

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

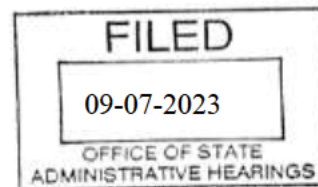
R [REDACTED] M [REDACTED],
Petitioner,

v.

DHS, DIVISION OF FAMILY AND
CHILDREN SERVICES,
Respondent.

Docket No.: [REDACTED]
[REDACTED]-OSAH-DFCS-M-QI1-112-Boggs

Agency Reference No.: [REDACTED]



INITIAL DECISION

I. INTRODUCTION

Petitioner R [REDACTED] M [REDACTED] (“Petitioner”) requested a hearing to challenge the Respondent’s decision to deny his application for Medicaid benefits. A hearing took place before the undersigned on August 16, 2023, in Ellijay, Georgia. Representing the Petitioner was Will Hays Pickett, Jr., Esq. Representing the Respondent was Regina M. Quick, General Counsel for the Department of Human Services (“DHS”).

For the reasons indicated below, the Respondent’s action in this matter is **AFFIRMED**.

II. FINDING OF FACT

1.

The Petitioner is 71 years old. On or around April 4, 2023, he completed an application for Medicaid benefits and submitted it to DHS’s Division of Family and Children Services (“DFCS”) at its office in Pickens County. In the application, the Petitioner indicated that he is widowed, lives in his own home, and has Medicare coverage under Parts A, B, and C. Under the application’s section for “Income and Earnings,” he reported earning \$1,279.00 a month in “Social Security.” His application did not mention receipt of any veterans’ benefits. (Testimony of Petitioner; Ex. R-4.)

2.

In a notice dated June 1, 2023 (“June 2023 DFCS Notice”), DFCS notified the Petitioner his application was being denied because he did not fall within the income limits for the Qualifying Individuals class of assistance. Specifically, DFCS determined that his monthly net income totaled \$3,678.00, which exceeded the monthly net-income limit for an individual, \$1,641.00. DFCS had calculated the Petitioner’s net income as follows:

- DFCS identified the following sources of monthly income: \$1,926.00 in veteran benefits (deemed unearned income); \$1,286.00 in Social Security disability benefits (unearned income); and \$1,036.45 in paycheck amounts before taxes (deemed earned income).
- DFCS applied a \$20.00 unearned-income deduction to the Social Security benefits, to get \$1,266.00.
- DFCS deducted \$65.00 from the paycheck amount and then halved the difference, which resulted in \$485.73.
- After applying the above deductions, the sum of the three income sources totaled \$3,677.73. which was rounded up to \$3,678.00.

(Testimony of Megan Davis; Ex. R-1.)

3.

Megan Davis, an Adult Medicaid caseworker and fair hearing specialist with DFCS, testified at the hearing. She told the Court that DFCS learned the Petitioner was receiving income from Social Security disability benefits—otherwise known as Retirement, Survivors, and Disability Insurance (“RSDI”)—based on information the agency received directly from the Social Security Administration. Ms. Davis did not know how her agency learned about the \$1,036.45 monthly paycheck amount. As for the veteran benefits, DFCS referred to a letter from the Department of Veteran Affairs (“VA”) dated March 2, 2023 (“March 2023 VA Letter”), notifying the Petitioner that his monthly entitlement of “compensation” benefits was \$2,353.39 beginning

December 1, 2022. When asked by the undersigned, Ms. Davis could not explain why the benefit amount listed on the March 2023 VA Letter was about \$397.00 higher than the VA benefit amount appearing on the June 2023 DFCS Notice. (Testimony of Megan Davis; Ex. R-2.)

4.

