

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

ADMINISTRATIVE APPEAL SECTION

In Re Appeal of:

Docket Number:	AA-3540	
Appeal No(s)	1439101	MED
AG No.	5077651817	
Hearing Request Date:	09/24/2008	
Hearing Decision Date:	01/26/2009 / SBH	
Appeal Request Date:	02/03/2009	
Agency:	HAMILTON CDJFS	

Administrative Appeal Decision

The appellant, through her representative, requests an administrative appeal of the state hearing decision issued on January 26, 2009. The state hearing decision sustained the appellant's appeal, finding that the Hamilton County Department of Job and Family Services (Agency) failed to establish the correct amount that the appellant improperly transferred to her son. The state hearing officer ordered the Agency to change the amount of the improper transfer from \$33,211 to \$29,245.49 and change the period of restricted coverage to five full and one partial month of ineligibility. The appellant appeals, stating that the Agency did not provide a basis of how the improper transfer amount was calculated. We have to agree. The state hearing does not explain how the Agency arrived at the \$29,245.49 improper transfer amount and only addresses the transfer on a single certificate of deposit which is the basis for a portion of the improper transfer.

Improper Transfer of Resources

OAC 5101:1-39-07 defines an "improper transfer" as "a transfer on or any time after the look-back date, . . . of a legal or equitable interest in a resource for less than fair market value for the purpose of qualifying for Medicaid, a greater amount of Medicaid, or for the purpose of avoiding the utilization of the resource to meet medical needs or other living expenses." "The "look-back date" means the earliest date on which a penalty for transferring assets for less than fair market value can be assessed. The look-back date is sixty months prior to the baseline date."¹ "The "baseline date" means

¹ OAC 5101:1-39-07(B)(9)

the first date upon which the individual has both applied for Medicaid and is institutionalized.”²

The rule provides that certain types of transfers are presumed to be improper transfers for less than fair market value:

- (1) Any transfer that reduces the individual's resources and brings the value of their remaining resources within the resource limitation;
- (2) Any transfer that has the effect of safeguarding future eligibility by divesting the individual of property that could otherwise be sold and the proceeds then used to pay for support and medical care for the individual;
- (3) Any transfer of income-producing real property; or
- (4) Any transfer by an individual of an exempt home as defined in Chapter 5101:1-39 of the Administrative Code, whether prior to or after the Medicaid application date.
- (5) For an asset to be considered transferred for fair market value or to be considered to be transferred for valuable consideration, the consideration received for the asset must have a monetary value.
- (6) A transfer for love and consideration is not considered a transfer for fair market value. Clear and convincing evidence is required to rebut the presumption that it is an improper transfer.³

The rule allows the appellant to rebut a presumption of an improper transfer. “The individual must first provide a full written accounting and documentation of the transfer which clearly explains the following:

- (a) The purpose for transferring the resource; and
- (b) The attempts to dispose of the resource at fair market value; and
- (c) The reasons for accepting less than fair market value for the resource; and
- (d) The individual's relationship, if any, to the person to whom the resource was transferred.

² OAC 5101:1-39-07(B)(3)

³ Ohio Admin. Code 5101:1-39-07(C)

(2) The individual has the burden of rebutting the presumption of improper transfer by clear, convincing, and credible evidence.

(a) The evidence may include, but is not limited to: any documentary evidence such as contracts, realtor agreements, sworn statements, third party statements, medical records, financial records, court records, and relevant correspondence.

(b) Evidence which is provided must be reviewed by the administrative agency to determine if it is clear, convincing and credible.

