

**OHIO DEPARTMENT OF JOB AND FAMILY SERVICES
BUREAU OF STATE HEARINGS**

In the matter of:

<u>Case Number:</u>	<u>County:</u>	
5053447511	LUCAS	
<u>Appeal:</u>	<u>Program:</u>	<u>Disposition:</u>
1446430	MED	OVERRULED
No Compliance Required		
Decision Date:	03/20/2009	
Request Date:	10/30/2008	
Hearing Officer:	MICHAEL MAURER	

State Hearing Decision

ISSUE SECTION

The Appellant has been found eligible for the Waiver program. The Waiver program provides services to individuals who would be at risk of institutionalization if not in receipt of the Waiver services. Income is considered and there may be a determination of a patient liability. A patient liability is an amount of payment that must be paid each month by the individual in order to receive the waiver services. The Agency determined that the Appellant's patient liability is \$261 effective 12-01-08. The Appellant is not in agreement of being required to pay this amount of patient liability. The issue on appeal is whether the Agency's determination of the Appellant's patient liability for the Waiver program is correct.

The Agency's determination is correct because the Appellant's income must be considered when determining patient liability. The Agency correctly computed the budget based on the verified income and allowable deductions. The appeal of this issue is overruled.

PROCEDURAL MATTERS

The Appellant's hearing request was received on 10-30-08. The hearing was initially scheduled for 01-07-09 and rescheduled for 03-19-09 per scheduling notice sent to the Appellant on 01-23-09. The Agency prepared an appeal summary and it was received on 02-19-09.

The Agency was represented by Roberta Whitaker, Eligibility Specialist. The Appellant and her daughter attended the hearing. All parties were sworn in.

FINDINGS OF FACT

1. The assistance group consists of the Appellant only.
2. The Appellant receives Benefits through the Public Employees Retirement System (PERS) in the gross amount of \$1574 per month.

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3. The Appellant does not pay the Medicare premium.
4. The Appellant pays for health care coverage in the amount of \$69.74 per month.
5. The Agency determined the patient liability amount to be \$261 effective 12-01-08.
6. A notice was sent to the Appellant on 10-29-08 to increase the patient liability from \$211 per month to \$261 per month effective 12-01-08.
7. The Appellant did not verify any medical expenses to the Agency that she is required to pay and not covered by Medicare or Medicaid.

CONCLUSIONS OF POLICY

Policy

All income, including PERS is considered when determining eligibility per Ohio Administrative Code § 5101:1-39-08(C)(2).

Gross income is considered available in calculating countable income for a month per Ohio Administrative Code § 5101:1-39-08(D)

The Agency must total all income of the individual to determine patient liability, and the Appellant had no income exclusions per Ohio Administrative Code § 5101:1-39-24(C)(2)(a) and (b).

The special individual maintenance needs allowance is subtracted from the income for persons receiving the Waiver per Ohio Administrative Code § 5101:1-39-24(C)(2)(c)

The Medicare premium, insurance copayments, and unpaid past medical expenses are subtracted from the countable income per Ohio Administrative Code § 5101:1-39-24(C)(2)(g).

The remaining amount is the patient liability per Ohio Administrative Code § 5101:1-39-24(C)(2)(h).

The individual is required to pay the patient liability per Ohio Administrative Code § 5101:1-39-24.1(D).

The special needs allowance for 2008 is \$1243 per Medicaid Eligibility Procedural Letter Number 22.

Analysis

In the Appellant's case, the evidence and testimony presented at the state hearing shows that the Appellant is on the Waiver program. She receives PERS income of \$1574 per month gross. There is federal tax withheld from this as well as a health care deduction. She does not pay the Medicare premium, however, the health care deduction is \$69.74. The Agency determined her patient liability to be \$261 effective 12-01-08 based on her 2008 income. The Appellant and her daughter stated that the patient liability is being appealed because it is unaffordable. It was noted

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that her net income is less than the Agency used in the budget. The Appellant’s daughter stated that the Appellant has recently been prescribed a different medicine that is more expensive, and it is not known how much of the cost will be covered by their medical coverage.

There is no dispute regarding the Appellant’s gross income. The dispute is regarding having such a high patient liability. The Appellant’s gross income must be considered when determining eligibility. While the health care premium is an allowable deduction, the federal taxes that are withheld are not an allowable deduction. The Appellant is not having any amount withheld for the Medicare premium, so that is not an allowable deduction. The Agency correctly determined her income to be \$1574 as of 12-01-08. The Agency allowed the appropriate deduction for the health care premium as well as the Special Income Maintenance Needs Allowance of \$1243.

Thus, the budget was computed as follows:

\$1574	PERS income
<u>- 1243</u>	Special Income Maintenance Needs Allowance
\$ 331	
<u>- 69.74</u>	Health Care premium
\$ 261.26	Patient Liability (cents amount is dropped)

The Agency allowed the appropriate deductions, the budget was correctly computed, therefore, I find that the Agency correctly determined the patient liability.

HEARING OFFICER’S RECOMMENDATION

Because the Agency correctly determined the Appellant’s income and allowed the appropriate deductions, I recommend the appeal of this issue be found in the Agency’s favor and overruled.

The Appellant is advised that she may wish to present verification of medical expenses that she is required to pay to the Agency in order for the Agency to determine if they may be considered in the determination of the patient liability.