In his testimony, the Petitioner asserted that DFCS used incorrect income information when calculating his net gross income. Regarding the veteran benefits, he confirmed he began receiving a monthly “compensation” entitlement in December 2022, and that these benefits were for injuries he had sustained during wartime. He also confirmed he was receiving \$2,353.00, the amount listed on the March 2023 VA Letter. Nevertheless, the Petitioner told the Court that he understood from his own research that DFCS should have excluded his veteran benefits when calculating his monthly net income. Specifically, he contended that DFCS’s own website stated these benefits should have been excluded from consideration; however, the particular section of the website he cites appears to address a type of Medicaid benefits different from QI-1.¹ As for the remaining sources of income identified by DFCS, the Petitioner conceded he received \$1,286.00 a month from the Social Security Administration but disputed that it was for “disability.” And regarding

¹ The Petitioner told the Court he pulled a “Fact Sheet” from the DFCS website several days prior to the hearing. The “Fact Sheet” presented to the Court appears to have been created by the Georgia Department of Community Health. In his testimony, the Petitioner referred to a section of the document titled, “What is Considered Income for Medical Assistance?”, which reads in part as follows:

... For certain Family Medicaid populations and PeachCare for Kids, only taxable income is considered. Non-taxable income is excluded in the eligibility determination based on federal statute. Such examples of excluded income are adoption assistance payments, earnings from the Census Bureau, Child Support, Veteran’s Benefits, Supplemental Security Income (“SSI”), Earned Income Tax Credit, Disaster relief assistance and TANF (former ACDF benefits) . . .

(Testimony of Petitioner; Ex. P-1.) Apart from constituting hearsay, the provision cited above does not appear relevant to this case. The provision addresses “Family Medicaid,” which does *not* encompass QI-1, the class of assistance at issue in this matter. See Dep’t of Human Servs., Medicaid Manual, 2101-1, App’x E-1 and E-8, available at <https://odis.dhs.ga.gov/General> (last accessed Sept. 7, 2023). Rather, as further discussed *infra*, QI-1 falls under the category of Age, Blind, and Disabled “(ABD)” Medicaid.

the reported monthly paycheck amount, the Petitioner maintained he does not work anywhere and does not draw a paycheck. (Testimony of Petitioner; Ex. P-1.)

5.

DFCS maintains that pension benefits and compensation benefits issued by the VA constitute unearned income that it must consider when assessing a Medicaid applicant's eligibility. (Testimony of Megan Davis; Ex. R-3.)

III. CONCLUSIONS OF LAW

1.

Because this matter involves the denial of an initial application for public assistance benefits, the Petitioner bears the burden of proof. Ga. Comp. R. & Regs. 616-1-2-.07(1)(d). The standard of proof is a preponderance of the evidence. Id. 616-1-2-.21(4).

2.

Medicaid is a joint federal-state program that provides comprehensive medical care for certain classes of eligible recipients whose income and resources are determined to be insufficient to meet the costs of necessary medical care and services. 42 U.S.C. § 1396 et seq.; Moore v. Reese, 637 F.3d 1220, 1232 (11th Cir. 2011). Participation is voluntary, “but once a state opts to participate it must comply with federal statutory and regulatory requirements.” Moore, 637 F.3d at 1232. All states have opted to participate and, thus, each must designate a single state agency to administer its Medicaid plan. Id.; 42 C.F.R §§ 431.10(a), (b)(1). Georgia has designated the Department of Community Health (“DCH”) as the “single state agency for the administration” of Medicaid. O.C.G.A. §§ 49-2-11(f), 49-4-142. However, individuals in Georgia apply for Medicaid through DFCS, which publishes guidelines for Medicaid eligibility in its “Medicaid

Manual.” Dep’t of Human Servs., Medicaid Manual, available at <https://odis.dhs.ga.gov/General> (last accessed Sept. 7, 2023) (hereinafter “Medicaid Manual”).²

3.

