



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

Ms. Smith

Appearances: Ms. Smith, pro se, Appellant
Jacqueline Weed, School Social Worker, Appoquinimink School District

Marietta Wharton, Area 3 Manager, Team #190, Division of Social Services

I.

Ms. Smith ("Appellant") opposes a decision by the Division of Social Services ("DSS") to close her children's Medical Assistance benefits based upon being over the income limit for a household of five (5).

The Division of Social Services ("DSS") contends that the Appellant's children were no longer eligible for the Delaware Healthy Children program because the Appellant's household was over the income limit for a household of five (5).

II.

On July 19, 2011, DSS sent to Appellant a Notice to Deny Your Medical Assistance, effective August 1, 2011. (Exhibit 3)

On August 9, 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 August 19, 2011, benefits have continued. (Exhibit 1)

The Appellant was notified by certified letter dated September 13, 2011, that a fair hearing would be held on September 27, 2011. The hearing was conducted on that date in Newark, Delaware.

This is the decision resulting from that hearing.

III.

Jacqueline Weed (“Weed”) testified that she has often helped the Appellant’s family in her role as a school social worker when the Appellant’s family has suffered lapses in their State benefits, including medical assistance and food benefits. Weed testified that the Appellant’s family had been receiving medical assistance benefits. Upon a recertification, she testified, the Appellant’s family was denied continuing medical assistance benefits due to being over the income-limit for a household of five (5). Weed testified that while the two (2) older children are able to take advantage of a wellness center in the high school, the youngest child cannot. Weed testified that the Appellant’s husband works for a waste company, and is given hours of work based on hours of availability. As a result, she testified, he may get fifty (50) hours of work one week, but only forty (40) hours of work the next. This, she testified, causes his income to fluctuate from week to week. Weed testified that the medical assistance recertification occurred at a time when the Appellant’s husband was given extra hours: During the summer, Middletown Delaware began recycling waste, requiring the waste company workers to provide recycling cans to all residents, inflating the Appellant’s husband’s hours of work. Weed testified that as a result, the Appellant’s husband earned more income than usual, which made his children ineligible for medical assistance benefits.

DSS testified that with the Appellant’s recertification, she submitted her husband’s paystubs. DSS testified that the paystubs from May showed that the Appellant’s husband consistently worked eighty (80) hours per biweekly pay period. (Exhibits 4 and 5) In addition, DSS testified that the paystubs from April also showed the Appellant’s husband consistently worked eighty (80) hours per pay period, plus overtime. DSS testified that they used the most current paystubs to calculate the Appellant’s household income during the recertification. DSS testified that it first averaged the two (2) submitted paystubs for May, resulting in an average biweekly income of \$2,402.40 $((\$2,376.51 + \$2,428.30)/2 = \$2,402.40)$. (Exhibits 4 and 5)

Since there are 26 biweekly pay periods in a year, merely multiplying a biweekly income by two (2) yields an erroneous result because it fails to account for the two (2) “extra” pay periods in the year. To account for these “extra” pay periods, federal policy requires DSS to multiply a biweekly gross income by 2.16, 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 would receive a total of \$5,189.18 in compensation for the month of August 2011 $(\$2,402.40 \times 2.16 = \$5,189.18)$.

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. (DSSM 16230.1.4) Accordingly, DSS determined that the Appellant’s monthly income amounted to \$5,099.18 $(\$5,189.18 - \$90.00 = \$5,099.18)$. DSS applied a monthly income limit for a household of five (5) amounting to \$4,362.00 and closed the Appellant’s children’s medical assistance benefits.

With her request for a fair hearing, the Appellant argued that it was unfair to use the gross income amounts when determining her children's eligibility for medical assistance benefits. The Appellant argued that by using gross amounts, no consideration is given to the daily living expenses incurred by a family.

Pursuant to DSSM 18400, financial eligibility for the Delaware Healthy Children Program will be determined using the rules at DSSM 16230 through 16230.3. DSSM 18500 states that after applying appropriate disregards to income, countable family income must be at or below 200% FPL. Compare the countable family income to the income eligibility standard for the budget unit size.

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 Administrative Notice A-05-2011, 200% of the federal poverty level for a household of five (5) is equal to \$4,362.00 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 five (5). As a result, the Appellant was properly sent a Notice to Deny Your Medical Assistance. I conclude that substantial evidence supports DSS' decision to close the Appellant's children's medical assistance benefits. The Appellant is encouraged to re-apply for medical assistance benefits for her children, should her husband's income decrease.

IV.

For these reasons, the July 19, 2011 decision of the Division of Social Services to close Appellant's children's Medical Assistance benefits effective August 1, 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: Ms. Smith
Marietta Wharton, DSS, Team #190

EXHIBITS FILED IN OR FOR THE PROCEEDING

EXHIBIT #1 – Copy of DSS Fair Hearing Summary dated August 19, 2011, consisting of two (2) pages.

EXHIBIT #2 – Copy of the Appellant's request for a fair hearing date-stamped August 9, 2011, consisting of two (2) pages.

EXHIBIT #3 – Copy of the Notice to Deny Your Medical Assistance, dated July 19, 2011, consisting of four (4) pages.

EXHIBIT #4 – Copy of a biweekly paystub for James Williams dated May 13, 2011, consisting of one (1) page.

EXHIBIT #5 – Copy of a biweekly paystub for James Williams dated May 27, 2011, consisting of one (1) page.