

## STATE HEARING DECISION

ODHS 4005 (Rev. 9/94)

County <b>CUYAHOGA</b>	District Hearings Section <b>CLEVELAND</b>	Assistance Group Name		Assistance Group Number
Place of Hearing <b>CUYAHOGA CDHS</b>	Initial Hearing Date <b>12/23/2004</b>	Rescheduled Postponed to <b>01/24/2005</b>	Rescheduled Postponed to	Rescheduled Postponed to

Appellant/Representative	Appellant Representation
	Local Agency Representation <b>D. McIntosh, caseworker #3724</b>

Date Notice Mailed	Date Received by Local Agency	Date Received by ODHS <b>12/03/2004</b>	Date Appeal Summary Received <b>01/24/2005</b>	Date Scheduling Notice Mailed <b>01/14/2005</b>
Appeal Number(s)/Program(s) <b>1204474/MED</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:**

Appeal #1204474

An application for nursing home vendor Medicaid was filed in 5/04 and denied in the summer of 2004. A previous hearing request was withdrawn with the agreement that the agency would redetermine the appellant's eligibility for Medicaid. The agency has since denied the application because the appellant's authorized representative allegedly failed to cooperate in the determination of eligibility by not providing requested tax return information. The issue under appeal is whether the agency's 11/04 denial of the 5/04 Medicaid application is correct.

The denial is incorrect. The authorized representative suffered delays in obtaining all of the tax returns requested by the agency and the agency was aware of her difficulties yet denied the application anyway. Additionally, it is apparent from the testimony at the hearing that the agency has not been specific regarding what verifications are required from the authorized representative.

LMS

Appeal(s) <b>SUSTAINED 1204474</b>	Date Issued <b>02/04/2005</b>	Compliance <b>1204474</b>
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**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.)*

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**PROCEDURAL MATTERS:**

Notice of the Medicaid denial was issued in 11/04. The appellant's authorized representative disputes the denial and requested a state hearing. The state hearing request was received by the Bureau of State Hearings on 12/3/04. The hearing was originally scheduled for 12/23/04. The authorized representative failed to attend that hearing. Upon a show of good cause, the hearing was rescheduled and heard on 1/24/05. An appeal summary was received from the agency on 1/24/05. The appellant's representative attended the hearing; the agency was represented by the appellant's caseworker.

**FINDINGS OF FACT:**

1. The appellant was institutionalized in 12/03.
2. The appellant has a community spouse.
3. An application for Medicaid was filed with the agency in 5/04.
4. The application was originally denied in the summer of 2004.
5. A previous hearing request was withdrawn with the understanding that the agency would redetermine the appellant's eligibility for Medicaid as of 5/04.
6. The agency requested the appellant's tax returns for 1999 through 2003.
7. The authorized representative provided the agency with all the tax returns but 1999 (see Exhibit A).
8. The representative had to request the 1999 tax returns from the IRS.
9. The IRS did not immediately provide the 1999 tax return.
10. The authorized representative requested an extension to the middle of 11/04 from the agency because she was waiting on the 1999 tax return.
11. The authorized representative requested the agency's assistance in obtaining the tax return from the IRS.
12. The agency denied the Medicaid application on 11/1/04.
13. The 1999 tax return was provided at the hearing (see Exhibit B).
14. The tax returns show income from pension/annuities (refer to Exhibits A, B)
15. The agency questioned whether the appellant has any annuities because of the tax returns, but did not provide any evidence to show that they ever requested verification of annuities or whether they requested clarification from the authorized representative regarding any possible annuities.
16. The annuities/pensions noted on all of the returns are the appellant's pension income, which was reported to the agency at the time of the application for assistance.
17. The appellant does not have nor has he ever had any annuities.
18. The appellant and his spouse established a trust in 1993 (see Exhibit C).
19. The only thing in the trust was the appellant's/spouse's place of residence.
20. The home was removed from the trust in 5/28/04 (see Exhibit D).
21. The trust is still available but the authorized representative testified that it has a zero value.
22. The appellant's spouse still resides in the home.

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23. Although the agency alleges that they question the trust and its value, they did not provide any evidence to show that they requested clarification from the authorized representative, nor that they informed her specifically what verifications were needed regarding the trust.

24. Further, the agency did not offer the option of a notarized statement as verification, if the authorized representative is unable to obtain any other verification of the trust than what was already provided to the agency.

### **CONCLUSIONS OF POLICY:**

#### **Policy:**

The purpose of verification is to establish that the factors of eligibility applicable to a specific category of Medicaid are met and the assistance group is eligible to receive benefits. Verification is not an eligibility requirement in its own right, but a method for assuring that an eligibility requirement is met.

It is the AG's responsibility to provide the information necessary to establish eligibility and to cooperate in the verification process, including providing all required verifications. An application for assistance must be denied if an AG refuses to cooperate in establishing eligibility. When the AG or authorized representative is aware of what verifications are required but refuses to provide either consent for the administrative agency to obtain the verifications or to provide the necessary verifications, the administrative agency must deny assistance because eligibility cannot be established.

