

## STATE HEARING DECISION

ODHS 4005 (Rev. 9/94)

County <b>WAYNE</b>	District Hearings Section <b>CANTON</b>	Assistance Group Name		Assistance Group Number
Place of Hearing <b>WAYNE CDHS</b>	Initial Hearing Date <b>11/25/2002</b>	Rescheduled Postponed to <b>01/22/2003</b>	Rescheduled Postponed to <b>01/15/2003</b>	Rescheduled Postponed to

Appellant/Representative	Appellant Representation
	Local Agency Representation <b>Ellen Erying, Caseworker</b>

Date Notice Mailed <b>11/01/2002</b>	Date Received by Local Agency	Date Received by ODHS <b>11/05/2002</b>	Date Appeal Summary Received <b>11/22/2002</b>	Date Scheduling Notice Mailed <b>01/16/2003</b>
---	-------------------------------	--	---	--

Appeal Number(s)/Program(s) <b>1093045/MED</b>
---

### 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 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 CANTON District hearing section at 1-800-686-1569.

**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, Office of Legal Services, 30 East Broad Street, 31st Floor, Columbus, Ohio 43215-3414 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 Office of Legal Services 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.

### **Issue MED 1093045:**

On November 1, 2002 the Wayne County Department of Job and Family Services (Agency) notified the Appellant of a denial of his application for Medicaid (MED) nursing home vendor payment dated October 16, 2002 due to "over resources". The notice to the Appellant included a statement that when resources are reduced to \$88,500 the Appellant may reapply for MED. Attached to the denial was a notice of the Appellant's right to a state hearing to reallocate resources via the Single Premium Lifetime Immediate Monthly Payment Annuity (SPLIMPA) process, which is achieved through the state hearing process. The Appellant's Representatives request a reallocation of resources.

### **PRELIMINARY MATTERS:**

The Appellant through representation requested a hearing on November 5, 2002. By letter dated November 15, 2002 the matter was set for an evidentiary hearing which went forward on November 25, 2002. The Hearing Officer determined that the record lacked sufficient information in which to base a decision and as a

TDA

Appeal(s) <b>OVERRULED 1093045</b>	Date Issued <b>01/24/2003</b>	Compliance
------------------------------------	----------------------------------	------------

**Distribution:** Original to appellant, one copy to local agency; one copy to district Hearing section; one copy to district office; two copies to State Hearings. *(Photocopy to appellant's authorized representative, if any, and to ODHS units as appropriate.)*

Appeal Number(s) 1093045
-----------------------------

result notified the Agency and the Appellant's Representative of a reconvened hearing. By letter dated January 2, 2003 the matter was reconvened for January 15, 2003. The Appellant's Representative requested it be rescheduled. By letter dated January 16, 2003 the matter was rescheduled and the reconvened hearing went forward on January 22, 2003.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and the oral arguments presented and having examined the exhibits admitted into the record, the following findings of fact are made:

1. On October 16, 2002 the Appellant's wife, the community spouse (CS) who is age 71, applied for MED on behalf of the Appellant, the institutionalized spouse (IS) who is age 72 and who entered a nursing facility on April 4, 2001. The first continuous period of institutionalization was April 4, 2001. A resource assessment was completed November 2002 (Exhibit C). From the resource transfer worksheet (Exhibit F) the Agency determined that the total amount of resources were \$267,052.00 as of the first continuous period of institutionalization. As of October 16, 2002, some 19 months later, the total current combined resources were reduced by \$104,038.00 to \$163,014.00. The Agency determined that half of the spousal share (or one half of the \$267,052.00) was \$133,526.00. The Agency further determined that the CS resource allowance was \$87,000.
2. The Agency determined the CS's gross monthly income as follows (Exhibit E): \$340 RSDI, \$87 Annuity, \$800 exempt rental property-resource generated, \$500 countable rental property-resource generated. Total CS monthly income equals \$1,727.
3. The Agency completed the following monthly income allowance (MIA) budget (Exhibit B): Minimum Monthly Maintenance Needs Allowance (MMMNA) \$1,608 less \$427 (CS's income of \$340 RSDI plus \$87 Annuity) equals \$1,181 MIA.
4. The Agency notified the IS's Representative to obtain three SPLIMPA estimates needed to generated \$1,181 per month in income.
5. The Appellant's Representative presented the following SPLIMPA estimates: \$165,870.79, \$162,205.79 and \$167,247.00. These amounts were added and divided by three with the average SPLIMPA totaling \$165,107. The IS's Representative and the Agency request that resources be reallocated as the average cost of the SPLIMPA exceeds the total amount of resources of \$163,014. In addition, the Agency requested via appeal summary faxed November 25, 2002 that an MIA of \$14.78 be approved.
6. The Agency provided no CLRC (case record documentation) or an explanation at how they arrived at

Appeal Number(s) 1093045
-----------------------------

their determination that the incomes from the rental properties are considered resources and not incomes. There was no verification provided as to when the rental properties were purchased or where they were located. There was no testimony or evidence provided to show how and why resources were reduced by \$104,038.00 from \$267,052.00 to \$163,014.00 or any information regarding the annuity. For these reasons the Hearing Officer reconvened the state hearing.

7. Upon reconvening the state hearing, the IS's Representative provided a detailed statement which resulted in the reduction of resources. Upon review, the primary reduction was to pay for the IS's cost of care at the nursing facility as well as contributions to the church, the purchase of an automobile and other miscellaneous expenses. It was also explained that the IS and CS own approximately 13 acres of land on which the CS resides. The IS and the CS built another home on the property; the CS resides in that home and rents out their previous home. Also located on the property are three mobile homes that the CS rents out at \$125 per month. \$125 times three equals \$375. The Hearing Officer concludes that the difference from the \$800 total rental property income less the \$375 for the mobile homes leaves \$425 remaining that the CS receives per month in rent from the home on her property. The CS and IS also own rental property in Florida purchased in 1979. The CS receives \$500 per month in rent from this property. The annuity was purchased in April 1989.

