



Rhode Island Executive Office of Health and Human Services
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July 28, 2015

Docket # 15-1017
Hearing Date: July 9, 2015



ADMINISTRATIVE HEARING DECISION

The Administrative Hearing that you requested has been decided against you. During the course of the proceeding, the following issue(s) and Agency regulation(s) were the matters before the hearing:

EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES (EOHHS) MEDICAID CODE OF ADMINISTRATIVE RULES (MCAR)

SECTION: 0362 Income Generally; 0362.05 Income Standards-Individual/Couple; 0362.10 Income Definitions; 0362.10.10 Unearned Income 0362.10.20 Definition of "Individuals Living in Their Own Households"; 0362.10.20.05 Proof of Pro Rata Share

**SECTION 0364.20 Rental Property Income
SECTION 0364.20.15 Roomer or Roomer/Boarder
20 CFR 416.1133**

The facts of your case, the Agency regulations, and the complete administrative decision made in this matter follow. Your rights to judicial review of this decision are found on the last page of this decision.

Copies of this decision have been sent to the following: You, You (C/o of your attorney), and Agency representatives: Kristen Grosso, Robin Barradas, Betty Perez, and Denise Tatro.

Present at the hearing were: You, your wife, your attorney, and Agency representatives: Kristen Grosso, and Robin Barradas.

ISSUE:

Is the appellant ineligible for continued Medical Assistance because his countable monthly income as of May 12, 2015 exceeded the MA SSI related monthly income standard?

EOHHS RULES AND REGULATIONS:

Please see the attached APPENDIX for pertinent excerpts from Rhode Island Executive Office of Health and Human Services Medicaid Code of Administrative Rules (MCAR).

APPEAL RIGHTS:

Please see attached NOTICE OF APPELLATE RIGHTS at the end of this decision.

DISCUSSION OF THE EVIDENCE:

The appellant and his attorney testified:

1. We (appellant and DHS) are in agreement with all the facts, except how to count the \$400 received from the grandmother who lives with them. We agree upon the following:
2. His (the appellant's) social security is \$659.00 per month.
3. His pension is \$169.15 per month.
4. His wife's social security totals \$315.00 per month.
5. The state pays the Medicare premium as of February.
6. The home is a household of four including the couple, their adult son, and the grandmother.
7. Total rent for the cottage is \$300 per month.
8. Until today, it was thought there were 5 rooms, but there are 6.
9. Average monthly utilities are \$417.00 per month; and, with the \$300 rent, they total \$717.00.
10. The grandmother contributes \$400 per month towards the Rent, electric, heat, cable and other household expenses, but not towards food.
11. The \$1463 gross income on the notice represents the social security and pension benefits, plus \$320 per month unearned income from the grandmother's \$400.
12. There is now an Agency correction, as the Agency

originally divided the \$400 contribution and divided by 5 rooms, and say that her share of expenses for rent and utilities was \$80.

13. Now they are correcting, and I think with the 6 rooms, and using the right figure of \$717, the Agency would now agree that \$119.50 is the share of the living expenses, so you would take the \$400 and subtract the \$119.50 which leaves \$280.50 as countable income, instead of the \$320 they were using in the notice.

14. We agree with the new figures if the Agency were using the division by rooms-we do not agree with using that policy.

- You must use the SSI methodology when determining countable income for purposes of Medicaid.
- Under SSI rules, and Medicaid rules when determining pro rata share you take the expenses and divide by the number of people in the home, not by the number of rooms in the home.
- This is not a roomer situation, but an extended family sharing living quarters where the grandmother has access to all the rooms, not just one room.
- Thus, the roomer regulation should not be the one looked to due to common sense.
- The grandmother pays the \$400, part of which goes to rent and utilities, and what is fair is that her share of \$717.00, divided by the number of people in the home (4) comes out to \$180.00, any anything over and above the rent/and expenses is countable income.
- Supporting this are the SSI Rules and the Rental property rules, and the Medicaid rules-362.10.20.05 which discusses pro rata share and division by the number of people in the home.
- We are now relying on 364.20 which talks about if someone has income from property, you look at net income from the rental property as unearned income, but the grandmother is not a roomer in the sense that the regulation implies.
- To match the grandmother's situation, you would determine fair shares for SSI recipients using regulations 362.10.20.05, and comes from the federal regulations-20CFR416.1133 which speaks of pro rata share, the targeted expenses, and says to divide it by the number of people in the home.

