



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.

In Re: Redacted v. DSS

DCIS No. Redacted

Appearances: Redacted, *Pro se* **Appellant**

Rebekah Hennlein, Presenter for the Division of Social Services (DSS), **Appellee**
Kara Bristow, Senior Social Worker/Case Manager for Team 033,
Witness for the Appellee

I. Background

Redacted, Appellant, appeals the decision of the Division of Social Services (DSS) to terminate his Medicaid due his household income exceeding the income limit for a household of three (3). A Fair Hearing was held on May 21, 2009 concerning this appeal. This is the Hearing Officer's Decision regarding the matter.

II. Summary of Evidence

Kara Bristow, Senior Social Worker/Case Manager for Team 033, was sworn in and testified on behalf of DSS. Ms. Bristow testified that DSS received a recertification application for Medicaid from Mr. Redacted on February 4, 2010. She stated that although Mr. Redacted submitted pay stubs for dates 12/21/09, 12/28/09, 1/4/10, and 1/18/10 from his employer, William Houck, Inc., she determined that there was a missing check per the YTD figure on Mr. Redacted's 1/18/10 pay stub of \$1,587.60. The State moved to admit into evidence the four (4) checks provided to DSS by Mr. Redacted and the calculator tape showing Ms. Bristow's calculations regarding the amount of the missing check believed to have been paid on 1/11/10. These items were admitted as *State's Exhibit #1* without objection.

Ms. Bristow continued her testimony by stating that Mr. Redacted was also receiving \$330.00 per week in unemployment benefits. She admitted a copy of unemployment benefit payment history for the Appellant from the Department of Labor as *State's Exhibit #2* without objection. She stated that while the Appellant was reporting his wages to DSS, the gross wages reported did not equal the gross income on the check stubs. The State admitted into evidence a copy of the Appellant's wage history during 2009 from the Department of Labor as *State's Exhibit #3* without objection. Ms. Bristow pointed out that the gross income Mr. Redacted was earning in 2010 from William Houck, Inc. was not listed or not listed correctly on the Department of Labor system. An example she gave was that on 1/19/10, the Department of Labor system shows that the Appellant's gross earnings were \$129.00; however, per the 1/18/10 pay stub from William Houck, Inc., Mr. Redacted was paid \$648.00 during this pay period. Therefore she could not rely on the Department of Labor's reporting of gross income, but had to go by the more accurate actual pay stubs provided.

Ms. Bristow testified that the estimated monthly gross income DSS calculated for the Appellant was \$2,291.71 from his employment with William Houck, Inc. and \$1,428.90 from unemployment compensation. After applicable disregards, the net income counted for the Appellant was \$3,630.62. She stated that this figure exceeds the income limit for a family of three (3) which was \$1,526.00.

Ms. Bristow noted that Mr. Redacted has since come to the DSS office on March 25, 2010 to update his wage information and Delaware Healthy Children Medicaid was granted for his son, Justin, and coverage was backdated to March 1, 2010. Mr. Redacted however, was still over income per the adult Medicaid.

Redacted Redacted, *Pro se* Appellant, was sworn in and testified on behalf of himself. Mr. Redacted testified that the State has included his unemployment benefits as part of his monthly income as if he receives these benefits at all time, including when he is able to work his construction job. He stated that this is simply incorrect because he cannot receive his full benefits when he works and that if he works part-time, then he only receives a portion of unemployment benefits. He stated that the State's figure does not change for periods when he works and periods when he does not work.

Mr. Redacted stated that his employment is inconsistent and that he has not worked in two (2) weeks. He stated that his last pay check had a pay date of 4/19/10. Mr. Redacted stated he has a letter from his employer which states that his current YTD net income is \$3,630.00 and that the income limit for a family of three (3) per his denial letter was \$ 3,052.00 and this means mean that he should be eligible.

Ms. Bristow interjected that the income limit for Delaware Healthy Children is different than that for Medicaid for Uninsured Adults and that the income limit for Delaware Healthy Children is a lot lower.

