

## STATE HEARING DECISION

ODHS 4005 (Rev. 9/94)

County <b>HAMILTON</b>	District Hearings Section <b>CINCINNATI</b>	Assistance Group Name		Assistance Group Number
Place of Hearing <b>HAMILTON CDJFS</b>	Initial Hearing Date <b>11/03/2004</b>	Rescheduled Postponed to	Rescheduled Postponed to	Rescheduled Postponed to

Appellant/Representative	Appellant Representation
	Local Agency Representation Agency: Joyce Cottrell

Date Notice Mailed <b>10/01/2004</b>	Date Received by Local Agency	Date Received by ODHS <b>10/18/2004</b>	Date Appeal Summary Received <b>11/04/2004</b>	Date Scheduling Notice Mailed <b>10/25/2004</b>
---	-------------------------------	--	---	--

Appeal Number(s)/Program(s) <b>1196973/MED, 1196974/FS</b>
---

### Notice to Appellant

This is the state hearing decision in your case. All papers and materials introduced at the hearing or otherwise filed make up the hearing record. The hearing record will be maintained by the Ohio Department of Job and Family Services.

**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 state why you think the hearing decision is wrong. You can complete the appeal request form included with this decision. Your written request or appeal form 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, or your representative, may request a free copy of the hearing record and recording of the hearing by calling the Bureau of State Hearings at 1-866-635-3748 (select option 1 from main menu).

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 1 (1196973):

On 10/01/04, the Hamilton County Department of Job and Family Services (HCDJFS) demanded repayment of a \$4,834 Medicaid overpayment from 01/01/98 through 10/31/02 because the value of the appellant's unreported resources exceeded the program eligibility standard. The issue is whether the agency is authorized to take the action.

The agency is not authorized to take the action.

### ISSUE 2 (1196974):

On 10/01/04, the Hamilton County Department of Job and Family Services (HCDJFS) demanded repayment of a \$4,405 Food Stamp overpayment from 01/01/98 through 10/31/02

PJS

Appeal(s) <b>OVERRULED 1196973, 1196974</b>	Date Issued <b>01/14/2005</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) 1196973, 1196974
--------------------------------------

because the value of the appellant's unreported resources exceeded the program eligibility standard. The issue is whether the agency is authorized to take the action.

The agency is not authorized to take the action.

### **PROCEDURAL MATTERS:**

The HCDJFS mailed Medicaid and Food Stamp overpayment demand notices to the address of record on 10/01/04. On 10/18/04, the Bureau of State Hearings (BSH) received the State Hearing request.

The hearing was scheduled and heard on 11/04/04.

The issues were submitted for a Policy Clarification on 11/17/04.

### **FINDINGS OF FACT:**

1. The Medicaid and Food Stamp assistance groups consisted of the appellant only.
2. She owned a \$6334.95 retirement account (401K) from 01/01/98 through 10/31/02.
3. There is no evidence that establishes that the 401K funds were available to her or that she could access the funds without penalty.
4. The agency did not receive verification of the account from the appellant.
5. She received Medicaid and Food Stamp benefits from 01/01/98 through 10/31/02.
6. The date of discovery is 01/28/04.
7. The overpayment amounts were not disputed by the representative during the State Hearing.
8. The agency mailed the overpayment demand notices on 10/01/04.

### **POLICY:**

Ohio Admin. Code §5101:1-39-05 Medicaid: resource requirement.

- (8) "...Resources" are cash, personal property, and real property that an individual and/or spouse has an ownership interest in, has the legal ability to access in order to convert to cash (if not already cash), and is not legally prohibited from using for support and maintenance.
  - (b) ...Property cannot be a resource if the applicant/recipient lacks the legal ability to access funds for spending or to convert non-cash property into cash...

Appeal Number(s) 1196973, 1196974
--------------------------------------

Effective Date: 11/07/02

Ohio Admin. Code §5101:4-4-03 Food stamps: exempt resources.

In determining the resources of an AG, only those resources specified in this rule and rule 5101:4-4-03.3 of the Administrative Code shall be exempted...

(B) Household and personal goods, life insurance, pension funds, burial plot, revocable funeral agreement...

...The cash value of pension plans or funds shall be excluded...individual retirement accounts (IRAs), Keogh plans that involve no contractual obligation with anyone who is not a household member and simplified employer pension plans, often referred to as SEP-IRAs, which are operated like IRAs and in which employers make direct deposits in IRA-like retirement accounts for workers...

(E) Inaccessible resources

...Resources are exempted if the cash value is not accessible to the AG... Resources shall be considered inaccessible to the AG as long as they were truly unknown to the AG. At the point the AG discovers or is made aware of the resources that are legally available to them, the resources must be counted in determining the AG's eligibility for food stamps...

Effective Date: 04-01-03

**ANALYSIS:**

The agency alleges that the appellant owned a \$6334.95 retirement account (401K) through her employer from 01/01/98 through 10/31/02. A lump sum distribution was made to the appellant in 11/02.

The representative asserts that she was never employed, that she never owned a 401K account, and that she did not receive a lump sum distribution in 11/02.

On 07/01/04, Fidelity Investments mailed a letter to the HCDJFS (Exhibit D) that reads in part, "Fidelity Investments Institutional Operations Company, Inc. provides administrative record-

Appeal Number(s) 1196973, 1196974
--------------------------------------

keeping services to...the Employers 401K Savings Plan...The plan is a qualified retirement plan...Fidelity's records indicate that the appellant was a participant in such plan.

Fidelity Investments (Exhibit C) also verified that a \$6334.95 Lump Sum disbursement was made to the appellant on 11/05/02.

However, there is no evidence in the record that establishes that the 401K funds were available to her from 01/01/98 through 10/31/02 or that she could access the funds without penalty.

Based on the record, the hearing officer finds that there is insufficient evidence to establish that the 401K was an available, countable resource.

Per the above, the agency is not authorized to take the actions.

**HEARING OFFICER'S RECOMMENDATIONS:**

Issue 1 (1196973)

The appeal should be Sustained. The agency is not authorized to take the action.

Issue 2 (1196974)

The appeal should be Sustained. The agency is not authorized to take the action.

**FINAL ADMINISTRATIVE DECISION AND ORDER:**

The Hearing Officer's recommendations are adopted.

Issue 1 (1196973)

The appeal is Sustained. No orders of compliance shall be issued against the agency based on this appeal.

Issue 2 (1196974)

The appeal is Sustained. No orders of compliance shall be issued against the agency based on this appeal.

**AGENCY EXHIBITS:**

Appeal Number(s) 1196973, 1196974
--------------------------------------

- A. Appeal Summary
- B. Notice History Screen
- C. Resource Verification
- D. Letter
- E. Letter
- F. Case Dictation
- G. Food Stamp Packet
- H. Medicaid Packet
- I. Running Record Comments
- J. Regulations

**APPELLANT EXHIBITS:**

None

Date Issued: 01/14/2005