- Grandmother has her own Food Stamps, and sometimes eats with the family on a Sunday, and eats with the family on holidays.

The DHS representatives testified:

- We are in agreement with the facts as stated in the record (1-14 above).
- We look at adult MA cases as a client of one in single family homes, or a family of two in a spousal case as in this case.
- We would only look at two people, not an entire family.
- We are using 0388.20.15 policy to make the deductions, based upon two people, as the policy does not specify use for additional participants.
- We had used the policy incorrectly the first time, but now have corrected expenses and corrected number of rooms, and we agree the number of rooms, in this case, six, is what is used for dividing expenses.
- Regarding the policy cited (0362.10.20.05)-it is for a person who owns an apartment/or home, and is the applicant. The grandmother, is the contributor, not the applicant, and so we would not apply this policy here.

FINDINGS OF FACT:

- An MA notice dated April 24, 2015 informed the appellant he and his spouse were eligible as specified Low-Income Medicare Beneficiaries (SLMB) effective June 1, 2015; and, they were no longer eligible for Medical assistance resulting from countable income in excess of the SSI related income standard.
- The gross monthly income amount assigned to the appellant's household is \$1463.00.
- The income amount included a \$320.00 contribution from the grandmother, considered unearned income.
- The appellant filed a timely appeal date stamped May 4, 2015.
- A hearing was held on July 9, 2015.

CONCLUSION:

Is the appellant ineligible for Medical Assistance because his countable monthly income as of May 12, 2015 exceeded the MA SSI related monthly income standard?

The appellant was notified in an April 2015 Medical Assistance notice that he and his spouse were eligible as Specified Low-Income Medicare Beneficiaries (SLMB) effective June 1, 2015. Simultaneously he was informed that their MA assistance would end on May 12, 2015 as a result of exceeding the MA SSI related monthly income standard of \$908. The monthly income of the family was evaluated to be \$1463.00 per month.

There is no dispute that the appellant's social security benefits plus his pension plus his wife's social security benefits total \$1143.15 per month. There is no dispute that the Agency initially assigned \$320 of the grandmother's \$400 contribution to the household, as unearned income resulting in a gross income figure of \$1463.00. Following a prehearing negotiation, the Agency and the appellant's attorney agreed that using the same methodology employed by the Agency, the Agency should have added together the \$300 actually paid towards the rental of the home plus the \$417 established for the total allowable utilities, to obtain the full amount to be divided- \$717. The home has six rooms, and the Agency should have then divided the total bill of \$717 by the six rooms to determine the grandmother's share of expenses to be \$119.50. The Agency and the appellant agree that the new amount subtracted from the grandmother's \$400 would yield an assignment of \$280.50 to be contributed towards the unearned income, rather than the \$320 initially assigned. However, although the appellant and the Agency agree upon the figures if the policy cited by the Agency is to be utilized, the appellant disputes that the correct policy is being used to determine expenses.

The appellant's attorney argues that the grandmother is not a roomer or boarder, as the policy by the Agency suggests, but a household member who utilizes all the rooms. She further contends that under the SSI methodology the appellant should have been assessed using the Pro Rata Share policy and corresponding federal policy which would have resulted in taking the expenses identified and dividing them by the number of people in the home, in this case, four. She testifies that the policy used by the Agency is unfair and does not capture the intent of the regulation.

The Agency argues that adult MA cases consider a client of one in a single family home, or a family of two when considering income. They did not consider the grandmother's income or the grandmother as part of the two person household for evaluation purposes, but considered her as someone contributing to the home as a boarder. They testified that the policy recommended by the appellant's attorney is applicable for the owner of the home or apartment, and that the policy is written for the applicant, not the contributor.