III. Findings of Fact

The factual findings of an administrative officer must "be supported by substantial evidence on the record as a whole." *See* 31 *Del. C.* § 520. *Dean v. Delaware Dept. of Health and Soc. Serv.*, 2000 Del. Super. LEXIS 490, *aff'd sub. nom.* 781 A.2d 693; 2001 Del. LEXIS 205 (Del. 2001). Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Morales v. Apfel*, 225 F.3d 310, 316 (3d Cir. 2000) (quoting *Plummer v. Apfel*, 186 F.3d 422, 422 (3d Cir. 1999)).

The Appellant, Redacted Redacted, submitted a recertification application for Medicaid for himself and his minor son, Justin Redacted. This application was received by DSS on February 4, 2010. Along with the application, Mr. Redacted provided copies of four (4) pay stubs from his employment with William Houck, Inc., covering the following pay dates: 12/21/09, 12/28/09, 1/4/10, and 1/18/10. While reviewing these pay stubs, caseworker Kara Bristow realized that the YTD figure on the last pay stub supplied (1/18/10) was higher than the pay stubs supplied. The higher YTD figure indicated that Mr. Redacted received another check on 1/11/10 which was not provided. Mr. Redacted works in construction and has varied hours.

The four (4) pay stubs from William Houck, Inc. provided by the Appellant indicates the following:

<u>Pay Period</u>	<u>Pay Date</u>	<u>Amount</u>	<u>YTD</u>
12/7/09– 12/13/09	12/21/09	\$453.60	\$972.00
12/14/09 – 12/20/09	12/28/09	\$648.00	\$1,620.00
12/21/09 – 12/27/09	1/4/10	\$421.20	\$421.20
1/4/10 – 1/10/10	1/18/10	\$648.00	\$1,587.00

Per the check stubs provided and assuming Mr. Redacted was working, he got paid on a weekly basis. It is evident per the YTD figure on Mr. Redacted's 1/18/10 pay check (\$1,587.00), that he received another check prior to the 1/18/10 pay check and after the 1/4/10 pay check. The difference between the YTD figure of \$1,587.00 and the two (2) January 2010 pay checks Mr. Redacted submitted (\$421.20 from the 1/4/10 pay check + \$648.00 from the 1/18/10 pay check = \$1,069.20) is the gross amount of the missing pay check. The missing pay check was therefore for \$518.40 gross. Based on weekly pay period, the pay date on the missing pay check was 1/11/10. This figure matches Ms. Bristow's calculation and was included in her estimation of Mr. Redacted's monthly income (see *State's Exhibit #1*).

In addition, to Mr. Redacted's employment with William Houck, Inc., Mr. Redacted was receiving unemployment compensation during this period countable in the amount of \$330.00 per week since 11/29/09 (see *State's Exhibit #2*). The incorrect figures in the gross earnings column in the Department of Labor system accessible to DSS, indicates that the Department of Labor may not of had the most up-to-date or accurate information of Mr. Redacted's employment income.

Based on the above information, DSS calculated Mr. Redacted's net monthly income to be estimated at \$3,630.62 which exceeded the income limit for a household of three (3), and thus Mr. Redacted was declined for Medicaid for Uninsured Adults.

Mr. Redacted provided updated income information to DSS in March 2010 and Medicaid for his son Justin was subsequently approved and backdated to March 1, 2010. Mr. Redacted however, was still deemed ineligible for being over income for Medicaid for Uninsured Adults.

Mr. Redacted believes that DSS incorrectly calculated his monthly income and was under the impression that the income cut-off amounts for eligibility for himself and his son for a household of three (3) was the same (\$3,052.00). Thus, he requested a Fair Hearing.

IV. Positions of the Parties

The State contends that the Appellant's estimated monthly earned income, derived from his submitted paychecks, in addition to what the Department of Labor is reporting as his unemployment compensation, puts the Appellant exceedingly over the income limit for a household of three (3). This being the case, the State avers that its decision to deny the Appellant for being over income be affirmed.

The Appellant argues the State incorrectly included unemployment compensation benefits to his earned income which caused him to be over income. He asserts that he cannot

receive unemployment compensation when he is able to work his construction job and therefore, including both incomes at the same time paints the wrong picture and he does not receive anywhere near what the State has calculated as his monthly income.

