

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF HUMAN SERVICES
APPEALS OFFICE
600 New London Avenue
Cranston, Rhode Island 02920
(401) 462-2132/Fax# (401) 462-1678
TDD# (401) 462-3363**

Docket # 14-1010
Hearing Date: August 26, 2014

Date: September 12, 2014

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 policy reference(s) were the matters before the hearing:

DHS POLICY MANUAL: MEDICAL ASSISTANCE
SECTION: 0362.05 Income Standards - Individual/Couple
SECTION: 0388 Treatment of Income
SECTION: 0372.05 Eligibility Determination

The facts of your case, the agency policy, 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 (the appellant), and Agency representatives: Fina Cicerchia, Kristen Grosso, and Betty Perez.

Present at the hearing were you (the appellant), and the Agency Representative Fina Cicerchia.

ISSUE: Is the appellant eligible for Medical Assistance (MA) under the Medicare Premium Payment Program?

DHS POLICIES:

Please see the attached APPENDIX for pertinent excerpts from the Rhode Island Department of Human Services Policy Manual.

DISCUSSION OF THE EVIDENCE:

The agency representative provided the following testimony

- The Agency verified that the appellant receives \$946.00 gross monthly income for a Social Security disability benefit.
- His wife's average monthly income was determined to be \$2,477.00, as calculated from his wife's submitted paystubs.
- We applied a \$20.00 unearned income disregard to the appellant's social security payment.
- We then applied an appropriate disregard of \$65.00 and one half the balance of the appellant's wife's earned income which gave us a monthly countable net income of \$2132.00.
- Because his income is over the standard, we are not able to pay his Medicare premium for him.
- We have placed him into a flexible test of income situation.
- This means, that we determine his monthly income and multiply it times six, and once the appellant incurs medically related bills totaling the amount of that excess income, or submits receipts for payments made for medically related items or purchases (within the time frame), they could be used to find him eligible for the remainder of the six month period.
- If he reaches the amount of \$7392.00 between the period beginning May 1, 2014 through October, 2014, he would be considered eligible medically needy.
- His next eligibility period for this program will start on November 1, 2014.

The appellant provided the following testimony:

- He had chosen to reschedule this hearing to today because he wanted legal representation.
- He did not bring legal representation because they did not want his case.
- He did speak with Legal services and his attorneys heard his case, and they had a Federal case, and they did not show up today because maybe it was forgotten.
- He guesses those (the paystubs entered into evidence) are his wife's paystubs.
- He doesn't agree with any of the figures, because he wants only his figures used.
- He is not saying what figures those are unless he has legal representation.
- He only gets \$946.00 in disability, and he has only those figures.
- If he opens his mouth it will be used against him, so he's not saying anything about the figures being correct or wrong.
- He has to be very very clear about what he says, so he is not saying much.
- Regarding leaving the record open to allow additional time for the appellant to continue to seek legal counsel, and enter an appearance, or reconvene if desired; he answered, "Whatever you want."

FINDINGS OF FACT:

- A denial notice dated May 30, 2014 informed the appellant that his application for the Medicare Premium Payment Program through RI Medical Assistance (MA) had been denied for the month of May, 2014. It further stated his countable monthly income of \$2,132.00 was more than that allowed for a family of two.
- The May 30th denial notice further informed the appellant that he had an excess of \$7,392.00 for the flexible test of income policy, and it further explained how he could spend down bills and medical expenses in order to become eligible for six month periods.

- The appellant filed a timely request for hearing received by the Agency on June 21, 2014.
- The appellant's household consists of himself and his wife.
- The maximum countable monthly income limit for a family of two for the medically needy program is \$900.00.
- The appellant receives \$946.00 per month in social security disability benefits.
- The agency totaled the appellant's spousal countable income to equal \$2132.00, calculated from the paystubs which she submitted.
- The appellant rescheduled his August 7th hearing to August 26th in order to obtain legal counsel, with whom he made contact. They did not appear at hearing, nor enter an appearance.
- The record of hearing was held open to the close of business on September 9th, in order to allow the appellant to continue to explore legal options, or to allow an entry of appearance by an attorney, and to allow a reconvene with an attorney if needed.
- There was no contact from the appellant or legal representatives by the close of business on September 9, 2014.

CONCLUSION:

The issue to be decided is whether the appellant is eligible for Medical Assistance under the Medicare Premium Payment Program for the month of May 2014.

The record establishes that the appellant's MA household consists of two. The appellant verified his SSI disability benefits total \$946.00 per month. He neither confirmed nor denied the paystubs attributed to his wife, stating that information given to the hearing officer could be used against him. The Agency argued that the appellant's wife had provided documentation indicating that the family's countable income totaled \$2132.00 per month which exceeds the maximum allowable SSI related monthly income of \$900.00. The appellant argued that he wanted only his own figures used, and that he did not agree with the entire process. In utilizing the \$900.00 income limit figure for six months, the Agency determined that the appellant could participate in the Flexible test of income program if he were to present appropriate medical expenses which reduced his income to below \$5400.00. They calculated the appellant's excess income for that program to be \$7392.00.