The administrative agency must explain what verifications and information are necessary to establish eligibility for Medicaid. The administrative agency shall explain where and how to obtain the required verifications. The administrative agency is responsible for assisting in securing all of the required verifications necessary to establish eligibility when the AG requests such assistance because of an inability to provide them without the administrative agency's help.

In some instances, verification may not be available to either the AG or the administrative agency through no fault of the AG. When absolute proof is not available, the eligibility determination is based on the best possible evidence. When evidence conflicts, the determination of eligibility should be based on the strongest evidence available. Where information from another source contradicts statements made by the AG, the AG shall be afforded a reasonable opportunity to resolve the discrepancy prior to an eligibility determination. In situations in which there is no available verification for a factor for which self-declaration is not normally acceptable verification, the administrative agency shall not deny or terminate the case but shall accept a signed affidavit, a third-party statement, notarized statement, or the statement on the application form, if the information is consistent with other facts and statements. Ohio Admin. Code § 5101:1-38-02 (A), (B) (2003)

The determination of Medicaid eligibility, including the gathering of any verifications, shall be completed as

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rapidly as possible within thirty calendar days from the date of application. But the CDJFS must not use the time standards as a reason for denying eligibility because eligibility has not been determined within the time standards. Ohio Admin. Code 5101:1-38-01 (F) (2003)

The hearing officer's findings of fact shall be based exclusively on the evidence introduced at the hearing. It is the responsibility of the agency to "show, by a preponderance of the evidence, that its action or inaction was in accordance with ODJFS rules." Ohio Admin. Code § 5101:1-6-07

**Analysis:**

The agency representative at the hearing testified that she denied the case on 11/1/04 because the authorized representative failed to provide the requested tax information and because the 'case had pended too long already.' First, the agency did not establish why they needed the 1999 tax returns; and, second, the agency was aware that the authorized representative was waiting on the IRS to provide those tax returns when they denied the case on 11/1/04 because it had pended too long. This is despite that fact that the time limits are not to be used as a reason for denial, especially when the agency is aware that the parties involved are trying to get the requested verifications. As a result, the hearing officer finds that there was no failure to cooperate with the verification process as alleged by the agency and the 11/1/04 denial is incorrect.

Additionally the agency should note that although they question whether the appellant has an annuity because of the tax returns, the only income noted on the tax returns under "annuities/pensions" is the income from the appellant's pension. The pension income was reported and verified with the agency. Per the authorized representative's direct sworn testimony the appellant has never had an annuity. There is no other clarification needed from the authorized representative regarding the annuity/pension information on the tax returns.

Further, although the agency questions the trust information, no evidence or testimony was presented by the agency to show that they ever requested clarification of the status of the trust or what property was held in the trust. The authorized representative testified that the only verification of the trust she has is what was given the agency. She also testified that at this time, the trust has a zero value because there is nothing in it since the home, which was reportedly the only thing in the trust, had been transferred back to the appellant's spouse in 5/04. It should also be noted that the home has always been and remains the homestead property where the spouse continues to reside. While the hearing officer understands that the agency needs to verify the trust fully, including verifying what was in it at the time of application and the current value of it, no evidence was presented to show that information was requested from the authorized representative. Further, no evidence or testimony was presented to establish that the agency informed the authorized representative that if no other verifications could be obtained (by the agency or the authorized representative) regarding the trust, then a notarized statement regarding the trust could be acceptable verification.

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**HEARING OFFICER'S RECOMMENDATIONS:**

Based on the record before me, I find the Appeal #1204474 should be SUSTAINED. The agency should redetermine the appellant's eligibility for Medicaid, considering the facts established in this decision. If necessary, the agency may request clarification of the status of the trust, but they should assist the authorized representative in obtaining such clarification if needed. If no other verification is obtainable, the agency should accept a notarized statement regarding the trust's status, value, and what was/is held in the trust.

**FINAL ADMINISTRATIVE DECISION AND ORDER:**

Finding the hearing officer's decision to be supported by the evidence, the recommendations above are adopted.

**COMPLIANCE IS REQUIRED:** Ohio Admin. Code § 5101:6-7-03(B)(1)(a) requires compliance with this decision within fifteen calendar days from the date of this decision, but no later than ninety calendar days from the hearing request date. Compliance shall be promptly reported to ODJFS, Bureau of State Hearings, via JFS 04068, compliance form, accompanied by supporting documentation. (2003)

**EXHIBITS:**

- A. 2000 through 2003 tax returns
- B. 1999 tax return
- C. Declaration of Trust
- D. Cuyahoga recorder records

**APPENDIX:**

- 1. Appeal summary and miscellaneous papers

Date Issued: 02/04/2005