

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

In the matter of:

<u>Case Number:</u>	<u>County:</u>	
5067932037	MIAMI	
<u>Appeal:</u>	<u>Program:</u>	<u>Disposition:</u>
1375369	MED	SUSTAINED
1375370	MED	SUSTAINED
1375372	MED	SUSTAINED
1375373	MED	SUSTAINED
Compliance Required		
Decision Date:	02/13/2008	
Request Date:	10/05/2007	
Hearing Officer:	SALLY A. CASSABON	

State Hearing Decision

ISSUE SECTION

Issue #1/Appeal #1375369

Issue #2/Appeal #1375370

Issue #3/Appeal #1375372

Issue #4/Appeal #1375373

Application for Medicaid assistance was filed on Appellant's behalf with the Miami County Department of Job and Family Services (Agency). The Agency is counting the Community Spouse's current residence as a resource citing it meets the definition of a "continuing care retirement community". The issue under appeal is whether the Agency is correct to include the CS's home as a resource, thus finding the Appellant is ineligible for assistance due to excess resources.

In reviewing the documentation submitted and the criteria listed under the definition of continuing care retirement communities, this Hearing Officer finds the Agency failed to prove by a preponderance of the evidence that their actions were correct. Therefore, denial of the above appeals is found to be incorrect. It is recommended that the appeals be SUSTAINED.

PROCEDURAL MATTERS

The Appellant's state hearing request was received by the State of Ohio on 10/05/07. The state hearing was initially scheduled for 10/23/07, however, was rescheduled at the request of the Appellant's Authorized Representative to 11/07/07. The Appeal Summary was completed by the county agency and submitted to the Regional Office on 10/17/07. Testimony for the Agency was presented by K. Osborne, Eligibility Referral Specialist and M. Fetter. Testimony for the Appellant was presented by the Appellant's son and Authorized Representative. Two representatives from the nursing facility were also available to present testimony and answer questions during the scheduled hearing.

FINDING OF FACT

1. On 07/12/07 the Community Spouse completed a face to face interview applying for Medicaid Waiver for his wife. The application date was 06/21/07.
2. The spouse was admitted to Upper Valley Medical Center on 07/11/07 and then admitted to Koester Pavilion NF on 07/13/07.
3. Appellant was discharged from NF on 08/01/07 at which time she was admitted to Springmeade Nursing Home on 08/01/07.
4. A resource assessment was initially completed on 03/26/06 when an application was made for waiver services.
5. At the time of the resource assessment the Agency determined that the couple was over the Medicaid resource limit for institutional Medicaid.
6. The Agency determined the couple was over the Medicaid resource limit as they determined the CS's residence is a countable resource and not considered homestead property.
7. Appellant's Authorized Representative disputes the Agency's determination that the CS's homestead property meets the criteria under continuing care retirement communities.

CONCLUSIONS OF POLICY

Policy

“Continuing Care Retirement Communities” and Life Care Communities” mean housing communities that provide different types of care based on each resident’s need over time. CCRCs and life care communities may range from independent living in an apartment to assisted living to full time care in a nursing facility. Residents may move from one setting to another, based on their needs, but continue to live as part of the community. Generally, CCRCs require a written contract and an entrance fee, in addition to monthly fees. CCRCs and life care communities may also be philanthropic facilities.

An “entrance fee” means a payment generally required for admission to a CCRC and life care community and may vary in amount based on the type of housing accommodations and/or type of care.

For purposes of determining or redetermining eligibility for medical assistance on or after February 8, 2006, an individual’s entrance fee for admission to a CCRC or life care community must be considered an available resource to the individual when all of the following conditions are met:

- (1) The entrance fee can be used to pay for care, under the terms of the entrance contract, should other resources or income of the individual be insufficient; and

STATE HEARING DECISION CONTINUATION

- (2) The individual is eligible for a refund of any remaining entrance fee when the individual dies or terminates the contract and leaves the CCRC or life care community; and
- (3) The entrance fee does not confer an ownership interest in the CCRC of life care community.

Ohio Admin. Code § 5101:1-39-02.2 (Oct. 2006)

Analysis

The only issue to be addressed is the Agency's characterization of the Community Spouse's primary place of residence as a countable resource for determining Medicaid eligibility. The couple sold their home in Dayton, Ohio in 1997 and purchased a retirement home at SpringMeade Retirement Community. A Residency Agreement was signed along with the purchase of a specific retirement home on or about 10/02/1997. The Agency has characterized the couple's home as meeting the criteria under the definition of a Continuing Care Retirement Community or CCRC. The AR is disputing the Agency's determination that the residence meets the definition of a CCRC and, therefore, is being counted as a resource in the resource assessment process.