MCAR Medicaid applicants who are aged, blind or disabled are considered SSI-related cases. Medicaid eligibility for SSI-related individuals and/or couples living in a

community setting is determined in accordance with the rules and regulations outlined in sections 0350 through 0372 of the MCAR. A review of the MA policy indicates that Medically needy SSI-related cases are subject to income and resource methodologies and limits. The Pro Rata Share policy-both the MA regulations and the Federal regulations-do identify policy wherein the household expenses are divided by the number of persons in the household, as argued by the appellant. However, those regulations and the language found in the regulations indicate that the policy is specific to the "applicant" and the household to which he is contributing. The policy reads, "if the applicant claims that s/he is contributing to the household, her/her pro rata share is established by...." The assumption is that the policy is to be applied to the applicant.

Clarification can also be found in regulations 0362.10.20 which reveals that to be considered an "individual living in their own household", one additional qualifier is that the individual must be eating meals with the household which they did not purchase separately. In this case, the grandmother occasionally eats with the family on a Sunday or a holiday, but she has established her "own household" as she has been assessed for, and receives, her own SNAP benefits. Thus, she could not also be considered as being part of a different household (that of her sons) for purposes of federal benefits. Per MA regulations, the argument that the grandmother is an individual living in her own household does not apply.

The policy presented by the Agency-0388.20.15 is a Long Term Care policy identical to the MA 0364.20.15 presented by the appellant. It identifies that an individual-either applicant/or recipient-may rent one or more rooms of his single family home or apartment. Allowable expenses in this case would be pro-rated based on the number of rented rooms to the total number of rooms in the house. Although the appellant's attorney presented that the grandmother has access to all the rooms, she rents at least her bedroom, which would allow her to claim one-sixth of the allowable expenses, and the remaining balance would be assigned to the family's countable unearned income. It has already been established that she is not part of the household for purposes of determining eligibility. She is to be considered a "roomer".

In conclusion, the appellant through his attorney argues that the grandmother's share of household operational expenses should be determined by dividing the allowable expenses by the number of occupants in the home, also known as pro rata share. For purposes of determining SSI countable monthly income, the grandmother is not considered part of the household, and is considered a roomer. Under the roomer income determinations the grandmother's contribution must be determined by pro-rating allowable expenses, based upon the six rooms in the home, and deducting the one-sixth from the gross expenses. The balance after deductions is countable unearned income. Thus, the roomer/boarder regulations are to be employed.

The de novo nature of the hearing allows the finding of new facts, which in this case, shed light on the Agencies miscalculations. The Agency and the appellant's attorney determined that the Agency had previously divided the incorrect expenses by the

incorrect number of rooms, thus rendering the initial notice incorrect. As a result, although the appellant's countable monthly income still exceeds the MA SSI monthly income standard, the Agency is responsible for recalculating the appellant's countable income.

After a careful review of the Agency's regulations, as well as the testimony presented, the Appeals Officer finds that the appellant's request for relief is denied. The appellant should be reassessed using the roomer regulations presented by the Agency, but the allowable expenses include the rent/and the pro-rated utilities, and the number of rooms in the home is six, not five.

A handwritten signature in black ink, appearing to read "Karen Walsh". The signature is written in a cursive, flowing style.

Karen Walsh
Appeals Officer

APPENDIX

MEDICAID CODE OF ADMINISTRATIVE RULES (MCAR)

0362 Income Generally

The provisions in this Section do not apply to the individuals and families in the Medicaid affordable coverage groups identified in MCAR Section 1301 that took effect on January 1, 2014.

The rules governing the application process for the Medicaid affordable coverage groups included in MCAR Section 1301 are located in MCAR Section 1303. Accordingly, the provisions of this Section are applicable only to individuals and families who were enrolled and receiving Medicaid coverage prior to January 1, 2014, as specified.

