



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. 000000000

Ms. Smith

Appearances: Ms. Smith, pro se, Appellant

Gayle King, Sr. Social Worker, Division of Social Services, Team #312
Nicole Stevens, Sr. Social Worker, Division of Social Services

I.

Ms. Smith ("Appellant") opposes a decision by the Division of Social Services ("DSS") to reduce the Medical Assistance benefits for herself and her child 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) to qualify for Medical Assistance benefits under Section 1931 Medicaid.

II.

On July 19, 2011, DSS sent to Appellant a Notice About Your Medical Assistance, effective August 1, 2011, reducing her Medical Assistance benefits from Medicaid to Family Planning Services and reducing her daughter's Medical Assistance benefits from Medicaid to the Delaware Healthy Children program.

On July 22, 2011, DSS received a request for a fair hearing from the Appellant, requesting that benefits continue during the pendency of the case. (Exhibit 2) According to the Fair Hearing Summary dated July 25, 2011, benefits have continued. (Exhibit 1)

The Appellant was notified by certified letter dated August 8, 2011, that a fair hearing would be held on August 22, 2011. The hearing was conducted on that date in Dover, Delaware.

This is the decision resulting from that hearing.

III.

DSS testified that at the time of her renewal, the Appellant's household's income exceeded the gross income test for eligibility for Medicaid. DSS testified that the Appellant reported that she received \$767.28 in monthly self-employment earned income from babysitting, \$850.00 in a monthly rental Section 8 Housing allowance, \$22.00 in monthly Social Security (Title II) benefits received by her minor daughter, and \$180.00 in monthly child support, for a total of \$1,819.28. (Exhibit 3) DSS applied a standard child support deduction of \$50.00, and determined that the Appellant's monthly gross income amounted to \$1,769.28 ($\$1,819.28 - \$50.00 = \$1,769.28$). (Exhibit 3) DSS applied a monthly gross income limit for a family of two (2) amounting to \$1,685.00, and reduced both the Appellant's and her daughter's Medical Assistance benefits.

At the hearing, the Appellant testified that her minor nephew also lives in her household.¹ With her request for a fair hearing, the Appellant indicated that she actually received \$659.00 in monthly Section 8 Rental Housing allowance; however, at the hearing, she re-affirmed that she received a monthly allowance of \$850.00 from that source. The Appellant testified that after this allowance is counted toward her mortgage, she only receives \$90.00 in cash per month. The Appellant further questioned which income test the agency used: Had DSS used the net income test, she testified, she would be eligible for Medicaid under Section 1931.

Pursuant to the Division of Social Services Manual ("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. Section 1931 defines the basic criteria for determining Medicaid eligibility based upon AFDC eligibility criteria. The criteria includes income and resource standards and methodologies as in effect on July 16, 1996, and deprivation and specified relative rules that were in effect on that date. Section 1931 gives states flexibility to change these criteria. Families who are eligible for Medicaid under Section 1931 may be receiving TANF cash assistance or may be Medicaid only families.

DSSM 15120.1.1 identifies that in order to be eligible for Medicaid under Section 1931, a child must be living in the home of a relative by blood, marriage, or adoption who is within the fifth degree of kinship to the child. The degree of relationship is as follows:

- parent (1st degree)
- grandparent (2nd degree)
- sibling (2nd degree)
- great-grandparent (3rd degree)
- uncle or aunt (3rd degree)

¹ DSS testified that the Appellant's nephew was not on her case: DSS testified that as the nephew was not the Appellant's biological child, he could not be counted in the Appellant's household. Conversely, DSS testified, the Appellant's income was not counted in her nephew's Medical Assistance case.

- nephew or niece (3rd degree)
- great-great-grandparent (4th degree)
- great-uncle or aunt (4th degree)
- first cousin (4th degree)
- great-great-great-grandparent (5th degree)
- great-great-uncle or aunt (5th degree)
- first cousin once removed (5th degree)

According to DSSM 15120.2, two income tests are used to determine financial eligibility for Section 1931 Medicaid. 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. 100% of the federal poverty level).

DSSM 15120.2 further identifies that financial eligibility for both applicant and recipient families will be calculated using the 30 and 1/3 disregard if applicable. This disregard allows the deduction of \$30 plus 1/3 of the remaining earned income after the standard allowance for work-connected expenses is subtracted. The \$30 plus 1/3 disregard is applied to earned income for four (4) consecutive months. If Medicaid under Section 1931 or employment ends before the fourth month, the earner is eligible for the disregard for four (4) additional months upon reapplication or re-employment. When an earner has received the \$30 and 1/3 disregard in four (4) consecutive months and the \$30 deduction has been available for eight (8) consecutive additional months, neither disregard can be applied to earned income until the individual has not received Medicaid under Section 1931 for twelve (12) consecutive months.