Testimony was presented by the AR along with representatives from the facility itself. After careful consideration of the testimony and evidence presented, this Hearing Officer finds that the Agency failed to prove by a preponderance of the evidence that its determination that the couple's home meets the criteria under the CCRC rule. The CS lives in the retirement home and retains equity. He does not receive any type of services from the nursing facility. Testimony was also presented disclosing that SpringMeade Retirement Community only offers independent living housing and is not a multiple level care community. The couple established their principle residence at SpringMeade in 1997. They resided together at the property until 07/20/07 when the Appellant went to live in the NF due to her health. The CS remains in the couple's home.

Based on the testimony and evidence presented at the state hearing, this Hearing Officer finds the weight of the evidence lies with the Appellant. The Agency has failed to support the Appellant's retirement home meets the criteria outline in the regulation cited in the above policy section. Therefore, it is recommended that the appeals be SUSTAINED.

HEARING OFFICER'S RECOMMENDATION

Based on the record before me, I find

Issue #1/Appeal #1375369 should be SUSTAINED.

Issue #2/Appeal #1375370 should be SUSTAINED.

Issue #3/Appeal #1375372 should be SUSTAINED.

Issue #4/Appeal #1375373 should be SUSTAINED.

The Agency is directed to redetermine the Appellant's application for Medicaid assistance retro-active to the initial date of application for Medicaid assistance filed on 06/21/07. The Agency's

STATE HEARING DECISION CONTINUATION

redetermination shall be based on the fact that the CS's residence does not meet the criteria of Continuing Care Retirement Community as defined in the above cited regulation and, therefore, is exempt as a countable resource. The Agency shall notify the Appellant and AR of their redetermination in writing via the appropriate notice affording full hearing rights.

FINAL ADMINISTRATIVE DECISION AND ORDER

Finding the Hearing Officer's decision to be supported by the evidence, the recommendations above are adopted, and

Issue #1/Appeal #1375369 is SUSTAINED with COMPLIANCE.

Issue #2/Appeal #1375370 is SUSTAINED with COMPLIANCE.

Issue #3/Appeal #1375372 is SUSTAINED with COMPLIANCE.

Issue #4/Appeal #1375373 is SUSTAINED with COMPLIANCE.

COMPLIANCE REQUIRED

Ohio Admin. Code § 5101:67-03(B)(1)(a) requires compliance be achieved for decisions involving public assistance, social services, or child support services 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).

Hearing Authority

February 13, 2008

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 TOLEDO District hearing section at 1-866-635-3748.

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, Bureau of State Hearings, P.O.BOX 182825, Columbus, OH 43218-2825 or fax: (614) 728-9574.

STATE HEARING DECISION CONTINUATION

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 Bureau of State Hearings 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.

Aviso a la Apelante

Esta es la decisión estatal administrativa de su caso. Todos los documentos y materiales presentados como prueba en la vista o de otra manera radicados componen el récord administrativo. El récord administrativo será mantenido por el Ohio Department of Job and Family Services.

Si usted cree que esta decisión estatal administrativa es errónea, usted puede solicitar una apelación administrativa escribiendo al: Ohio Department of Job and Family Services, Bureau of State Hearings, P.O. Box 182825, Columbus, Ohio 43218-2825 o facsímil (614) 728-9574. Su solicitud debe indicar por qué usted piensa que la decisión administrativa es errónea. Usted puede completar la solicitud de apelación incluida con esta decisión. Su solicitud escrita o formulario de apelación tiene que ser recibido por el Bureau of State Hearings dentro de los 15 días calendario desde la fecha en que esta decisión es expedida. (Si el 15to. día recae sobre un fin de semana o un día feriado, esta fecha límite es extendida al próximo día laborable). Durante el período de 15 días de apelación administrativa, usted o su representante pueden solicitar una copia gratuita del récord administrativo y de la grabación de la vista llamando al Bureau of State Hearings al 1-866-635-3748 (seleccione la opción 1 del menú principal).

Si usted quiere información sobre servicios legales gratuitos pero no sabe el número de su oficina local de servicios legales, usted puede llamar al Ohio State Legal Services Association, gratuitamente, al 1-800-589-5888, para el número local.

Appendix

APPENDIX

Appellant's Exhibits

1. Appellant's State Hearing Request (2 pages).
2. Appeal Summary and statement of facts presented by Appellant's AR (3 pages).

Agency's Exhibits

A. Agency's Appeal Summary including verification of resources, contract of residency and purchase of couple's current home, Medicaid regulations pertaining to resources and CCRCs, case record comments, notice of denial (64 pages).