V. *Applicable Law*

The mandate of the hearing officer with respect to Medicaid statutes and regulations is to “apply the State rules except to the extent they are in conflict with applicable federal regulations.” 16 *DSSM* § 5406.1(1). “[T]he decision of the hearing officer [must be] supported by substantial evidence and [be] free of legal error.” *Brooks v. Meconi*, 2004 Del. Super. Lexis 363, *3 (Del. Super. Ct. 2004).

Financial eligibility for the Medicaid programs is determined prospectively based on the best estimate of income and circumstances that exist in the month for which the eligibility determination is being made. *DSSM* § 16230 Per *DSSM* § 16230.1.1, an average monthly income is calculated by utilizing gross income derived from both earned and unearned income. Earned income is the money an individual receives in return for work he or she performs. *DSSM* § 16230.1 Unearned income is income received without performing work-related activity including unemployment compensation. *DSSM* § 16230.2

Pay stubs are generally obtained to verify wages from an employer. *DSSM* § 16230.1.1 Actual pay dates, not week ending dates, are utilized as the deemed date of receipt. *Id.* If an applicant does not have all of the pay stubs for the month of application or redetermination, the stubs available are utilized to calculate average pay. *Id.*

Estimated monthly income is determined by multiplying gross income by a conversion factor based on frequency of pay. *DSSM* § 16230 The income conversion factor for weekly income is 4.33. *Id.*

Countable Income is earned or unearned income from which certain disregards (if applicable) have been deducted. *DSSM § 16230* Unearned income is counted as paid without application of any disregards. *DSSM § 16230.2* If there is earned income in the household however, a \$90.00 earned income deduction is applied for every earner. *DSSM § 16230.1.4* After applying appropriate disregards to income, DSS compares the countable family income to the income eligibility standard for the budget unit size. *DSSM § 16250* Uninsured adults must have family income at or below 100% of the poverty level. *DSSM § 16250* The countable Net Income Limit for a family size of three (3) for Medicaid for Uninsured Adults effective October 2009 through September 2010 is \$1,526.00¹.

VI. Conclusions of Law

Since this Fair Hearing was requested, Delaware Healthy Children’s Medicaid for Justin Redacted has been approved upon reevaluation with updated income information and backdated to cover the beginning of the previous denial period of March 1, 2010. The only remaining issue in dispute, which will be reviewed, is income eligibility for Appellant Redacted Redacted for Medicaid for Uninsured Adults. DSS denied Mr. Redacted for being over income for a household size of three (3).

Mr. Redacted challenges DSS’s income calculations and believes that his estimated monthly income was calculated incorrectly. Actual pay dates, not week ending dates, are utilized as the deemed date of receipt per *DSSM § 16230.1.1*. DSS has evidence of five (5) consecutive weekly pay checks consisting of the following pays (see *Findings of Fact* section above):

<u>Issued Date</u>	<u>Amount</u>
12/21/09	\$453.60
12/28/09	\$648.00
1/4/10	\$421.20

¹ Adjusted Medicaid Limits per Cost of Living Adjustments delineated Administrative Notice A-10-2009 effective October 2009 through September 2010.

1/11/10	\$518.40
1/18/10	\$648.00

The average of these five (5) checks is a weekly pay of \$537.84 (sum of \$2,689.20 / 5). This average weekly income multiplied by the conversion factor of 4.33 per DSSM § 16230 equates to an estimated monthly gross income from William Houck, Inc. of \$2,328.85. The State came up with a slightly lower gross income figure of \$2,291.72. Although the difference is negligible, the State's more favorable gross income determination will be utilized to show that the Appellant's gross income so far exceeds the income limit for Medicaid for Uninsured Adults that it really does not matter even if the lower figure is utilized. From this earned income figure, a \$90.00 earned income deduction is made per DSSM § 16230.1.4 for a net figure of \$2,201.72.