0362.05 Income Standards - Individual/Couple

REV: June 2015

The following standards are used in the determination of an individual's or couple's income eligibility:

- 2015 Monthly Federal Benefit Rate (FBR);
- Categorically Needy Income Limits;
- Medically Needy Monthly Income Limits;
- 2015 Federal Poverty Level Income Guidelines (for Low Income Aged and Disabled Individuals, Qualified Medicare Beneficiaries, Specified Low Income Medicare Beneficiaries and Qualified Disabled and Working Individuals).

| | |
|--|----------------------|
| 2015 Monthly Federal Benefit Rate (FBR) | \$ 733.00 |
| Individual - Own Home | |
| Couple - Own Home | \$ 1,100.00 |
| Individual - Home of Another | \$ 488.67 |
| Couple - Home of Another | \$ 733.34 |
| | "DIFFERENCE BETWEEN" |
| Couple and Individual - Own Home | \$ 367.00 |
| Couple and Individual - Home of Another | \$ 244.67 |
| | "DOUBLE THE FBR" |
| Individual - Own Home | \$ 1,466.00 |
| Individual - Home of Another | \$ 977.34 |
| Couple - Own Home | \$ 2,200.00 |
| Couple - Home of Another | \$ 1,466.68 |

| 2015 Categorically Needy Net Monthly Income Limits for Aged, Blind, or Disabled Individuals/Couples Income Limits | Individual | Couple |
|--|--------------------------|--------------------------|
| Living in a Nursing Facility or ICF-MR Facility | \$ 2,199.00 ¹ | N/A |
| Living in Own Household | \$ 772.92 | \$ 1,179.38 |
| Living in Household of Another | \$ 540.59 | \$ 830.64 |
| Living in a residential care and assisted | \$ 2,199.00 | ** **Treat as Individual |

living facility

Institutionalized individual eligible for the \$50.00

\$ 100.00

federal and state Supplement

This is the FEDERAL CAP which is \$2,199.00 effective 01/01/2015.

2015 TABLE OF MEDICALLY NEEDY MONTHLY INCOME LIMITS

| | | | |
|-----------|-------------|-----------|-------------|
| 1 Person | \$ 867.00 | 5 Persons | \$ 1,442.00 |
| 2 Persons | \$ 908.00 | 6 Persons | \$ 1,625.00 |
| 3 Persons | \$ 1,125.00 | 7 Persons | \$ 1,783.00 |
| 4 Persons | \$ 1,283.00 | 8 Persons | \$ 1,967.00 |

2015 FEDERAL POVERTY LEVEL MONTHLY INCOME GUIDELINES

100% of Federal Poverty Level Income Guidelines for Qualified Medicare Beneficiaries (QMB's) and Low-Income Aged and Disabled

| | |
|------------|------------|
| Individual | \$980.83 |
| Couple | \$1,327.50 |

120% of Federal Poverty Level Income Guidelines for Specified Low-Income Medicare Beneficiaries (SLMB's)

| | |
|------------|------------|
| Individual | \$1,177.00 |
| Couple | \$1,593.00 |

135% of Federal Poverty Level Income Guidelines for Qualified Individuals (QI-1)

| | |
|------------|------------|
| Individual | \$1,324.13 |
| Couple | \$1,792.13 |

200% of Federal Poverty Level Income Guidelines for Qualified Disabled and Working Individuals (QDWI's)

| | |
|------------|------------|
| Individual | \$1,961.67 |
| Couple | \$2,655.00 |

0362.10 Income Definitions

REV: 06/1994

Income is anything received in cash or in-kind that can be used to meet the needs for food, clothing or shelter. In-kind income is not cash, but is actually food, clothing, or shelter, or something the individual can use to get one of these. Earned and unearned income is considered when determining an individual's and couple's financial eligibility.

