

STATE OF NEBRASKA
DEPARTMENT OF HEALTH AND HUMAN SERVICES

IN THE MATTER OF)
THE ADMINISTRATIVE APPEAL OF)

230909

)
MLTC MA

)
ORDER

[REDACTED]

This matter came on for hearing before Julie L. Agena, Department of Health and Human Services (DHHS) Hearing Officer, on September 21, 2023, in Lincoln, Nebraska. Appearing were [REDACTED] Veteran's Administration Service Officer, and [REDACTED] Appellant's husband, on behalf of Appellant; and Rebecca Merritt, on behalf of DHHS.

Testimony and exhibits were received into evidence under seal. The hearing officer now makes the following findings of fact and conclusions of law.

ISSUE

Whether the evidence and applicable authority support the determination that Appellant was eligible for Medicaid benefits with a share of cost (SOC).

FINDINGS OF FACT

1. All parties were provided proper notice of the administrative hearing.
2. On [REDACTED] 2023, Appellant submitted a renewal application for Medicaid. Appellant's household consisted of Appellant and her husband [REDACTED].
3. At the time of Appellant's renewal application, Appellant's gross monthly household income consisted of Appellant's social security benefits in the amount of [REDACTED] and [REDACTED] social security benefits of [REDACTED] and Veteran Administration (VA) pension/compensation in the amount of [REDACTED]. At the time of the application, Appellant was residing in a Skilled Nursing Facility and [REDACTED] was residing in the family home.
4. On [REDACTED] 2023, DHHS notified Appellant that she was eligible for Medicaid Assistance with a monthly SOC to be [REDACTED] effective [REDACTED] 2023.
5. In [REDACTED] 2023, [REDACTED] VA pension/compensation increased to [REDACTED] monthly.
6. On [REDACTED] 2023, DHHS notified Appellant that she continued to be eligible for Medicaid with a monthly SOC of [REDACTED] effective [REDACTED] 2023, due to [REDACTED] increased VA pension/compensation.
7. On [REDACTED] 2023, Appellant filed an administrative appeal.

8. On [REDACTED] 2023, DHHS notified Appellant that she continued to be eligible for Medicaid with a monthly SOC of [REDACTED] effective [REDACTED] 2023, due to an increase in the personal needs allotment.

CONCLUSIONS OF LAW

In Medicaid, a share of cost is the client's monthly financial out-of-pocket obligation for medical services when the client's income exceeds the program limits. 477 NAC 20-003.34. A medically needy individual who resides in a medical institution may establish a medical need using a reasonable projection of institutional expenses. 477 NAC 25-003.03. The gross income is used to determine the share of cost (SOC) for medically needy individuals. 477 NAC 25-003.03(A). Income that is excluded or disregarded in determining eligibility is used to calculate the share of cost (SOC). *Id.* The following deductions are made in determining the share of cost (SOC) due to the provider of institutional services: (i) a personal needs allowance appropriate to the type of facility in which the individual resides is deducted from income; (ii) the expense of a guardian or conservator of up to ten dollars (\$10) per month, or as ordered by a court, is an allowable deduction; (iii) an allowance for the cost of mortgage, rent, utilities, real estate taxes, or homeowner's insurance may be allowed for up to six months if it is possible that the individual will return home; and (iv) medical expenses not provided by the institutional service provider are deducted from the share of cost (SOC) amount owed to the provider. This may include expenses not covered by Medicaid or medical insurance premiums. 477 NAC 25-003.03(B). The budget procedure is used for the first full month that a budget for a medical institution is used for the individual. 477 NAC 25-003.03(C).

The maintenance needs of a spouse or dependent family member are calculated, subject to a minimum and maximum amount. 477 NAC 26-004.05. In comparing income of a spouse or family member, all income is used, even if such income would normally be subject to a deduction or exclusion for Medicaid eligibility. *Id.* A portion of the income of the institutionalized spouse can be allocated to the community spouse when necessary to maintain the living standard of the community spouse. 477 NAC 26-004.05(A). If the community spouse has income in excess of the maximum amount, then no allocation is allowed. *Id.*

The evidence and applicable authority support the determination that Appellant was obligated to pay a SOC each month for Medicaid and all household income was properly used in the calculation. DHHS properly considered Appellant's social security benefits and Appellant's husband's social security and VA pension/compensation benefits as Appellant's household's gross income when determining her share of cost. DHHS properly found that Appellant's

husband's income was over the maximum income for a community spouse. Appellant's husband argued that he would not be able to pay for his own expenses on the income allotted to him if he pays her share of cost for the Skilled Nursing Facility. Appellant's husband argued that the increased monthly pension/compensation was provided by the VA to pay his in-home caregiver to allow him to remain in his home. Appellant's husband further argued that calculations should not use his pension/compensation in the gross income for the family, as that extra money was only paid to him to pay his care provider himself because the VA was unable to issue a check directly to his care provider. However, there is no income disregard provided for a community spouse to exclude the VA payments and DHHS correctly calculated the amount of Appellant's SOC after consideration of Appellant's household income and applicable disregards. The action of DHHS was therefore proper.

PROPOSAL

Based upon the above findings of fact and conclusions of law, I recommend the Division AFFIRM the action taken by DHHS.


Date 9.26.2023


Julie L. Agena, Hearing Officer

ORDER

I have reviewed the above Findings of Fact, Conclusions of Law and Proposal and hereby certify that they are adopted as my official and final order in these proceedings. Accordingly, it is ordered that 230909 MLTC MA is AFFIRMED.

Date 9/28/2023


Kevin Bagley, Director
Division of Medicaid & Long-Term Care
Department of Health and Human Services

NOTICE

Pursuant to the Administrative Procedure Act, NEB. REV. STAT. § 84-901 *et seq.*, this decision may be appealed by filing a petition in the district court of the county where the action is taken within thirty days after the service of the final decision by the agency.

CERTIFICATE OF SERVICE

The undersigned certifies that copies of the foregoing were sent on the date below by United States Mail, postage prepaid, and/or electronically to the following:

	
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Date September 29, 2023



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