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. 0000000

Ms. Smith

Appearances: Ms. Smith, pro se, Appellant

Gayle King, Sr. Social Worker, Team # 312, Division of Social Services
Denise Curtis, Sr. Social Worker Supervisor, Division of Social Services

I.

Ms. Smith ("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 one (1).

The Division of Social Services ("DSS") contends that the Appellant is over the income limit for a household of one (1).

II.

On June 2, 2011, DSS sent to Appellant a Notice to Deny Your Medical Assistance, effective July 1, 2011. (Exhibit 3)

On June 8, 2011, the Appellant filed a request for a fair hearing requesting that benefits continue during the pendency of the case. (Exhibit 2) According to the Fair Hearing Summary dated June 13, 2011, benefits have not continued. (Exhibit 1)

The Appellant was notified by certified letter dated July 8, 2011, that a fair hearing would be held on July 29, 2011. The hearing was conducted on that date in Dover, Delaware.

This is the decision resulting from that hearing.

III.

DSS testified that during the renewal process, the Appellant submitted current wage information in the form of four (4) paystubs. DSS testified that as these paystubs showed a fluctuating weekly gross income, the DSS worker elected to use all four (4) paystubs in determining the Appellant's monthly income. DSS

testified at the hearing that these paystubs showed that the Appellant earned a gross monthly income of $1,081.58.[1] (Exhibit 4)

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. In this case, the Appellant received an earned income disregard of $90.00, as all of her income was earned. Accordingly, DSS determined that the Appellant's monthly income amounted to $991.58 ($1,081.58 - $90.00 = $991.58)[2]. DSS applied a monthly income limit for a family of one (1) amounting to $908.00 and closed the Appellant's medical assistance benefits.

At the hearing, the Appellant testified that she works for a contractor that contracts with Proctor & Gamble to manufacture baby wipes. The Appellant testified that the number of orders received by the contractor dictate her hours: Some nights, she said, she is let go early. As a result, the Appellant testified, she could earn $370.00 in one week, yet earn only $197.00 in another. The Appellant testified that her renewal period caught her during a "good time," and that not every paystub she receives reflects such healthy paychecks.

The Appellant testified that she has been receiving medical assistance benefits since she moved to Delaware in 2002 or 2003. The Appellant testified that her concern is that she was diagnosed with breast cancer in 2009. The Appellant testified that she went through chemotherapy and radiation, but requires a lot of follow-up care. The Appellant testified that as a woman over age fifty (50), she would normally be recommended to get yearly mammograms. But because of her history of breast cancer, she testified, her doctors recommend that she get a mammogram every six (6) months. The Appellant testified that she has searched for programs that can help her, but that they are all dependent on income.

Lastly, the Appellant testified that after requesting the fair hearing, her benefits were cut off despite requesting that they continue. The Appellant testified that after learning that her medical assistance had ended, she contacted Judy Fiore at DSS. The Appellant testified that Ms. Fiore checked the DSS computer system, determined that the Appellant's benefits should have continued through the pendency of this hearing, and restarted the Appellant's medical assistance benefits. The Appellant testified that she suffered no out-of-pocket expenses during the time that her benefits were erroneously closed.

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.

---

[1] I note that the four (4) submitted paystubs actually reflect a higher monthly income. The gross amounts of all four (4) paystubs amount to $1,589.84, including hourly pay, overtime pay, and "UNPAID-VTO." (Exhibit 4) The Notice to Close Your Medical Assistance dated June 2, 2011, identified that DSS had calculated the Appellant's gross monthly income to be $1,561.08. (Exhibit 3) As the overtime and "UNPAID-VTO" income amounts were in separate fields on the paystub, it is unclear whether all amounts were accounted for. The submitted calculator printout shows that DSS used the hourly pay from three (3) of the paystubs when it determined that the Appellant had a gross income of $1,081.58 ($335.83 + $380.00 + $365.75). (Exhibit 5) Despite the varying amounts, one thing is clear: The Appellant's gross monthly income met or exceeded $1,081.58.

[2] I note that the June 2, 2011 Notice to Close Your Medical Assistance identified that the Appellant's net monthly income was determined to be $1,471.08 ($1,561.08 - $90.00 = $1,471.08). To reduce confusion, I elected to use the amount of gross income DSS testified to at the hearing in illustrating the calculations.

In order to determine eligibility for Medicaid for Uninsured Adults, DSSM 16250 instructs DSS that after applying appropriate disregards to income, to compare the countable family income to the income eligibility standard for the budget unit size. To be eligible, uninsured adults must have family income at or below 100% of poverty.

According to Administrative Notice A-05-2011, 100% of the federal poverty level for a household of one (1) is equal to $908.00 per month.

Based upon the information provided, DSS correctly determined that the Appellant's total monthly countable income is over the income limit to be eligible for Medicaid for Uninsured Adults as a household of one (1). 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. The Appellant is encouraged to re-apply for Medicaid for Uninsured Adults should her hours be reduced.

Further, because the Appellant filed her request for a fair hearing before the effective date of the closure of her medical assistance benefits, her medical assistance benefits should have been continued at their prior level through the pendency of this case. According to DSSM 5308, if the recipient requests a hearing within the timely notice period, assistance will not be suspended, reduced, discontinued, or terminated (but is subject to recovery by the agency if its action is sustained on appeal) until a decision is reached after a fair hearing, unless the recipient specifically requests reduction or discontinuance, or if a listed exception applies. In this instance, the Appellant's request for a fair hearing was submitted before July 1, 2011, the effective date of her medical assistance benefit closure. As a result, DSS should have continued her benefits during the pendency of this proceeding. Although the Appellant testified that this error was corrected and that she incurred no out-of-pocket medical expenses, she is urged to report any such forgotten expenses.

IV.

For these reasons, the June 2, 2011 decision of the Division of Social Services to close the Appellant's Medical Assistance benefits effective July 1, 2011 is AFFIRMED.

Date: September 1, 2011

MICHAEL L. STEINBERG, J.D.
HEARING OFFICER

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

September 1, 2011
POSTED

cc: Ms. Smith
Gayle King, Team # 312, DSS
Denise Curtis, DSS

EXHIBITS FILED IN OR FOR THE PROCEEDING

EXHIBIT #1 – Copy of DSS Fair Hearing Summary dated June 13, 2011, consisting of two (2) pages.

EXHIBIT #2 – Copy of the Appellant's request for a fair hearing date-stamped June 8, 2011, consisting of one (1) page.

EXHIBIT #3 – Copy of the Notice to Close Your Medical Assistance, dated June 2, 2011, consisting of three (3) pages.

EXHIBIT #4 – Copy of Paystubs for the Appellant, covering dates April 25, 2011 through May 22, 2011, consisting of four (4) pages.

EXHIBIT #5 – Copy of a calculator printout, consisting of one (1) page.