0362.10.10 Unearned Income

REV: 06/1994

Unearned income is defined as all income that is not earned income whether cash or in-kind. Some types of unearned income are:

- Deemed income;
- Income from legally liable relatives;
- Workers' Compensation;
- Annuities, pensions, and other periodic payments;
- Alimony and support payments;
- Dividends, interests and royalties;

- Rents;
- Benefits received as the result of another's death to the extent that the total amount exceeds the expenses of the deceased person's last illness and burial paid by the recipient;
- Prizes and awards;
- In-kind support and maintenance (ISM);
- Life insurance proceeds; and
- Gifts and inheritances.

0362.10.15 Forms of Income

REV: 06/1994

Income, whether earned or unearned, may be received in either of two forms, cash and in-kind.

Cash includes currency, checks, money orders, or electronic funds transfers (EFT), such as:

- Social Security checks;
- Unemployment compensation checks; and
- Payroll checks or currency.

In-kind includes noncash items such as: Social Security checks; Unemployment compensation checks; and Payroll checks or currency.

In-kind includes noncash items such as: Real property; Food; Clothing; and Noncash wages (e.g., room and board as compensation for employment)

0362.10.20 Definition of "Individuals Living in their own Households"

REV: 06/1994

The following is a list of individuals living in their own households:

- An individual (or living-with spouse or any person whose income is deemed to the individual) who has an ownership interest or a life estate interest in the home;
- An individual (or living-with spouse or any person whose income is deemed to the individual) who is liable to the landlord/landlady for payment of any part of the rental charges;
- An individual who is in a non-institutional care situation;
- An individual who lives in an all-public assistance household; or
- An individual who pays at least a pro rata share of household operating expenses, AND
 - Is living with someone other than a spouse and/or child(ren) and/or someone whose income is deemable to such individual, AND
 - Is eating meals which s/he did not purchase separately.

0362.10.20.05 Proof of Pro Rata Share

REV: 06/1994

If the applicant claims that s/he is contributing to the household, his/her pro rata share is established by averaging the monthly household operating expenses over the past 12 months and dividing by the number of persons in the household, regardless of age. If exact figures are unavailable, a reasonable estimate is used, considering current expenses and seasons of the year.

The household expenses to be Water

considered, provided someone
outside the household does NOT
pay for them, are: Real Property

Taxes

Sewer

Garbage Removal

Food

Rental Payments

Heating Fuel

Gas

Electricity

Mortgage (including property
insurance)

0364.20 RENTAL PROPERTY INCOME

REV:06/1994

If the applicant reports income from property, the AP-759 is completed and signed by the applicant. For individuals and couples (SSI-related), net income from rental property or roomer/boarders is normally unearned income. (In rare instances in which an individual makes his/her living in the real estate or boarding home business, the rental income may be earned income. Any questions regarding classification of rental income are referred by memorandum to the Regional Manager.)

0364.20.15 Roomer or Roomer/Boarder Inc.

REV:06/1994

ROOMER INCOME

An individual may rent one or more rooms of his/her single family home or apartment. If the applicant/recipient has roomer income, pro-rate allowable expenses on the basis of the number of rented rooms to the total number of rooms in the house. Bathrooms, unfinished attics and basements do not count in determining total rooms. For example, if a house with six rooms has one room rented, one-sixth of the allowable expenses are deducted from the gross roomer income. The balance after deduction of the pro-rated expenses is countable unearned income.

ROOMER/BOARDER

The applicant/recipient may provide meals in addition to lodging. If so, the allowable expenses which are deducted from the roomer/boarder income may include the cost of providing food. To reflect the added cost of providing food, the Food Stamp Program "Maximum Food Stamp Allotment" amount is deducted for the number of roomer/boarders. (See Food Stamp Manual, Sec. 1038).

NOTICE OF APPELLATE RIGHTS

This Final Order constitutes a final order of the Department of Human Services pursuant to RI General Laws §42-35-12. Pursuant to RI General Laws §42-35-15, a final order may be appealed to the Superior Court sitting in and for the County of Providence within thirty (30) days of the mailing date of this decision. Such appeal, if taken, must be completed by filing a petition for review in Superior Court. The filing of the complaint does not itself stay enforcement of this order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms.