



The Delaware Code (31 Del. C. §520) provides for judicial review of hearing decisions. In order to have a review of this decision in Court, a notice of appeal must be filed with the clerk (Prothonotary) of the Superior Court within 30 days of the date of the decision. An appeal may result in a reversal of the decision. Readers are directed to notify the DSS Hearing Office, P.O. Box 906, New Castle, DE 19720 of any formal errors in the text so that corrections can be made.

**DELAWARE DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF SOCIAL SERVICES**

In re:

DCIS No. 0000000000

Mrs. Smith

Appearances: Mr. Smith, pro se, Appellant's Husband

Christine Best, Sr. Social Worker/Case Manager, Team #135, Division of Social Services

Rebekah Hennlein, Sr. Social Worker/Case Manager, Team #135, Division of Social Services

I.

Mrs. Smith ("Appellant") opposes a decision by the Division of Social Services ("DSS") to close her husband's Medical Assistance benefits and reduce her and her two (2) children's Medical Assistance benefits based upon being over the income limit for a household of four (4).

The Division of Social Services ("DSS") contends that the Appellant is over the income limit for a household of four (4).

II.

On June 6, 2011, DSS sent to Appellant a Notice to Close Your Medical Assistance, effective June 30, 2011. (Exhibit 3)

On June 22, 2011, the Appellant filed a request for a fair hearing, requesting that assistance continue during the pendency of the case. (Exhibit 2) According to the Fair Hearing Summary dated June 27, 2011, assistance has continued. (Exhibit 1)

The Appellant was notified by certified letter dated July 12, 2011, that a fair hearing would be held on July 26, 2011. A Continuance was granted on July 27, 2011. The Appellant was notified by certified letter dated September 15, 2011, that a fair hearing would be held on September 29, 2011. The hearing was conducted on that date in New Castle, Delaware.

This is the decision resulting from that hearing.

III.

DSS testified that with her medical assistance renewal, the Appellant submitted updated income documentation. DSS testified that this documentation showed that Mr. Smith was receiving \$330.00 in gross weekly unemployment compensation. (Exhibits 5, 6, 7, and 8) Since there are 52 weekly pay periods in a year, merely multiplying a weekly income by four (4) yields an erroneous result because it fails to account for the four (4) “extra” pay periods in the year. To account for these “extra” pay periods, federal policy requires DSS to multiply a weekly gross income by 4.33, resulting in a monthly income reflecting one twelfth (1/12) of the Appellant’s yearly gross income. (DSSM 16230) Following this federal policy, DSS determined that the Appellant’s husband would receive a total of \$1,428.90 in gross unemployment compensation for the month of July ($\$330.00 \times 4.33 = \$1,428.90$).

In addition, DSS testified, the Appellant provided documentation of her own earned income. DSS testified that the Appellant submitted a paystub from her employer, B&C Cleaning, documenting that the Appellant was paid \$500.00 semi-monthly. (Exhibit 4) DSS testified that this results in a gross earned monthly income of \$1,000.00 ($\$500.00 \times 2 = \$1,000.00$). DSS testified that the Appellant’s total gross household income amounted to \$2,428.90 for the month of July 2011 ($\$1,428.90 + \$1,000.00 = \$2,428.90$).

Pursuant to the Division of Social Services Manual (“DSSM”) 16230, countable income is used to determine eligibility for benefits. DSSM 16230 defines countable income as earned or unearned income minus any disregards, if applicable. DSSM 16230.2 identifies unemployment compensation as a type of unearned income, and notes that unearned income is counted as paid without application of any disregards. In this case, the Appellant received an earned income deduction (disregard) of \$90.00 because DSSM 16230 considers her income as earned, while her husband received no disregard as his income is considered to be unearned. Accordingly, DSS determined that the Appellant’s household’s monthly income amounted to \$2,338.90 ($\$2,428.90 - \$90.00 = \$2,338.90$). DSS applied a monthly income limit for a family of four (4) amounting to \$1,378.00 and the agency closed the Appellant’s husband’s medical assistance benefits, while reducing the Appellant’s medical assistance benefits to the Family Planning Program and her two (2) children’s medical assistance benefits to the CHIPS program¹.

At the hearing, the Appellant’s husband testified that on January 28, 2011, he attended an earlier fair hearing, in which he was told that the gross income limit for a household of four (4) was \$2,549.00. The Appellant’s husband testified that in that hearing, it was determined that his wife’s income had been calculated incorrectly, and that they were eligible for medical assistance benefits. The Appellant’s husband testified that he did not understand why the allowable gross income limit had been reduced by half. In addition, the Appellant’s husband testified that he no longer receives \$330.00 in gross weekly unemployment compensation: The Appellant’s husband

¹ DSS further testified that one (1) child, Ms. Smith, was not counted in the household: Because Ms. Smith receives SSI Medicaid, he cannot be included in his family’s budget group, but must be considered separately. As a result, DSS testified, although there were five (5) people in the home, the Appellant’s household was budgeted for a household of four (4).

testified that he extended his unemployment compensation and now receives \$252.00 in gross weekly unemployment compensation². (Exhibit 10) The Appellant's husband testified that as of this hearing, he will exhaust his unemployment compensation benefit in roughly five (5) weeks.

