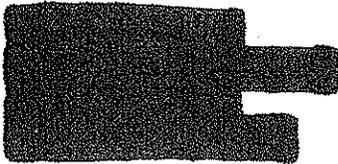


STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF HUMAN SERVICES
APPEALS OFFICE
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Docket # 14-626
Hearing Date: June 5, 2014

Date: June 18, 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:

**THE DHS PROVIDER MANUAL: Medical Assistance
SECTION : 392.05 Post Eligibility Treatment of Income**

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: the Appellant's parents, the Agency representative, and the Policy Unit.

Present at the hearing were: the Appellant's mother, Jodi Josephson, Social Worker for the Tavares Pediatric Center, Michelle Bouchard, RN, and Geraldine Anderson, Eligibility Technician/Agency Representatives.

ISSUE: Should child support payments be counted as part of the Appellant's income?

DHS POLICIES:

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

APPEAL RIGHTS:

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

DISCUSSION OF THE EVIDENCE:**The Agency Representatives testified:**

- On February 26, 2014 the agency issued a notice regarding the Appellant's participation in the Medical Assistance Program. The letter informed the Appellant that he is responsible to pay a share of his medical expenses, per policy § 0392.05. That the money is payable to the health care provider, such as the nursing home or homemaker agency that assists him. The share of the medical expenses is due monthly and is based on the gross income and allowable deductions reported to the agency. The Appellant's share of the medical expenses for February 1, 2014 is \$556.66.
- The Appellant's mother filed an appeal of the agency's action on March 18, 2014 stating that she had not received any prior notice of the agency' actions and that she does not feel that it is fair or equitable.
- The Appellant has been institutionalized since 2008 at the Tavares Pediatric Center. The Appellant's case had been coded incorrectly and the agency took action to correct the issue in late 2013. As a result of correcting the error in coding this case, the agency found out that the Appellant's mother has been receiving child support for the benefit of the child.
- The Appellant was a child who had receiving SSI, the case then had transferred to the Long Term Care (LTC) unit at Benjamin Rush, then transferred to the LTC unit in Providence and transferred again to case to the Katie Beckett Program – medical assistance unit. It was here that the case had been found to have been coded incorrectly and that child support payments were being made. The case was then coded correctly.
- The agency researched and contacted those knowledgeable in LTC regarding the issue of a parent receiving child support that has an institutionalized child.
- The agency had been told that whenever a parent was receiving child support, that money is considered applied income for the child and need to go to the institution, as per policy 0392.05.
- This case is not a Katie Beckett case per se due to the fact that the Appellant is already institutionalized; the Katie Beckett unit is involved only due to the child being treated at the Tavares Pediatric Center receiving Medicare.
- The agency present a packet of documents which consisted of the Request for Hearing; The agency's notice dated February 26, 2014; printout from the InRhodes computer screen, CCAS for June 2014; printout from the InRhodes computer screen, showing approved authorization segments; printout from the InRhodes computer screen, showing LTC Patient's Share; printout from the InRhodes computer screens, showing child support disbursements made to the

Appellant's mother from January 28, 2013 to May 2, 2014; and printout from the InRhodes computer screen, showing policy § 0392.05.

The Appellant's Mother testified:

- The Appellant's mother stated that she never received any of the agency's notices, she only received them because they had been sent to the Tavares Pediatric Center and that they had given them to her; no notices were ever sent to her home.
- She believes that the Tavares Pediatric Center is a nursing home and not an institution.
- The Appellant is severely handicapped and was at home for the first 8-9 years of his life and requires 24 hours a day care; he is now 14 years old.
- The child support payments that have been received have been used, allowing his mother to be buy him thing such as clothing and toys. Also, as a single parent, these funds allows Appellant's mother to leave work in order to be at his side when needed.
- The Appellant does not speak and his mother is the only person who can communicate with him. The Appellant is often hospitalized, commonly up to 30 days at a time. Due to some past errors during hospitalization, the Appellant's mother is afraid to leave his side.
- The Appellant's mother is in the process of filing for services with the Office of Child Support Services (OCSS). Currently there is a RI Family Court Order for child support (\$140.00 per week) but the case is a bookkeeping case only and OCSS is not enforcing the order.
- Only four child support payments have been made for the 2014 calendar year and that the Non-Custodial Parent is in arrears of over \$4,000.00. The last payment received was May 2, 2014.
- The Appellant's mother is very busy and has not had a chance to find out why the child support payments are not being made on a regular bases.
- The Appellant's mother has not seen or spoken to the Appellant's father since she was four months pregnant with the Appellant.
- The social worker from the Tavares Pediatric Center indicated that she has spoken with the administrator from the Tavares Pediatric Center and that she has never heard before that child support payments would be intercepted and be used to pay of services. There are patiences at the Tavares Pediatric Center who do not pay anything, that have two parent households and it is disturbing that a single mother is being forced to pay. Also, the Tavares Pediatric Center is a skilled nursing facility and not an institution.
- The State has started deducted the amount of child support payments from what it is paying the Tavares Pediatric Center for the Appellant, the social worker does not know who will finically make the Tavares Pediatric Center whole; they cannot chase people for money.
- If the Appellant's mother could have 18 hours a day of nursing care at home for the Appellant, she would welcome having her son back home with her.
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- The Appellant's mother is not active on food stamps, receives no assistance from the State and she relies on the money that she receives for child support to support her kids.