Qualifying Individuals – 1, or QI-1, is a class of assistance that falls under the umbrella of Aged, Blind, and Disabled (“ABD”) Medicaid. Medicaid Manual, 2101-1, App’x E-1. It is a Q Track class of assistance that pays the monthly premium for Medicare supplemental Medical Insurance (Part B) for individuals whose income is at least 120%, but less than 135%, of the Federal Poverty Level (“FPL”). 42 U.S.C. §§ 1396a(a)(10)(E)(iv), 1396u-3; Medicaid Manual, 2101-2, 2145-1, App’x A-1-1.³ This coverage is time-limited depending on available State funds.⁴ Medicaid Manual, 2145-1. The FPL/QI-1 income limit is subject to change between February and April of each year. Id.

4.

Effective March 2023, to be found eligible for QI-1 benefits, an applicant must have a monthly net income below \$1,641.00. Medicaid Manual, 2145-1, App’x A1-1. The “net income” reflects the applicant’s gross income minus certain deductions. Id. at 2505-1.

5.

The primary issue raised in this proceeding is whether the Petitioner’s monthly VA benefits should have been included or excluded when DFCS calculated his net monthly income.

² As announced at the hearing, the Court has taken official notice of the Medicaid Manual. See Ga. Comp. R. & Regs. 616-1-2-.18(2).

³ Citations to the Medicaid Manual are denoted by “Section-Page Number” or “App’x-Page Number.”

⁴ In contrast, the Q-Track class of assistance known as Specified Low-Income Beneficiary (“SLMB”) also covers the Part B Medicare premium but is *not* time-limited. Medicaid Manual, 2101-2, 2144-1, 2145-1. SLMB, however, has an even lower income cap than QI-1, equaling less than 120% of the FPL. 42 U.S.C. § 1396a(a)(10)(E)(iii); Medicaid Manual, 2145-1, App’x A-1-1. Additionally, another Q-Track class of assistance for Qualified Medicaid Beneficiaries (“QMB”) provides a Medicare supplement for those whose income does not exceed the actual FPL. 42 U.S.C. §§ 1396a(a)(10)(E)(i), 1396d(p)(1); Medicaid Manual, 2144-1, App’x A-1-1.

6.

Before addressing this specific issue, a brief overview of the applicable income criteria is warranted. When assessing an applicant's countable income for purposes of eligibility in a program like QI-1, federal law refers specifically to the income criteria applied to Supplemental Security Insurance ("SSI") eligibility. See 42 U.S.C. §§ 1396a(10)(E)(iv), 1396d(p)(1)(B), 1382a.⁵ See also 42 U.S.C. § 1396a(r)(2)(A)(ii) (requiring states to use income criteria "no more restrictive" than SSI's criteria when assessing eligibility for Medicaid assistance like QI-1); Sherman v. Griepentrog, 775 F. Supp. 1383 (D. Nev. 1991) (same). DFCS's Medicaid Manual, in turn, utilizes the SSI criteria for establishing countable income. See generally Medicaid Manual, 2405. Both federal law and its own manual requires DFCS to consider both earned and unearned income. Medicaid Manual, 2405-1; 42 U.S.C. § 1382a(a) (defining "income" for SSI purposes as both earned and unearned). Earned income consists of, but is not limited to, wages. Medicaid Manual, 2405-1; see also 42 U.S.C. § 1382a(a)(1)(A). Unearned income consists of, but is not limited to, "annuities, pensions, and other periodic payments" such as RSDI benefits. Medicaid Manual, 2405-2, 2499-31 to -32, 2499-37; see also 42 U.S.C. § 1382a(a)(2)(B).

7.

"Unearned income" also includes "veterans' compensation and benefits." 42 U.S.C. § 1382a(2)(B); Medicaid Manual, 2499-42 to -44. A "pension" from the VA is provided to certain eligible wartime veterans who are permanently and totally disabled for non-service reasons. 38 U.S.C. §§ 101(15), 1521(a). Pension amounts are based in part on the veteran's annual income.

⁵ Section 1396a(10)(E)(iv) describes the parameters for the QI-1 program and characterizes it as similar to the Medicare cost-sharing under the QMB program, but with a different income cap. This provision then cross-references Section 1396d(p)(1), which addresses QMB criteria. Subsection (B) of Section 1396d(p)(1) specifies that an individual who qualifies for QMB must meet an income level "as determined under section 1612 for purposes of the supplemental security income program." The reference to "Section 1612" corresponds to 42 U.S.C. 1382a, which addresses how income is counted for purposes of SSI eligibility.

