



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

Mr. Smith

Appearances: Mr. Smith, pro se, Appellant
Mrs. Smith, Appellant's Wife

Julia Turner-Wheeler, Sr. Social Worker/Case Manager, Team #910, Division of Social Services

I.

Mr. Smith ("Appellant") opposes a decision by the Division of Social Services ("DSS") to close his and his wife's Medical Assistance benefits based upon being over the income limit for a household of two (2).

The Division of Social Services ("DSS") contends that the Appellant and his wife are over the income limit for a household of two (2).

II.

On July 20, 2011, DSS sent to Appellant a Notice to Close Your Medical Assistance, effective July 31, 2011. (Exhibit 3)

The Appellant filed a request for a fair hearing date-stamped July 29, 2011, in which he requested that assistance continue. (Exhibit 2) According to the fair hearing summary dated August 5, 2011, assistance has continued. (Exhibit 1)

The Appellant was notified by certified letter dated September 7, 2011 that a fair hearing would be held on September 26, 2011. The hearing was conducted on that date in Dover, Delaware.

This is the decision resulting from that hearing.

III.

DSS testified that it discovered during a data exchange with the Delaware Department of Labor that the Appellant was receiving \$330.00 in gross weekly unemployment compensation. Since there are 52 weekly pay periods in a year, merely multiplying a weekly income by four (4) yields an erroneous result because it fails to account for the four (4) “extra” pay periods in the year. To account for these “extra” pay periods, federal policy requires DSS to multiply a weekly gross income by 4.33, 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 \$1,428.90 in gross unemployment compensation for the month of August 2011 ($\$330.00 \times 4.33 = \$1,428.90$).

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 no disregards, as all of his income was considered unearned. Accordingly, DSS determined that the Appellant’s monthly income amounted to \$1,428.90. DSS applied a monthly income limit for a family of two (2) amounting to \$1,226.00 and closed both the Appellant’s and his wife’s medical assistance benefits.

At the hearing, the Appellant’s wife testified that when they initially applied for medical assistance benefits, her husband had applied for—but was not yet receiving—unemployment compensation. The Appellant’s wife testified that as a result, at the time they applied for benefits they did not know how much weekly unemployment compensation her husband would receive. The Appellant testified that although he was eventually paid from the time he applied for unemployment compensation, there was an eight (8) week lag before he began receiving benefits. The Appellant testified that as of this hearing, he has only four (4) more weeks of unemployment remaining: The Appellant testified that he was able to extend his unemployment once, but did not think he could extend it again. In addition, the Appellant testified that although he receives \$330.00 in gross weekly unemployment compensation, after taxes he receives only \$297.00 per week.

The Appellant testified that due to medical conditions, he requires prescription medications that cost \$1,500.00 per month. Further, the Appellant testified that his twenty-four (24) year old son resides with him and his wife. The Appellant testified that his son works only part-time, and most of the income he earns goes to pay for gasoline for his car. Lastly, the Appellant testified that although he was told that his medical assistance benefits continued, he received two (2) separate bills from his physicians, stating that he no longer had Medicaid coverage. The Appellant testified that a caseworker informed him that she would resubmit the bills he received.

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.

DSSM 16230 identifies that countable income is earned or unearned income from which certain disregards (if applicable) have been deducted. Determine eligibility prospectively based on the best estimate of income and circumstances that will exist in the month for which the eligibility determination is being made. Changes in income are budgeted prospectively after verifying the information.

Further, DSSM 16230.2 states that unearned income is income received without performing work-related activity. Unearned income is counted as paid without application of any disregards.

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 two (2) is equal to \$1,226.00 per month.

Lastly, DSSM 16240.3 holds that related, non-married adults aged eighteen (18) or over must constitute separate budget units for medical assistance eligibility.

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 two (2). Although the Appellant testified that he actually receives less unemployment compensation per week due to taxes, DSSM 16230.1.1 specifically instructs DSS to consider only gross income. Further, although the Appellant testified that his grown son lives in his household, DSSM 16240.3 would preclude his inclusion into the Appellant's budget unit. 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 and his wife's medical assistance benefits. I encourage the Appellant to re-apply for benefits, when he is no longer receiving unemployment compensation.

However, because the Appellant filed his request for a fair hearing before the effective date of the closure of his medical assistance benefits, his 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 31, 2011, the effective date of his medical assistance benefit closure. As a result, DSS should have continued his and his wife's benefits during the pendency of this proceeding. The Appellant is urged to submit the bills that he received and the total of his out-of-pocket medical expenses to his caseworker, so he can be reimbursed for those expenses.

IV.

For these reasons, the July 20, 2011 decision of the Division of Social Services to close the Appellant's and his wife's Medical Assistance benefits effective July 31, 2011 is AFFIRMED. DSS is instructed to make prompt corrective payments pursuant to DSSM 5501.

Date: October 20, 2011



MICHAEL L. STEINBERG, J.D.
HEARING OFFICER

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

October 20, 2011

POSTED

cc: Mr. Smith
Julia Turner-Wheeler, DSS, Team #910

EXHIBITS FILED IN OR FOR THE PROCEEDING

EXHIBIT #1 – DSS Fair Hearing Summary consisting of two (2) pages dated August 5, 2011.

EXHIBIT #2 – Copy of Appellant's Request for a Fair Hearing date-stamped July 29, 2011, consisting of one (1) page.

EXHIBIT #3 – Copy of a Notice to Close Your Medical Assistance dated July 20, 2011, consisting of four (4) pages.