In addition, DSSM 15120.2 identifies that a self-employment standard deduction is used to calculate self-employment income. The self-employment standard deduction is considered the cost to produce income. The self-employment standard deduction is a percentage that is determined annually and announced in the Cost-of-Living Adjustment (COLA) Administrative Notice each October. To calculate self-employment income, use the gross proceeds and subtract the self-employment standard deduction. The result is the amount included in the gross income test (185% of the applicable standard of need). Standard earned income deductions are then applied to the self-employment income for the net income test (the applicable standard of need). To receive the self-employment standard deduction, the individual must provide verification that costs are incurred to produce the self-employment income. 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.

According to 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 16230.1.4 identifies that available deductions include a \$90 earned income deduction per month per earner and actual monthly dependent care expenses for the care of each dependent child or incapacitated adult living in the same home. Monthly dependent care expenses cannot exceed \$175 for each dependent child age two and older and each incapacitated adult and cannot exceed \$200 for each dependent child under age two.

DSSM 16230.1.2 identifies that a self-employment standard deduction is used to calculate self-employment income. The self-employment standard deduction is considered the cost to produce income. The self-employment standard deduction is a percentage that is determined annually and announced in the Cost-of-Living Adjustment (COLA) Administrative Notice each October. To calculate self-employment income, use the gross proceeds and subtract the self-employment standard deduction. The result is the amount included in the individual's gross income. Standard earned income deductions are then applied to the individual's gross income. To receive the self-employment standard deduction, the individual must provide verification that costs are incurred to produce the self-employment income. Verification can include, but is not limited to, tax records, ledgers, business records, receipts, check receipts, and business statements. The individual does not have to verify all business costs to receive the standard deduction. 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.

DSSM 16230.2 identifies that countable unearned income includes, but is not limited to, child support payments, cash contributions from social agencies, unemployment compensation, and Social Security benefits, among others. However, DSSM 16230.3 identifies that certain categories of income are excluded from the financial eligibility determination for Medicaid. This rule specifically excludes both the first \$50.00 of child support received per month and Governmental (federal, state, or local) rent and housing subsidies, including payments made directly to the applicant/recipient for housing or utility costs, e.g., HUD utility allowances.

In this instance, the Appellant's nephew could have been included in her household: According to DSSM 15120.1.1, her nephew was within the Appellant's fifth degree of kinship, and so could be included in her household.² Further, as the Appellant's earned income is from self-employment as a babysitter, the Appellant is eligible for a self-employment standard deduction pursuant to DSSM 15120.2 and DSSM 16230.1.2. However, as both of those sections indicate, in order to receive this deduction the Appellant must provide verification that she has incurred costs to generate such

² I note that while the Appellant's nephew could be included in her household, whether that would be beneficial to both the Appellant and her nephew is an issue outside of the scope of this hearing.

income—no information that the Appellant had such expenses was provided at the hearing.³ Although DSSM 15120.2 identifies a disregard of \$30 and 1/3 of earned income, this disregard is time-limited to eight (8) months. It is unclear from the record whether the Appellant received this disregard for the full eight (8) months. Lastly, according to DSSM 16230.3 indicates, the monetary grant received by the Appellant for Section 8 Housing allowance should not have been counted toward her household income: That section explicitly excludes from income rent and housing subsidies received from governmental agencies. As a result, DSS did not correctly determine the Appellant's monthly countable gross income. I conclude that substantial evidence does not support DSS' decision to reduce the Medical Assistance benefits for the Appellant and her daughter under Section 1931 Medicaid. The Appellant is encouraged to report any expenses she incurs in relation to her self-employment as a baby-sitter, as well as any dependent care expenses she incurs for her daughter.

IV.

For these reasons, the decision of the Division of Social Services to reduce the Appellant's Medical Assistance benefits effective August 1, 2011 is REVERSED.

Date: September 27, 2011



MICHAEL L. STEINBERG, J.D.
HEARING OFFICER

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

September 27, 2011
POSTED

cc: Ms. Smith
Gayle King, DSS, Team #312
Nicole Stevens, DSS

³ I note that as the Appellant had earned income, she was entitled to a standard deduction of \$90.00 pursuant to DSSM 16230.1.4. However, as DSSM 15120.2 and DSSM 16230.1.2 indicate, this deduction is applied when determining the household's net income, not gross income. In addition, DSSM 16230.1.4 identifies that the Appellant could receive (for purposes of determining net income) a disregard of \$175.00 for monthly dependent care expenses for her daughter.

EXHIBITS FILED IN OR FOR THE PROCEEDING

EXHIBIT #1 – Copy of DSS Fair Hearing Summary dated July 25, 2011, consisting of two (2) pages.

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

EXHIBIT #3 – Copy of a Notice About Your Medical Assistance, dated July 19, 2011, consisting of six (6) pages.