Per Medicare Premium Payment Program (MPPP) policy, the purpose of the program is to assist elders 65 and older, and adults with disabilities, pay all or some of the costs of their Medicare premiums. Low income adults with disabilities may be eligible if they meet both the non-financial requirements and the specific requirements of the Medicare Premium which includes income and resource limits. Further exploration of policy determines that the medically needy monthly income limit for a two person household is \$900.00. Additional Flexible Test of Income policy allows applicants who have income in excess of the Medically Needy income limits to explore eligibility for that program which allows medical spend downs over periods of six months if the applicant is able to meet the medical spend down determinations which reduce his amount of income to that less than his excess income. In this case the Agency determined that the 6 month flexible test of income standard was \$5400.00.

There is no dispute that the appellant lives in a two person household as defined by MA policy. Although the appellant originally stated that he wanted only his \$946.00 in SSI income used for the MA determination, he did not dispute that he and his wife live in the home together. The Agency argued that the spousal income is used to determine eligibility. Policy agrees-the income counted by the Agency must include the spousal income. The appellant would neither confirm nor deny that he was familiar with the paystubs provided by his wife and that they were hers. The Agency used the wife's stubs to determine gross income. When queried about whether the appellant thought the Agency calculations were incorrect, he answered he did not agree with any of the figures. The Agency correctly determined gross income of \$3,423.00 by determining the appellant's monthly income of \$2,477.00 and adding the appellant's unearned income of \$946.00, totaling \$3,423.00. Per policy, they further calculated an earned disregard of \$1,271.00 the result of a spousal employment exclusion of \$65.00 plus ½ of her income, totaling \$1271. A monthly general income disregard of \$20.00 was then subtracted from the calculated total of \$2152.00, leaving a net income of \$2132.00. This amount exceeded the MA SSI related monthly income standard of \$900.00.

The Agency then identified that although the appellant was over the flexible test of income for his household size of two, he could possibly meet his balance of excess income of \$7,392.00 by presenting allowable unpaid or paid medical bills or purchases, which could be used to find him eligible in the six month period from May 1, 2014 through the last day of October 2014.

The appellant provided conflicting testimony on several points. He indicated he did not agree with any of the figures, and then identified he wanted only his figures used. He did not dispute Agency policy, but indicated that if he acknowledged any policy or acknowledged his wife's paystubs, this would be held against him. The appellant had been allowed a rescheduled hearing as he identified at his first scheduled hearing on August 7, 2014, that he did not wish to move forward without legal representation. At the commencement of this second hearing he indicated he had called Legal Services, and his case had been heard. He then identified his case had been heard on a Federal level. When asked where representation was on this day of hearing, he identified that they were not present because they would not take his case. He then identified that perhaps they had forgotten. He was allowed two more weeks to continue to explore legal representation and reconvene with representation if needed. There was no response.

In summary, although the appellant displayed great distrust of the hearing proceedings, and of the Agency, the Agency calculations were correct. The paystubs used were submitted by his wife. Additionally, the Agency made an effort to systematically and carefully articulate the process. The credible and undisputed testimony and evidence presented by the Agency found that the appellant is not eligible for MA under the Medicare Premium Payment as a result of his excess family income.

After a careful review of the Agency's policies, as well as the evidence and testimony given, the Appeals Officer finds that the appellant's countable monthly income exceeds the Medical Assistance SSI related monthly income, and he is not eligible for MA under the Medicare Premium Payment Program. The appellant's request for relief is denied.

A handwritten signature in black ink that reads "Karen E. Walsh". The signature is written in a cursive, flowing style.

Karen E. Walsh
Appeals Officer

APPENDIX

0362.05 Income Standards - Individual/Couple

REV: April 2014

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

2014 Monthly Federal Benefit Rate (FBR);

Categorically Needy Income Limits;

Medically Needy Monthly Income Limits;

2014 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).

2014 Monthly Federal Benefit Rate (FBR)

Individual - Own Home \$721.00

Couple - Own Home \$1,082.00

Individual - Home of Another \$480.44

Couple - Home of Another \$721.33

"DIFFERENCE BETWEEN"

Couple and Individual - Own Home \$361.00

Couple and Individual - Home of Another \$240.89

"DOUBLE THE FBR"

Individual - Own Home \$1,442.00

Individual - Home of Another \$960.88

Couple - Own Home \$2,164.00

Couple - Home of Another \$1,442.66

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

\$ 2,163.00¹ N/A

Living in Own Household \$ 760.92 \$ 1,161.38

Living in Household of Another \$ 532.36 \$ 818.63

¹ By federal law, to be eligible as "Categorically Needy" while living in a nursing facility, ICF-MR facility or a licensed residential care and assisted living facility, an individual's gross income cannot exceed 300% of the federal SSI level of payment for an individual.

2

Income Limits Individual Couple

Living in a residential care and assisted living facility

\$ 2,163.00 ** **Treat as Individual

Institutionalized individual eligible for the federal and state Supplement

\$ 50.00 \$ 100.00

This is the FEDERAL CAP which is \$2,163 effective 01/01/ 2014.