Id. § 1521(c). “Compensation” from the VA, in contrast, is provided to eligible veterans because of a service-connected disability, with the amount based on a particular rating system for that disability. Id. §§ 101(14), 1110, 1114. See also White v. Shalala, 7 F.3d 296, 298 (2nd Cir. 1993) (describing difference between VA pension and VA compensation).

8.

Notwithstanding the above, certain specific subsets of VA benefits are excluded from countable income for QI-1-eligibility purposes. Per the Medicaid Manual, these excluded benefit types are identified as follows: educational benefits; “Aid and Attendance”⁶; “Unusual Medical Expense Reimbursement and Continuing Medical Expense”; a housebound allowance; a clothing allowance; any portion of VA benefits that is augmented for the Medicaid applicant’s dependent(s); and the repayment of benefits that were deducted from a VA check. Medicaid Manual, 2499-43 to -44; see also 20 C.F.R. § 416.1103(a)(7), (b)(1) (when calculating income for SSI, excluding VA payments for “unusual medical expenses” and for purchase of “aid and attendance” or other social services). See also Ledford v. Colbert, No. 1:10-cv-706, 2012 U.S. Dist. LEXIS 83840, at *5-6 (S.D. Ohio Jun. 18, 2012) (addressing income exception for “aid and attendance”); Mitson v. Coler, 674 F. Supp. 851 (S.D. Fla. 1987) (addressing income exception for unusual medical expenses). However, the Petitioner has failed to prove, by a preponderance, that any of these exceptions apply. Rather, the evidence before this Court—which includes the Petitioner’s own testimony—establishes *only* that the VA benefits constituted “compensation” for

⁶ “Aid and Attendance” augments the pension of a veteran who is “(1) a patient in a nursing home or (2) blind, or so nearly blind or significantly disabled as to need or require the regular aid and attendance of another person.” 38 U.S.C. §§ 1502(b), 1521(b).

wartime injuries. Absent any applicable exceptions, the totality of those benefits can be considered when DFCS assesses the Petitioner's income eligibility for QI-1.⁷

9.

Having established that the Petitioner's VA compensation constitutes countable income, the Court concludes that these benefits, by themselves, would put him over the monthly net-income limit of \$1,641.00 by several hundred dollars. The evidence shows that the Petitioner was receiving \$2,353.00 (rounding to the whole dollar) in VA compensation benefits a month at the time he applied for Medicaid in April 2023. The only applicable deduction is the \$20.00 unearned-income deduction, which drops the monthly net income to \$2,333.00.⁸ See Medicaid Manual, 2505-1. In light of these results, the Court need not address the Petitioner's arguments regarding DFCS's findings of earned income and Social Security payments.

IV. DECISION

For the foregoing reasons, the Respondent's denial of the Petitioner's Medicaid application is hereby **AFFIRMED**.

SO ORDERED, this 7th day of September, 2023


Lisa Boggs
Administrative Law Judge



⁷ Courts in other jurisdictions have addressed the policy reason for including VA pensions and compensation as countable income. For example, the Illinois Court of Appeals held as follows in Estate of Bruce C. Palmer v. Department of Public Aid: “The intent of Medicaid is to help those individuals who need additional help, but if an individual can apply for, and receive benefits from another source, logic dictates that the Medicaid payments by the federal and state governments should decrease.” 760 N.E.2d 80, 83 (Ill. Ct. App. 2001) (quotation omitted).

⁸ Even if the Court used the lower VA compensation amount of \$1,926.00—which DFCS utilized in its original computation—the resulting net income of \$1,906.00 (\$1,926.00 minus the \$20.00 unearned-income deduction) still exceeds the net-come cap by more than \$200.00.