

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

ADMINISTRATIVE APPEAL SECTION

In Re Appeal of:

Docket Number:	AA-771	
Appeal No(s)	1323625	MED
AG No.	5068462018	
Hearing Request Date:	12/20/2006	
Hearing Decision Date:	01/16/2007 / SAC	
Appeal Request Date:	01/29/2007	
Agency:	CLARK CDJFS	

Administrative Appeal Decision

Appellant is appealing a November 2006, agency decision to approve his October application for Medicaid nursing home vendor payment effective starting in November, rather than retroactive to August. The hearing officer overruled the appeal, finding that Appellant's accumulated SSI income was not reduced below the \$1500 Medicaid resources limit until November. In his request for administrative appeal, Appellant asserts a Statement of Error that the hearing decision is contrary to the weight of the evidence presented at the hearing, to the effect that the SSI payments which were received after his May institutionalization would have to be returned to the social security administration, and that he was functionally unable to manage his own affairs until a guardian was appointed for him in August.

There is thus no question regarding the \$1500 resource limit established by OAC 5101:1-39-05. Further, Ohio Admin. Code 5101:1-39-27.2 provides as follows:

A checking account or savings account is virtually like having cash on hand because deposits are payable on demand. An individual should be able to withdraw money from a checking account or savings account on the same day the individual requests it. In a joint account, all funds in the account are a resource of the applicant/recipient if he has unrestricted access to the funds.

There is also no dispute that the funds in the checking account were available to Appellant. In determining Appellant's eligibility for retroactive Medicaid, "Eligibility for retroactive medicaid coverage is based on monthly circumstances. Income received up to and including the last day of a month is counted for that particular month. The resources available on the last day of the month are compared to the resource limits."¹

¹ Ohio Admin. Code 5101:1-38-01.3(H)

The issue then is whether Appellant has the legal ability to access the resources. Ohio Admin. Code 5101:1-39-05 states: "Property cannot be a resource if the applicant/recipient lacks the legal ability to access funds for spending or to convert noncash property into cash." The rule specifically provides:

(ii) An applicant/recipient has the legal ability to access property even when action can be taken only by an agent, any person with power of attorney, a guardian whether court appointed or not, or any other court appointed fiduciary such as a conservator of the applicant/recipient. For purposes of medicaid eligibility, any action by an agent, a guardian whether court appointed or not, any person with a power of attorney, or any other court appointed fiduciary such as a conservator is deemed to be an action by the applicant/recipient. This is true even if he or she is required to petition the court to withdraw funds for the individual's care.

There is no question that Appellant lacked the physical ability to access the property. The problem is that, despite his physical disability, Appellant at all times retained his legal ability to access property, either directly or through his guardian. Finally, even assuming that Appellant's accumulated SSI funds might have been the subject of a possible social security overpayment claim, that claim did not rise to the level of a legal impediment to his use of the funds, as evidenced by his November payment to the nursing home.

For these reasons, we cannot accept the Statement of Error based on the weight of the evidence.

DECISION

We therefore ORDER that the hearing decision is AFFIRMED.

Administrative Appeal Officer

CONCUR:

Administrative Appeal Officer

Chief Administrative Hearing Officer

Date of Issuance: February 12, 2007

Notice to Appellant

This Administrative Appeal decision is the final decision on this appeal from the state department of job & family services. It is binding on the department and agency, unless it is reversed or modified on appeal to the court of common pleas.

An Appellant who disagrees with this decision may appeal it to the court of common pleas pursuant to sections 119.12 and 5101.35(E) of the Revised Code. The Appellant shall mail the original notice of appeal to the department at the following address:

**Ohio Department of Job & Family Services
Office of Legal Services
30 E. Broad Street, 31st Floor
Columbus, OH 43215-3414**

The Appellant must also file a copy of the notice of appeal with the court of common pleas in the county in which the Appellant resides (Franklin County, if the Appellant does not reside in Ohio). Please note: Both the mailing to the department and the filing with the court must occur within thirty (30) calendar days of the date of issuance of this decision.

If you have questions about appealing to a court, contact your attorney, local legal aid society, or bar association. If you want information about free legal services, you can call the Ohio State Legal Services Association, toll free, at 1-800-589-5888.

cc:

Director, CLARK CDJFS
LEHMAS01, CASSAS, Bureau of State Hearings