members. Appropriate members are enrolled but cannot be eligible until the share of cost is met.

16. The Code of Federal Regulations 20 C.F.R. § 416.1124 defines unearned income that is not counted in SSI – Related Medicaid programs:

(C)(12) The first \$20 of any unearned income in a month other than income in the form of in-kind support and maintenance received in the household of another (see §416.1131) and income based on need. Income based on need is a benefit that uses financial need as measured by your income as a factor to determine your eligibility.

17. Fla. Admin. Code R. 65A-1.716 (2), Income and Resource Criteria, sets forth the MNIL for one person at \$180.00.

18. The SOC is determined by subtracting the MNIL from the individual's total countable income. For the petitioner, the determination of the SOC is his monthly SSRE (743.00) less a \$20.00 unearned income disregard, less the MNIL of \$180.00, which resulted in his SOC of \$543.00 effective November 2015 and ongoing.

19. In careful review of the cited authorities and evidence, the undersigned concludes that the Department correctly enrolled the petitioner in the MN Program and calculated his SOC as \$543.00 effective November 2015.

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 19 day of February, 2016,

in Tallahassee, Florida.



Cassandra Perez
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Copies Furnished To: [REDACTED] Petitioner
Office of Economic Self Sufficiency