FINDINGS OF FACT:

- The Appellant's mother received a notice from the agency that had been sent to the Tavares Pediatric Center that she is responsible to pay a share of her medical expenses, per policy § 0392.05. That the money is payable to the health care provider, such as the nursing home or homemaker agency that assists her. The share of the medical expenses is due monthly and is based on the gross income and allowable deductions reported to the agency. The Appellant's share of the medical expenses for February 1, 2014 is \$556.66.
- The Appellant's mother filed a timely appeal on March 18, 2014.
- The Appellant is presently a fourteen year old boy who has been institutionalized since 2008 at the Tavares Pediatric Center. The Appellant's case had been coded incorrectly and the agency took action to correct this issue in late 2013. As a result of correcting the error in coding this case, the agency found out that the Appellant has been receiving child support.
- That this case had been transferred to the Katie Beckett Program – medical assistance unit near the end of 2013 and is when the agency researched and contacted those knowledgeable in LTC regarding the issue of a parent receiving child support that has an institutionalized child.
- The agency present a packet of documents which consisted of the Request for Hearing indicating the Appellant's mother reason for requesting the Hearing and the agency's response; the agency's notice dated February 26, 2014 informing the Appellant of his responsibility to pay a share of medical expenses as stated in RI DHS Manual § 0392.05; printout from the InRhodes computer screen, CCAS for June 2014 indicating the principle amount owed for child support and the date of the last child support paid; printout from the InRhodes computer screen, showing approved authorization segments; printout from the InRhodes computer screen, showing LTC Patient's Share showing the Appellant's income; 8 pages of printouts from the InRhodes computer screens, showing 51 child support disbursements/payments made to the Appellant's mother from January 28, 2013 to May 2, 2014; and printout from the InRhodes computer screen, showing policy § 0392.05.

CONCLUSION:

The issue to be decided in this matter is whether child support payments should be counted as part of the Appellant's income.

The Appellant is presently a fourteen year old boy who has been placed with the Tavares Pediatric Center since 2008. The Appellant's case with the Department of Human Services has been transferred from the Long Term Care (LTC) unit at Benjamin Rush to LTC in Providence and then transferred again in late 2013 to the Katie Beckett

program, medical assistance unit, at which time it was realized that the case had been coded incorrectly all along. Although the Appellant is not a "Katie Beckett child", the Katie Beckett program over sees children that the State has placed with the Tavares Pediatric Center. In reviewing the case, the agency representative discovered that there is a child support order issued by the RI Family Court, docket # 00R2394, for the benefit of the Appellant. The child support order has been paid for a number of years by the Appellant's father in the amount of \$140.00 per week to the RI Family Court and those monies were released to the Appellant's mother for the benefit of the child. The child support payments do not come in each and every week as the Family Court has ordered; presently the non-custodial parent is \$3,348.99 in arrears (principle only, no interest added) as of May 2, 2014. For the calendar year of 2013, 47 payments of 52 payments had been made and as of May 2, 2014, only 4 payments have been made for the 2014 calendar year.

The agency has taking the position that the child support that is being paid is an income for the Appellant and that income should be applied to the cost of the care that the Appellant is receiving. RI DHS Policy § 0392.05 states in part:

"Institutionalized Medicaid recipients are required to apply their income toward the cost of institutional care. Once Categorically Needy or Medically Needy eligibility has been established and the applicant has been determined eligible for payment of institutional care services, a determination is made of the amount of income that the institutionalized individual must allocate to the cost of care."