(c) Evidence that is not clear, convincing and credible does not rebut the presumption of an improper transfer.”⁴

Analysis

The appellant is ninety-three years old. She applied for Medicaid on May 22, 2008. The Agency approved the appellant’s application on September 11, 2008 for Medicaid with a period of restricted eligibility due to an improper transfer of \$33, 211. The Agency reduced that amount to \$29,245.49 at the hearing. A review of the state hearing record indicates that the Agency’s improper transfer period was based on several transfers from the appellant to her son. The transfers that were the basis of the improper transfer period were:

TRANSFERS

2/28/06	\$2,181.41	appellant’s Scottrade account was closed and deposited to son’s money market account
1/18/07	\$168.26	transfer from appellant’s checking to son’s Van Kempen account
2/20/07	\$29,829.79	Huntington CD 07655829118 transferred from mom to son’s money market account
2/20/07	\$9916.03	Huntington CD 07655949001 transferred from mom to _____ son’s money market account
<u>Total transfer \$42,095.49</u>		

From the total amount transferred, the Agency deducted the following amounts that were conveyed from the appellant’s son to his mother.

DEDUCTIONS:

2/1/06	\$500.00	Transfer from son’s savings to appellant
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⁴ Ohio Admin. Code 5101:1-39-07(D)

4/3/06	\$350.00	Transfer from son's savings to appellant
<u>2/21/07</u>	<u>\$12,000.00</u>	<u>Transfer to Union Savings CD</u>
Total reconveyed \$12,850		

Based on those figures, the Agency determined that a total of \$29,245.49 was improperly transferred.

The state hearing addressed the transfer of Huntington CD 07655829118 from the appellant to her son. The appellant had owned this certificate of deposit until August 17, 2004 when she removed her name from the account. The appellant's son and his wife were then sole owners of the account. On January 19, 2007, the son reconveyed the certificate of deposit to the appellant, adding her name as an owner. The appellant and her son were joint owners at that time. One month later the certificate was cashed out and the funds placed in the son's Edward Jones money market account. The appellant argued that the transfer should not be considered improper since the money belonged to the son following the August 2004 transfer. The hearing officer disagreed. Even though the hearing officer found that the August 2004 action was not subject to an improper transfer, she found that the February 2007 transfer back from the appellant to her son was the basis for an improper transfer. We agree. The assets at issue originally belonged to the appellant. The initial transfer in 2004 was an improper transfer, but because it was outside of the look-back period, it could not be the basis of a restricted eligibility period. However, by reconveying the assets to the appellant and back to the son in 2007, the transfer came within the look-back period and is a proper basis for a finding of an improper transfer.

The appellant, however, raised several other issues in the state hearing record regarding the figures used in the improper transfer calculation. The appellant argued that the \$168.26 transferred from the appellant to her son's Van Kempen account was used for the appellant's expenses. She further argues that the \$2,181.41 transferred by the appellant from Scot Trade account 24190463 was reopened the same day as account 76979984 in both the appellant's and her son's names. Additionally, the appellant cites additional reconveyances of AIM/Van Kampen redemptions totaling \$32,700 from 2004 to 2008. The appellant claims that the AIM/Van Kampen account was in the son's name, but that redemptions were deposited into the appellant's checking account for her expenses. The Agency disregarded these conveyances

because there was no allegation that these were the funds that had been improperly transferred. Ohio Admin. Code 5101:1-39-07(M)(4) provides that, "When only part of the asset or its equivalent value is returned , a restricted medicaid coverage period can be modified but not eliminated." The rule clearly provides that the exact assets need not be returned as long as the equivalent value is returned. Since some of these AIM/Van Kampen redemptions occurred after the improper transfers, they could be a basis for reducing the improper transfer period. The appellant also cites a \$2000 transfer on February 5, 2007 from the son's AIG account to open an Edward Jones money market account for the appellant. None of these issues were addressed in the state hearing decision.

DECISION

Accordingly, we ORDER that the state hearing decision be VACATED and REMANDED to the state hearing officer to address the additional issues identified above and issue a supplemental state hearing decision.

Administrative Appeal Officer

CONCUR:

Administrative Appeal Officer

Chief Legal Counsel

Date of Issuance: February 13, 2009

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, HAMILTON CDJFS

FOGLEA, HARTS02, Bureau of State Hearings