

STATE HEARING DECISION

ODHS 4005 (Rev. 9/94)

County WAYNE	District Hearings Section CANTON	Assistance Group Name		Assistance Group Number
Place of Hearing WAYNE CDHS	Initial Hearing Date 12/30/2002	Rescheduled Postponed to 02/04/2003	Rescheduled Postponed to 01/14/2003	Rescheduled Postponed to

Appellant/Representative	Appellant Representation
	Local Agency Representation Ms. Nancy Britton, Eligibility Referral Specialist II

Date Notice Mailed 12/11/2002	Date Received by Local Agency	Date Received by ODHS 12/17/2002	Date Appeal Summary Received 12/20/2002	Date Scheduling Notice Mailed 01/24/2003
Appeal Number(s)/Program(s) 1099398/MED				

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 CANTON District hearing section at 1-800-686-1569.

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 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 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 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.

ISSUE SECTION

On 12/11/02 the Wayne County Department of Job and Family Services (agency) denied Medicaid. The action was based on Ohio Administrative Code (OAC) Rule 5101:1-40-14. The issue on appeal is whether the community spouse (CS) is entitled to a reallocation of resources from the institutionalized spouse (IS). The decision finds that the CS is entitled to a reallocation of resources; the appeal is sustained.

PROCEDURAL MATTERS

On 12/11/02 notice of denial was mailed. A state hearing request was received on 12/17/02. By notice mailed on 12/19/02 the hearing was scheduled to be heard on 12/30/02; it was

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Appeal(s) SUSTAINED 1099398	Date Issued 03/05/2003	Compliance 1099398
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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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rescheduled by notice mailed on 1/2/03 for 1/14/03; it was rescheduled again by notice mailed on 1/24/03 and was heard on 2/4/03.

FINDINGS OF FACT

1. The IS entered the nursing facility on 11/15/02. The total combined resources of the couple were determined to be \$20,886.
2. The application for Medicaid was made on 11/25/02.
3. The CS has income of \$494 per month in unearned income. She would require \$1,119 in monthly income in order to bring her up to the Minimum Monthly Maintenance Needs Allowance (MMMNA) standard of \$1,613 (\$1,493 plus excess shelter of \$120). The IS has monthly income of \$1,116.
4. The following annuity estimates show the amount of resources that would produce \$1,119 in income per month:

ING (USG Annuity)	\$48,160.41	Lincoln	\$101.424.77 (rejected)
First Colony	\$42,744.28		
Jackson	\$51,590.59		

The average of these estimates is \$47,498.42.

5. The appellant's representative and the agency representative were contacted in regard to the estimates. They were advised that the Lincoln estimate submitted at the state hearing had an installment refund which is not acceptable and was rejected by the Hearing Officer. The appellant's representative was given an opportunity to provide another estimate in order to average three estimates. The appellant's representative provided a fourth estimate to the agency which was forwarded to the Hearing Officer; it was received on 3/4/03 and found to be acceptable.

CONCLUSIONS OF POLICY

Policy

OAC Rule 5101:6-7-02 (C)(1), effective 10/1/97, provides that if either the institutionalized

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spouse (IS) or the community spouse (CS) disagrees with the attribution of resources or believes that the income generated by the resources attributed to the CS in addition to the CS's income is not enough to meet the MMMNA, a state hearing can be requested.

Paragraph (C) of this rule provides that if the hearing establishes that the CS's income and the income generated by the CS's resources allowance is inadequate to raise the CS's income to the MMMNA, there shall be substituted a resource amount adequate, when combined with the CS's income, to provide the MMMNA. The hearing decision must specify the amount of additional transfer authorized and must increase the CS's resource allowance by the same amount.

Action Change Transmittal Letter No. 148 provides that a single premium lifetime immediate payment annuity(SPLIMPA) is an annuity that provides monthly payments for the annuitant's lifetime only. The annuity is purchased with a one time single lump sum payment and the annuity payments begin within 90 days. An annuity that is a delayed payment annuity, a time-period certain (e.g., 10 year certain), an annuity with a death benefit, or an annuity that guarantees return of the principal is not a SPLIMPA and cannot be used to determine the amount of additional resources needed to generate the difference between the CS's gross income and the MMMNA.

Analysis

The record developed at hearing establishes that the appellant applied for Medicaid 11/25/02. The application was denied due to excess resources and the appellant's representative was advised that she needed to obtain three annuity estimates to show the amount needed to produce \$1,119 in monthly income. The appellant's representative submitted three annuity estimates during the state hearing; however, after review, it was determined that one of the estimates had an installment refund which was not acceptable. The appellant's representative and the agency were advised of this and the appellant's representative was given an opportunity to submit an additional estimate. On 3/4/03 a fourth estimate was received which meets the criteria for a SPLIMPA. The hearing officer has reviewed all three proper estimates and has determined that the average of these estimates is \$47,498.42. The CS's income of \$494 falls well below the MMMNA of \$1,613 by \$1,119. The combined total resources at the time of application were \$20,866. The estimates show that in order to produce \$1,119 a total of \$47,498.42 was needed. As the couple's resources falls below this amount a transfer of resources is appropriate.

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HEARING OFFICER'S RECOMMENDATIONS

Based on the record before me, I find the appeal should be sustained (there was no CDJFS error) and the agency be directed to allow the IS's resources to be transferred to the CS and Medicaid eligibility be determined from the 11/25/02 date of application. It is further recommended that the agency be directed to send appellant and representative written notice of the action taken as a result of this decision and attach a copy of this notice to the ODJFS 4068, State Hearing Compliance form. If the appellant or representative disagree with the action taken a result of this decision, they retain the right to a state hearing on the issue.

FINAL ADMINISTRATIVE DECISION AND ORDER

Finding the hearing officer's decision to be supported by the evidence, the recommendations above are adopted, and appeal 1099398 is SUSTAINED. The agency is required to comply with the terms set forth in the hearing officer's recommendation above. OAC Rule 5101:6-7-03(B)(1)(a) requires compliance with this decision within fifteen calendar days from the date the decision is issued, but in no event later than ninety calendar days from the date of the hearing request. Compliance shall be promptly reported to the Bureau of State Hearings, ODJFS, via "State Hearing Compliance", ODJFS 4068, accompanied by appropriate documentation.

Exhibits entered into the record were:

- A. Resource Assessment Worksheet
- B. Resource transfer worksheet
- C. Monthly income allowance computation worksheet
- D. Determination of income and resources allocation
- E. Request for estimates
- F. SPLIMPA hearing information
- G. Running record comments
- H. Individual demographics
- I. Monthly unearned income
- J. Notice of denial 12/11/02
- K. Resource assessment worksheet
- L. Resource transfer budget

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M. Estimates

Date Issued: 03/05/2003