FINAL ADMINISTRATIVE DECISION AND ORDER

Since I find that the Hearing Officer's recommendation is supported by policy and the evidence, I hereby adopt the recommendation. The appeal of this issue is overruled.

Hearing Authority

March 20, 2009

Notice to Appellant

This is the official report of your hearing and is to inform you of the decision and order in your case. All papers and materials introduced at the hearing or otherwise filed in the proceeding make up the hearing record. The hearing record will be maintained

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by the Ohio Department of Job and Family Services. If you would like a copy of the official record, please telephone the hearing supervisor at the TOLEDO District hearing section at 1-866-635-3748.

If you believe this state hearing decision is wrong, you may request an administrative appeal by writing to: Ohio Department of Job and Family Services, Bureau of State Hearings, P.O. BOX 182825, Columbus, OH 43218-2825 or fax: (614) 728-9574. Your request should include a copy of this hearing decision and an explanation of why you think it is wrong. Your written request must be received by the Bureau of State Hearings within 15 calendar days from the date this decision is issued. (*If the 15th day falls on a weekend or holiday, this deadline is extended to the next work day.*) During the 15-day administrative appeal period you may request a free copy of the tape recording of the hearing by contacting the district hearings section.

If you want information on free legal services but don't know the number of your local legal aid office, you can call the Ohio State Legal Services Association, toll free, at 1-800-589-5888, for the local number.

Aviso a la Apelante

Esta es la decisión estatal administrativa de su caso. Todos los documentos y materiales presentados como prueba en la vista o de otra manera radicados componen el récord administrativo. El récord administrativo será mantenido por el Ohio Department of Job and Family Services.

Si usted cree que esta decisión estatal administrativa es errónea, usted puede solicitar una apelación administrativa escribiendo al: Ohio Department of Job and Family Services, Bureau of State Hearings, P.O. Box 182825, Columbus, Ohio 43218-2825 o facsímil (614) 728-9574. Su solicitud debe indicar por qué usted piensa que la decisión administrativa es errónea. Usted puede completar la solicitud de apelación incluida con esta decisión. Su solicitud escrita o formulario de apelación tiene que ser recibido por el Bureau of State Hearings dentro de los 15 días calendario desde la fecha en que esta decisión es expedida. (Si el 15to. día recae sobre un fin de semana o un día feriado, esta fecha límite es extendida al próximo día laborable). Durante el período de 15 días de apelación administrativa, usted o su representante pueden solicitar una copia gratuita del récord administrativo y de la grabación de la vista llamando al Bureau of State Hearings al 1-866-635-3748 (seleccione la opción 1 del menú principal).

Si usted quiere información sobre servicios legales gratuitos pero no sabe el número de su oficina local de servicios legales, usted puede llamar al Ohio State Legal Services Association, gratuitamente, al 1-800-589-5888, para el número local.

Appendix

Agency Exhibits

- A. Appeal summary received on 02-19-09
- B. Verification of Appellant's PERS income received by Agency on 10-22-08
- C. Verification of Appellant's PERS income received by Agency on 09-04-08
- D. Patient liability budgets for 2008 (D1 – D3)
- E. Notice history computer printout for notice of increase of patient liability, sent to the Appellant on 10-29-08

Appellant Exhibits

- 1. Hearing request received on 10-30-08

Cited Regulations

Ohio Administrative Code § 5101:1-39-08(C)(2) – “A basic tenet of medical assistance is all income must be considered in determining the need of an individual. . . . Such incomes include but are not limited to:

- (a) Retirement, survivors, disability insurance (RSDI);
- (b) Prouty benefits;
- (c) Railroad retirement;
- (d) Veterans benefits;
- (e) Other public/private retirement benefits;”

Ohio Administrative Code § 5101:1-39-08(D) – “Income is counted on a monthly basis. Gross income, prior to any deductions, exemptions or exclusions, that can be reliably anticipated is considered available in calculating countable income for a month.”

Ohio Administrative Code § 5101:1-39-24(C)(2)(a) and (b) - “The administrative agency must determine the individual's patient liability by utilizing the following procedure, in sequence, subsequent to notification of an appropriate level of care, and, if applicable, HCBS waiver agency approval or PACE site approval: (a) Total all income, earned and unearned, of the individual, without applying any exemptions or disregards; then
(b) Exclude the following as income for the purposes of determining patient liability: . . .”

Ohio Administrative Code § 5101:1-39-24(C)(2)(c) – “The administrative agency must subtract the appropriate personal needs allowance for the needs of the individual. Appropriate personal needs allowances are: . . . (iii) For HCBS waiver eligible individuals who have no earned income: the special individual maintenance needs allowance;”

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Ohio Administrative Code § 5101:1-39-24(C)(2)(g) – “The administrative agency must subtract the individual's medical expenses not subject to third party payment, including:

- (i) Medicaid, medicare, or other health insurance premiums;
- (ii) Insurance deductibles, coinsurance, or copayments;
- (iii) Necessary medical or remedial care, recognized under Ohio law, but not covered by medicaid and not subject to third party payment;
- (iv) Unpaid past medical expenses.”

Ohio Administrative Code § 5101:1-39-24(C)(2)(h) – “The remainder is the individual's patient liability for a full month of institutionalization.”

Ohio Administrative Code § 5101:1-39-24.1(D) – “The individual must pay the patient liability amount to the facility in accordance with rule 5101:1-39-24 of the Administrative Code.”