Next, Mr. Redacted's estimated unearned income is determined per DSSM § 16230 & 16230.1.1. Per the Department of Labor system, Mr. Redacted has been receiving \$330.00 per week in unemployment compensation since at least 1/19/10 and the claim date on the Department of Labor system is 11/29/09. Since Mr. Redacted did not make the argument and did not provide any evidence to indicate that he did not receive unemployment compensation during any week during the reviewed time frame, based on the evidence, it is assumed that he received \$330.00 in unemployment compensation every week. This figure multiplied by the weekly conversion factor of 4.33 per DSSM § 16230 equates to a monthly unearned income figure of \$1,428.90. This figure matches the figure on the calculation sheet in Mr. Redacted's denial notice. No disregards are applied to unearned income under DSSM § 16230.2. This unearned monthly income added to Mr. Redacted's monthly net earned income of \$2,201.72 equates to a total monthly net income figure of \$3,630.62.

Per DSSM § 16250, this estimated figure is compared to the income eligibility standard for the budget unit size to determine income eligibility. To be eligible for Medicaid for

Uninsured Adults, the monthly income for a household of three (3) cannot exceed \$1,526.00 per Administrative Notice A-10-2009 regarding Cost of Living Adjustments and which is effective from October 2009 through September 2010. Based on this income limit, it is clear that Mr. Redacted's combined income far exceeds the income limit for a household of three (3) for Medicaid for Uninsured Adults based on the pay stubs he provided and the information provided by the Department of Labor.

Although it may be true that Mr. Redacted's employment may not always be consistent and that he has recently had gaps in his employment with William Houck, Inc., DSS can only base its determination based on verifiable information it has at the time. Mr. Redacted's recent gaps were not foreseeable at the time DSS made its income calculations and based on the pay stubs DSS had at the time, Mr. Redacted was employed for five consecutive weeks. In addition, income variations must change for a significant period of time of at least 3 to 4 weeks before DSS can reevaluate an application. Because DSS calculates necessity prospectively, two weeks is too short of a time frame to reevaluate an application. It takes time for changes to take effect and DSS does not have the man power to constantly adjust figures on a weekly or biweekly basis.

Mr. Redacted thought DSS made a mistake in denying himself Medicaid because he erroneously believed that the household limit utilized for his son is the same as the household limit that would be utilized in determining his own income eligibility for Medicaid. This however, is incorrect because the cut offs for children's Medicaid are significantly lower than that for Uninsured Adult Medicaid. While the income limit for Uninsured Adult Medicaid for for a household of three (3) is \$1,526.00, as discussed above, the income limit for a family of three

(3) for the Delaware Healthy Children Program (children's Medicaid) is \$3,052.00²; which is practically double the figure for uninsured adults. Apparently, the Legislature, in making its income cut-off decisions, has decided that it is more important to cover minor children than uninsured adults.

WHEREFORE, the decision of the Division of Social Services to deny Appellant Redacted Redacted for Medicaid for Uninsured Adults due to being over income is **AFFIRMED**, consistent with this opinion.

Date: May 24, 2010

/s/ Maria C. Tedeman-Poliquin
MARIA C. TEDEMAN-POLIQVIN
HEARING OFFICER

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

May 24, 2010
POSTED

cc: Redacted, *Pro se Appellant*
Rebekah Hennlein, Presenter for DSS, *Appellee*
Kara Bristow, SSW/CM for Team 033, Witness for the Appellee

EXHIBITS

STATE'S EXHIBITS

Exhibit #1 - (2 pages) Copies of the pay stubs the Appellant provided DSS with his recertification application consisting of pay dates 12/21/09, 12/28/09, 1/4/10, and

² Administrative Notice DMMA 01-2009

1/18/10. Included in this exhibit is the calculator tape showing the calculations Ms. Bristow conducted to determine the amount of the missing check from the YTD figure on the last check.

Exhibit #2 – (1 page) Unemployment benefit payment history for the Appellant from the Department of Labor for 1/19/10 through 3/1/10.

Exhibit #3 – (1 page) Appellant's wage history from the Department of Labor for 2009.

APPELLANT'S EXHIBITS

None.