8. During the reconvened state hearing the Representative questioned the reason for the Hearing Officer's additional questioning. The Hearing Officer pointed out that all information was not sufficiently submitted at the initial state hearing, and that the state hearing decision will set forth the rational.

**CONCLUSION OF POLICY:**

Ohio Administrative Code (OAC) Rule 5101:6-7-02(C)(2) states that "if the hearing establishes that the CS's income, and the income generated by the CS's resource allowance, is inadequate to raise the CS's income to the MMMNA, there shall be substituted a resource amount adequate, when combined with the CS's income, to provide the MMMNA." Subsection (C)(8) of the Rule states that "in order for the CS to receive the substituted allowance, the CS or IS shall be required to obtain three written estimates of the cost of a SPLIMPA. These amounts shall be averaged to determine the cost of a SPLIMPA." Paragraph (C)(3) of this rule provides that if the state hearing determines that an additional transfer should be made but there are not sufficient resources to transfer to generate the full amount of the income necessary to meet the MMMNA, a monthly income allowance (MIA) can also be determined

Action Change Transmittal Letter No. 148 provides that a single premium lifetime immediate payment annuity (SPLIMPA) is an annuity that provides monthly payments for the annuitant's lifetime only. The annuity is purchased with a one time single lump sum payment and the annuity payments begin within 90 days. An annuity that is a delayed payment annuity, a time-period certain (e.g., 10 year certain), an annuity with a death

Appeal Number(s) 1093045
-----------------------------

benefit, or an annuity that guarantees return of the principal is not a SPLIMPA and cannot be used to determine the amount of additional resources needed to generate the difference between the CS's gross income and the MMMNA.

Ohio Administrative Code (OAC) 5101:1-39-15.1 regarding treatment of rental income effective October 1, 2002 states in pertinent part that: rent is a payment which an individual receives for the use of real or personal property, such as land, housing or machinery. Net rental income is gross rent less the ordinary and necessary expenses paid in the same taxable year. Ordinary and necessary expenses are those necessary for the production or collection of rental income. In general these expenses include interest on debts, state and local taxes on real and personal property and on motor fuel, general sales taxes and expenses of managing or maintaining property. Rental deposits are not income to the landlord while subject to return to the tenant. Rental deposits used to pay rental expenses become income to the landlord at the point of use. In determining net income do not consider rents received or expenses paid in months prior to Medicaid eligibility. Expenses are deducted when paid, not when incurred. *Net rental income is unearned income unless it is earned income from self-employment* (emphasis added) (e.g., someone who is in the business of renting properties). This section lists the appropriate disregards which can be used from rental income.

OAC 5101:1-39-07 regarding MED and transfer of resources provides that an "improper transfer" of resources is a transfer on or any time after the look-back date, as defined in subsection (A)(6) of this rule, of a legal or equitable interest in a resource for less than fair market value for the purpose of qualifying for Medicaid or a greater amount of Medicaid, or for the purpose of avoiding the utilization of the resource to meet medical needs or other living expenses...section (6) of this rule sets forth the look-back date as the earliest date on which a penalty for transferring assets for less than fair market value can be assessed. The look-back date is thirty-six months prior to the baseline date with the exception that is noted in subsection (A)(7) of this rule.

**Analysis:**

As there was no information provided at the initial hearing regarding how the resources were reduced and when the rental properties and annuities were purchased, the state hearing was reconvened to determine if appropriate resources were considered by the Agency in their resource assessment. A reallocation of resources can not be determined by the Hearing Officer without knowing that appropriate resources were determined by the Agency. However, upon further review of the case it is clear that the CS is receiving income from rental properties in the amounts of \$800 and \$500 per month. Pursuant to OAC 5101:1-39-15.1 this is countable income. The Agency however excluded this income in arriving at the MIA. The CS's total income of \$1,727 exceeds the MMMNA standard of \$1,608 as set by the Agency and the MMMNA standard of \$1,493, therefore, a reallocation of resources is inappropriate. The Agency may determine if the

Appeal Number(s) 1093045
-----------------------------

CS qualifies for any deductions from the rental income as set forth in OAC 5101:1-39-15.1.

**HEARING OFFICER'S RECOMMENDATION:**

Based upon the record before me I find the appeal should be overruled. A reallocation of resources is not appropriate in this case, and the denial of Medicaid is affirmed.

**FINAL ADMINISTRATIVE DECISION AND ORDER:**

Finding the Hearing Officer's decision to be supported by the evidence, the above recommendation is adopted and the appeal is **OVERRULED**. No orders of compliance shall be issued based on this appeal.

**Exhibits presented by the Agency and entered into the record:**

- A. Appeal summary
- B. ODJFS 4079 determination of income and resources allocation
- C. ODJFS 4076 resource assessment worksheet
- D. ODJFS 4078 monthly income allowance computation worksheet
- E. SPLIMPA hearing information
- F. ODJFS 4077 resource transfer worksheet
- G. Notice to Appellant from Agency
- H. Notice of denial
- I. SPLIMPA estimates
- J. OAC rules

**Exhibits presented by the IS's Representatives and entered into the record:**

- K. Summary of SPLIMPAs
- L. SPLIMPA estimates
- M. Written accounting of reduction of resources
- N. Verification of annuity
- O. Deeds to rental properties

Date Issued: 01/24/2003