Pursuant to DSSM 16230.1.1, DSS is only permitted to utilize gross income, and not net income (after expenses), for purposes of eligibility. As this benefit is based solely on income, there are no deductions made for medical or other expenses and a person's medical condition is not taken into consideration when determining eligibility.

According to DSSM 15120, The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, Section 114, established a new Medicaid eligibility group for low-income families with children at Section 1931 of the Social Security Act. Coverage for this mandatory categorically needy group of families with children is effective March 10, 1997, the date that Delaware's TANF plan was approved.

DSSM 15120.2 states that TANF rules on income standards and methodologies (disregards, exclusions, allocations) apply to Section 1931 Medicaid except as provided in this section. DSSM 15120.2 further identifies that for Section 1931 Medicaid, there are two income tests to determine financial eligibility. The first test is a gross income test and the second is a net income test. For the gross income test, compare the family's gross income to 185% of the applicable standard of need. For the net income test, compare the family's net income to the applicable standard of need (i.e. 75% of the federal poverty level).

According to Administrative Notice A-05-2011, 185% of the federal poverty level for a household of four (4) is equal to \$2,549.00, while 75% of the federal poverty level for a household of four (4) is equal to \$1,378.00 per month.

Based upon the information provided, DSS correctly determined that the Appellant's total monthly countable income is over the income limit for a household of four (4). While the Appellant may take home less income than DSS used in determining eligibility, according to DSSM 16230.1, DSS must use the gross income amount, not the after-tax income amount. As a result, the Appellant was properly sent a Notice to Close Your Medical Assistance. I conclude that substantial evidence supports DSS' decision to close the Appellant's husband's medical assistance benefits, to reduce the Appellant's medical assistance benefits to Family Planning, and to reduce their two (2) children's medical assistance benefits to the CHIPS program. I encourage the Appellant to re-apply for medical assistance benefits once her husband's unemployment compensation ends.

² DSS testified that it entered this new income into their DCIS II computer system, but that the Appellant's household remains over-income for the medical assistance benefits they were receiving.

IV.

For these reasons, the June 6, 2011 decision of the Division of Social Services to close the Appellant's husband's Medical Assistance benefits and to reduce her and her children's Medical Assistance benefits effective June 30, 2011 is AFFIRMED.

Date: October 21, 2011



MICHAEL L. STEINBERG, J.D.
HEARING OFFICER

THE FOREGOING IS THE FINAL DECISION OF THE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES

October 21, 2011

POSTED

cc: Mrs. Smith
Christine Best, DSS, Team #135
Rebekah Hennlein, DSS, Team #135

EXHIBITS FILED IN OR FOR THE PROCEEDING

EXHIBIT #1 – Copy of DSS Fair Hearing Summary dated June 27, 2011, consisting of two (2) pages.

EXHIBIT #2 – Copy of the Appellant's request for a fair hearing date-stamped June 22, 2011, consisting of one (1) page.

EXHIBIT #3 – Copy of the Notice to Close Your Medical Assistance, dated June 6, 2011, consisting of six (6) pages.

EXHIBIT #4 – Copy of a Paystub from B&C Cleaning Inc. for the Appellant dated May 16, 2011, consisting of one (1) page.

EXHIBIT #5 – Copy of a Delaware Department of Labor Division of Unemployment Insurance Benefits Payment Account Receipt for the Appellant's husband, dated May 2, 2011, consisting of one (1) page.

EXHIBIT #6 – Copy of a Delaware Department of Labor Division of Unemployment Insurance Benefits Payment Account Receipt for the Appellant's husband, dated May 9, 2011, consisting of one (1) page.

EXHIBIT #7 – Copy of a Delaware Department of Labor Division of Unemployment Insurance Benefits Payment Account Receipt for the Appellant's husband, dated May 16, 2011, consisting of one (1) page.

EXHIBIT #8 – Copy of a Delaware Department of Labor Division of Unemployment Insurance Benefits Payment Account Receipt for the Appellant's husband, dated May 23, 2011, consisting of one (1) page.

EXHIBIT #9 – Copy of a Delaware Department of Labor Insurance Claim History for the Appellant's husband, dated September 29, 2011 and covering dates April 4, 2011 through July 5, 2011, consisting of one (1) page.

EXHIBIT #10 – Copy of a Delaware Department of Labor Insurance Claim History for the Appellant's husband, dated September 29, 2011 and covering dates July 11, 2011 through September 26, 2011, consisting of one (1) page.