TABLE OF MEDICALLY NEEDED MONTHLY INCOME LIMITS

1 Person \$ 858.00 5 Persons \$ 1,417.00

2 Persons \$ 900.00 6 Persons \$ 1,592.00

3 Persons \$ 1,108.00 7 Persons \$ 1,750.00

4 Persons \$ 1,258.00 8 Persons \$ 1,933.00

2014 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 \$ 972.50

Couple \$ 1310.83

120% of Federal Poverty Level Income Guidelines for Specified Low-Income

Medicare

Beneficiaries (SLMB's)

Individual \$ 1,167.00

Couple \$ 1,573.00

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

Individual \$ 1,312.88

Couple \$ 1,769.63

200% of Federal Poverty Level Income Guidelines for Qualified Disabled and

Working

Individuals (QDWI's)

Individual \$ 1,945.00

Couple \$ 2,621.67

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 considered, provided someone outside the household does NOT pay

for them, are:

Real Property Taxes Water

Sewer Heating Fuel

Garbage Removal Gas

Food Electricity

Rental Payments Mortgage (including property insurance)

The applicant must be advised to retain future bills/receipts in the event a redetermination is

required because changes occur, or because s/he wants to rebut one or more of the amounts used in

determining the household expenses.

When a change does occur, it is only necessary to determine what is affected by the change. For

example, if the only change is in household composition, only the food expense will increase or

decrease. If the individual's contribution has decreased, a determination must be made that the

lower contribution still constitutes a pro rata share.

0388 TREATMENT OF INCOME

0388.05 EARNED/UNEARNED INCOME EXCLUS

REV:06/1994

Certain exclusions apply only to EARNED income, some apply only to UNEARNED income and a few apply to BOTH earned and unearned income. The following exclusions apply to both earned and unearned income:

- o Infrequent and irregular income exclusions;
- o \$20 per month General Income Exclusion;
- o PASS Exclusion.

0388.05.05 Infrequent/Irregular Income Exclusion

REV:06/1994

Income which is received infrequently and irregularly is excluded provided the total income of such exclusion does not exceed:

- o \$10/month of earned income; and/or,
- o \$20/month of unearned income.

An individual receives income on an INFREQUENT basis if s/he receives it no more than once in a calendar quarter from a single source. An individual receives income on an IRREGULAR basis if s/he could not reasonably expect to receive it.

This exclusion can apply to both earned and unearned income in the same month provided the total of each does not exceed the allowed limits. Thus it is possible to exclude as much as \$30 in a month under this provision.

0388.05.10 \$20/Month General Income Disregard

REV:04/1995

The first \$20 per month of unearned income is deducted from income. The \$20 is applied to earned income only if the \$20 cannot be applied to unearned income. The dollar amount of this exclusion is not increased when an eligible individual and eligible spouse both have income. An eligible couple receives one \$20 exclusion per month.

0388.05.15 PASS Exclusions

REV:06/1994

Income, whether earned or unearned, of a blind or disabled recipient may be excluded if such income is needed to fulfill a Plan for Achieving Self-Support (PASS).

This exclusion does not apply to a blind or disabled individual age 65 or older, unless s/he was receiving SSI or State disability or blind payments for the month before s/he reached age 65.

0388.10 EARNED INCOME EXCLUSIONS

REV:06/1994

Earned income is never reduced below zero. Any unused earned income

exclusion is never applied to unearned income. Any unused portion of a monthly exclusion cannot be carried over for use in subsequent months.

0388.10.05 \$65 and 1/2 Earned Income Exclusion

REV:06/1994

If the applicant or spouse is employed, earned income of \$65/month plus one-half (1/2) of the balance is excluded. When both eligible spouses are employed, this exclusion is applied to only one earned income.

0372 SPECIAL Treatment Coverage Groups

0372.05.25 Eligibility Determination

REV: 09/2010

- A. To qualify for MPPP eligibility, an individual must meet the non-financial requirements of citizenship, alienage, residency, enumeration and third party resource requirements that all other Medicaid applicants must meet, as well as the specific requirements of the Medicare Premium Payment Program: Enrollment in Medicare Part A, income and resources limits.
- B. An individual or member of a couple may qualify for Medicare Premium Payment Program benefits regardless of living arrangement. Income and resource limits are uniform, and do not vary depending on living arrangement or institutional status.
- C. An individual may apply for the Medicare Premium Payment Program only, Medicaid only, or both Medicaid and Medicare Premium Payment Program benefits. If eligible, the applicant is certified at his/her option for:
1. Medicare Premium Payment Program Benefits only;
 2. Medicaid only; or
 3. Medicaid with QMB/SLMB. (QIs and QDWIs are not eligible for Medicaid.)
- D. Notices of agency action to applicants for Medicare Premium Payment Program benefits parallel the notices sent regarding actions on Medicaid applications. Applicants for Medicare Premium Payment Program benefits must receive adequate notice of agency action to accept or reject an application for such coverage.
1. The agency must send timely and adequate notice of benefit termination. The notice must be mailed at least ten (10) days prior to the effective date of the action.
 2. Applicants/recipients requesting or receiving Medicare Premium Payment Program benefits are entitled to the same due process protection afforded other Medicaid applicants and recipients.

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.