Furthermore, as someone who receives medical assistance, the Appellant or whoever completed his application on his behalf assigned certain rights to the Department of Human Services. DHS Policy § 0704.15 states:

"An applicant for or recipient of public assistance..., for and on behalf of herself or himself and for and on behalf of a child or children, shall be deemed, without the necessity of signing any document, to have made an assignment to the Department of Human Services of any and all rights and interests in any cause of action, past, present, or future, that said applicant or recipient may have against any person failing to or obligated to provide for the support, maintenance, and medical care of said applicant, recipient and or said minor child or children for the period of time that assistance is being paid by said Department..."

The RI Family Court Order is currently a bookkeeping case only and is not being enforced by the Office of Child Support Services (OCSS) as a result. A bookkeeping case only is a child support case that is only using the Family Court's ledger for accounting purposes and no enforcement action will be taken by the court until either party files a motion. The Appellant's mother previously had the services of OCSS. The Appellant's mother testified that she does not know when or why the child support case became a bookkeeping case only. Presently, the Appellant's mother is re-applying for OCSS services so that the child support order can be enforced and to get the child support to be paid.

The Appellant should be receiving \$140.00 each and every week or \$602.00 per month (\$140.00 x 4.3 week in a month) for child support from his father, the non-custodial parent until the Family Court grant him relief from doing so. Policy permits a personal need deduction of \$50.00 per month in which the Appellant may receive. All other payments shall be applied to medical care that the Appellant receives at the Tavares Pediatric Center. These monies will only be paid to cover the medical assistance that the Appellant receives out of the child support when it is being paid as ordered by the Family Court. It is unclear how the agency calculated the Appellant's gross income to \$656.66 per month.

The Appellant's mother feels that the agency's actions are not fair or equitable. For the first eight years of the Appellant's life, he had resided with her but due to the amount of care that the Appellant started to need, he was placed with the Tavares Pediatric Center. Due to the Appellant's health problems, he is often admitted to the hospital and commonly stays up to 30 days. During these times at the hospital, the Appellant's mother feels that she must be with the Appellant as much as possible since she is the only person who can communicate with him; these times are too difficult to stay at work, so she really relies on the child support during these periods. The Appellant's mother explained two incidences that happened when the Appellant was at the hospital and she had to leave to pick up another child, the hospital's actions were harmful to her son.

The Appellant's mother, is a single parent, she relies on the child support payments that she receives so that, when needed, she can leave work to be by her son's side. She has not seen the Appellant's father since she was four months pregnant with the Appellant. She also uses the child support payments received to buy the Appellant items for the Appellant, "little things like toys that any mother would like to purchase for her child." The Appellant's mother indicates that she receives no other benefit from the state although she wishes that she could obtain 18 hours a day home care for her son that would allow the Appellant to be able to return home but she cannot.

The Appellant's mother testified that she had not realized that the non-custodial parent has not been making his child support payments recently, with all that has been going on, she has been busy. Although that she has finally been able to speak with a live person at OCCS and has received an application, the application is very long and that she will be leaving some questions blank since she has not seen the non-custodial parent in fourteen years. Also, she is troubled that since this issue has arisen, the Tavares Pediatric Center has not been paid properly and they are not accustomed or have the knowledge on how to force the Appellant's father to make payments.

The Family Court calculated a child support order for the support and maintenance of the Appellant, that the Appellant's father was court ordered to pay the sum of \$140.00 per week. The Appellant, who is a minor, is prohibited from filing an action on his own with the court for support, which may be why child support payments were made to the Appellant's mother, the mother acting as a trustee for the Appellant. If the child support is paid, the first \$50.00 that is paid per month can go to the Appellant as part a standard personal needs deduction, this is a benefit for the Appellant/child, not the custodial parent.

The regulation of child support of a minor child is subject to control of the Family Court and cannot be address in this decision. The custodial and non-custodial parents submitted a child support federal guidelines worksheet regarding child support and the Family Court placed the non-custodial parent under a child support order of \$140.00 per week. The child support is a benefit for the child and is paid to the custodial parent but remains an income to the minor child/Appellant. When the non-custodial parent does not pay his child support obligation, the agency is not seeking to have the Appellant's mother, the custodial parent pay instead but there is an arrearage accruing that must be paid by the non-custodial parent who is under a court order for support of a minor child. Also, either the Appellant and/or his mother agreed to assign certain rights to the agency to become eligible for medical assistance as part of the application process; this assignment properly allows the agency to apply the child support payments to the treatment in which the Appellant is receiving medical assistance.

After a careful review of the Agency's policies, as well as the evidence and testimony given, this Appeals Officer finds that the agency's actions were proper in counting the Appellant's child support as part of his income. The appellant's request for relief is therefore denied.



Thomas Bucacci
Appeals Officer