



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. Redacted

Redacted

Appearances: Redacted, pro se, Appellant
Doug Myer, Appellant's husband

Kateri Fountain, Social Worker, Division of Social Services

I.

Redacted ("Appellant") opposes a decision by the Division of Social Services ("DSS") to close her Medical Assistance benefits based upon being over the income limit for a household of two (2).

The Division of Social Services ("DSS") contends that the Appellant is over the income limit for a household of two (2).

II.

On April 19, 2010, DSS sent to Appellant a Notice to Close Your Medical Assistance, effective April 30, 2010. (Exhibit 3).

On April 28, 2010, the Appellant filed a request for a fair hearing. (Exhibit 2).

The Appellant was notified by certified letter dated May 17, 2010, that a fair hearing would be held on June 7, 2010. The hearing was conducted on that date in Georgetown, Delaware.

This is the decision resulting from that hearing.

III.

The Appellant recertified for medical assistance benefits. When the Appellant recertified in April 2010, she presented her 2009 Federal Income tax forms as proof of her income. The family operated two (2) businesses during 2009. The first, Redacted Auto Sales, operated at a loss and did not result in any monthly income for purposes of calculating the Appellant's eligibility. Therefore, no calculations from the Auto Sales business were included in the agency's determination of eligibility.

The second business, Redacted Groceries, produced a profit. Ms. Fountain testified that she used the gross income amount from Line seven (7) of Schedule C, amounting to \$155,049.00 to establish the gross income. Ms. Fountain testified that she arrived at the business expense deduction by reducing Redacted Groceries' total business expenses, or \$131,151.00, from Line twenty-eight (28) of Schedule C by the depreciation allowed on Line thirteen (13) or \$12,986.00. ($\$131,151.00 - \$12,986.00 = \$118,165.00$). The agency then calculated her family's self employment income by subtracting the allowed business expenses of \$118,165.00 from the gross income of \$155,049.00. ($\$155,049.00 - \$118,165.00 = \$36,884.00$). The agency then divided the net income of \$36,884.00 by twelve (12) to determine monthly income of \$3,073.67. ($\$36,884.00 \div 12 = \$3,073.67$). The agency further reduced the Appellant's income by an earned income disregard of \$90.00 to reach a monthly income amount of \$2,983.67. ($\$3,073.67 - \$90.00 = \$2,983.67$).

Pursuant to DSSM 16230.1.2., if the individual does not claim or verify any costs to produce the self-employment income, the self-employment standard deduction will not be applied. When the application of the standard deduction results in a finding of ineligibility, the applicant or recipient will be given an opportunity to show that actual self-employment expenses exceed the standard deduction. If the actual expenses exceed the standard deduction, they will be used to determine net income from self-employment.

In this instance, the Appellant's actual business expenses exceeded the standard 51% deduction so actual business expenses were applied by the agency to reduce the Appellant's gross income as noted above.

The Appellant testified that she believed depreciation should be considered when determining monthly income.

Pursuant to DSSM 16230.1.2, actual self-employment expenses must be directly related to producing the goods or services. Actual self-employment expenses for the eligibility determination do not include all expenses that are allowed by the Internal Revenue Service. Actual self-employment expenses that are not allowed for the eligibility determination include depreciation, personal and entertainment expenses, personal transportation, purchase of capital equipment, payments on the principal of loans for capital assets or durable goods, and rent or mortgage payments when the business is in the home.

I find that after careful consideration, the agency additionally correctly disallowed the Appellant's depreciation expense as required under DSSM 16230.1.2, when calculating the monthly income. DSS applied a monthly income limit for a family of two (2) amounting to \$1,215.00 and closed the Appellant's medical assistance.

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.

Ms. Fountain testified that the Appellant was concerned with the amount of \$13,191.08 on the face of the Notice to Close Your Medical Assistance. (Exhibit 3). I conclude that the calculations on the interior of the notice combined with the Fair Hearing Summary properly reflect the actions taken by the agency to determine her eligibility and that the Appellant would not be unaware by looking at the Notice about the reason her benefits were closed. Therefore, due process concerns have been satisfied in this instance pursuant to DSSM 5301, which provides that adequate means a written notice includes a statement of what action the agency intends to take, the reasons for the intended agency action, the specific regulations supporting such action, explanation of the individual's right to request a fair hearing, and the circumstances under which assistance may be continued if a hearing is requested. I conclude that the Appellant's Notice was not defective despite the inaccurate figure reflected on the face of the Notice.

The Appellant testified that she located an additional bill that should have been submitted for \$749.65 and wished for the bill to be considered in calculating her monthly income. I noted that the Appellant's monthly income exceeded the income limit for a family of two (2) by \$1,768.67. Even if the bill the Appellant discovered directly reduced her income, the Appellant would not meet the income limit. However, the expense would need to be divided by twelve (12) to spread the expense over the entire year as all the other expenses were calculated leaving a reduction of approximately \$62.50 for each month, which will not change the decision made by the agency.

Based upon the information provided, DSS correctly determined that the Appellant's total monthly countable income is over the income limit for a family of two (2). 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 medical assistance benefits.

IV.

For these reasons, the April 19, 2010 decision of the Division of Social Services to close the Appellant's Medical Assistance benefits, effective April 30, 2010, is AFFIRMED.

Date: June 16, 2010



MICHAEL L. STEINBERG, J.D.
HEARING OFFICER

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

June 16, 2010

POSTED

cc: Redacted
Kateri Fountain, Team 808
Jacqueline Bensel, Team 808

EXHIBITS FILED IN OR FOR THE PROCEEDING

EXHIBIT #1 – Copy of DSS Hearing Summary date-stamped May 10, 2010, consisting of two (2) pages.

EXHIBIT #2 – Copy of the Appellant's request for a fair hearing date-stamped April 28, 2010, consisting of one (1) page.

EXHIBIT #3 – Copy of the Notice to Close Your Medical Assistance, dated April 19, 2010 consisting of four (4) pages.

EXHIBIT #4 – Copy of the Appellant's 2009 Federal Income Tax Forms consisting of twelve (12) pages.