

IN THE OHIO DEPARTMENT OF JOB AND FAMILY SERVICES
BUREAU OF STATE HEARINGS

ADMINISTRATIVE APPEAL SECTION

IN RE APPEAL OF:

DOCKET NO.	2006-AA-0258
APPEAL No(S).	1269634 / MED
AG No.	
HEARING REQUEST DATE:	01/27/2006
HEARING DECISION DATE:	02/24/2006 / EAF
APPEAL REQUEST DATE:	03/13/2006
AGENCY:	Franklin CDJFS

Administrative Appeal Decision

By letter received March 13, 2006, Appellant, through Representative, has requested an Administrative Appeal of a state hearing decision rendered February 24, 2006. The state hearing decision overruled the Appellant's appeal, finding that the Franklin County Department of Job and Family Services (Agency) appropriately proposed termination of the Appellant's Medicaid for the Disabled benefits due to resources in excess of the \$1500 Medicaid resource limit. At issue is the Appellant's interest in a trust created by her mother for her benefit.

1. PROCEDURAL ARGUMENTS

The Appellant raises four procedural arguments related to the state hearing process. First, he objects to the fact that the hearing authority, not the hearing officer issued the state hearing decision. Ohio Administrative Code sets forth this process for issuing hearing decisions.

The bureau of state hearings is responsible for preparing and issuing state hearing decisions under the authority of the director of the Ohio department of job and family services. For this purpose, the chief of the bureau of state hearings shall designate hearing authorities to review the findings, conclusions, and recommendations of the hearing officers and to issue decisions under the authority of the director, ODJFS.¹

The Appellant's argument is rejected.

The Appellant argues that the state hearing officer misinterpreted the burden of proof because ODJFS failed to obtain evidence from the Trustee as to her position regarding the availability of funds from the trust. As will be seen below, however, the language of the rule bases the availability of the trust on the language of the trust document, not on the intention or opinion of

¹ Ohio Admin. Code 5101:6-7-01(A)(1)

the Trustee. The trust was presented into evidence, its availability is a legal question and does not require any testimony from the Trustee. The Appellant's second argument is rejected.

Finally, the Appellant argues that the Agency's termination notice was deficient because it failed to reference the correct administrative code cite. The Appellant also argues that, because of this, the Agency's appeal summary which cites the correct code sections should be stricken. The Appellant provides no authority for his position that the notice was deficient or that the appeal summary should be stricken from the administrative record. We assume he is relying on Ohio Admin. Code 5101:6-2-03 that provides:

The notice shall contain a clear and understandable statement of the action the agency has taken and the reasons for it, cite the applicable regulations, explain the individual's right to and the method of obtaining a county conference and a state hearing, and contain a telephone number to call about free legal services.

The Appellant objects because the notice cites Ohio Admin. Code 5101:1-39-34, instead of Ohio Admin. Code 5101:1-39-27.1 as the basis for the denial. However, any error in that regard was harmless because the Appellant had counsel at the hearing who pointed out the mistake and did not ask for a continuance to allow more time to prepare. As noted by the state hearing officer, the Appellant's representative was clearly aware of the reasons for the Agency's denial and prepared to address those issues at the state hearing. The Appellant's third and fourth procedural arguments are also rejected.

2. FACTS

The Appellant is a sixty-two year old disabled woman residing in a nursing facility. She has been receiving Medicaid for the Disabled since 1999. The Appellant's mother created a Trust Agreement in 1983. The trust was to be administered for the mother's benefit during her lifetime. Upon the mother's death, the trust provided:

The Trustee shall pay such parts of the income and principal of this trust to or for the benefit of [the Appellant], daughter of the Grantor, for her support, maintenance and health, in the Trustee's sole discretion.

Upon the Appellant's death, the trust is terminated and the benefits are distributed to the remainder beneficiaries. The Appellant's mother died on 03/12/05. The current value of the trust is approximately \$350,000. On 12/22/05, the Trustee filed an action in Franklin County Probate Court for Declaratory Judgment or Reformation of the Trust. On 01/11/06 the Agency proposed termination of the Appellant's Medicaid for the Disabled benefits due to the value of the trust.

3. STATUTORY AND REGULATORY FRAMEWORK

Ohio Admin. Code 5101:1-39-27.1(C)(4) and O.R.C. 5111.151(G) contain analogous provisions regarding the treatment of trusts established by a third party for the benefit of a Medicaid applicant/recipient. There appears to be no question that this trust was established by a third party for the Appellant's benefit and should be analyzed under these provisions. Ohio Admin. Code 5101:1-39-27.1(C)(4) describes how the availability of these trusts is determined.

(b) Any portion of a trust in this category is an available resource only if the trust permits the trustee to expend principal or corpus or assets of the trust for the applicant/recipient's medical care, care, comfort, maintenance, health, welfare, general well-being, or a combination of these purposes. The trust will still be considered an available resource even if the trust contains any of the following types of provisions:

(i) Any provision that prohibits the trustee from making payments that would supplant or replace medicaid or public assistance, or other government assistance;

(ii) Any provision that prohibits the trustee from making payments that would impact or have an effect on the applicant/recipient's right or ability or opportunity to receive medicaid, or public assistance, or other government assistance.

(iii) Any provision that attempts to prevent the trust or its corpus or principal from being counted as an available resource under this rule.

The rule, however, provides the following exceptions.

(c) A trust in this category that would normally be considered an available resource shall not be counted as an available resource under the following circumstances.

(i) If the trust contains a "clear statement" requiring the trustee to preserve a portion of the trust for another beneficiary or remainderman, . . .

(ii) If the trust contains a "clear statement" requiring the trustee to use a portion of the trust for a purpose other than the medical care, care, comfort, maintenance, welfare, or general well-being of the applicant/recipient,. . .

(iii) If the trust contains a "clear statement" limiting the trustee to making fixed periodic payments, . . .

(iv) If the trust contains a "clear statement" that requires the trustee to terminate the

trust if it is counted as an available resource, . . .

(v) If any person obtains a judgment from a court of competent jurisdiction that expressly prevents the trustee from using part or all of the trust for the medical care, care, comfort, maintenance, welfare, or general well-being of the applicant/recipient, then the trust or that portion subject to the court order shall not be counted as a resource.

(vi) If the trust is specifically exempt from being counted as an available resource by this rule, another rule, the Ohio Revised Code, or the U.S. Code, then it shall not be counted as a resource.

(vii) If the applicant/recipient presents a final judgment from a court demonstrating that he or she was unsuccessful in a civil action against the trustee to compel payments from the trust, then it shall not be counted as an available resource.

(viii) If the applicant/recipient presents a final judgment from a court demonstrating that in a civil action against the trustee they were only able to compel limited or periodic payments, . . .

(ix) If the applicant/recipient provides written documentation showing that the cost of a civil action brought to compel payments from the trust would be cost prohibitive, then it shall not be counted as an available resource.

4. JURISDICTION OF THE STATE HEARING AND THE PROBATE COURT

The Appellant's main argument is that the Franklin County Probate Court has jurisdiction over the matter of the Appellant's interest in the trust and that the Agency is prohibited from taking any action with regard to the Appellant's Medicaid eligibility while the probate action is pending. The issue of the jurisdiction of the probate court over Medicaid determinations was addressed in *In re Guardianship of Stowell*. In that case, the Court of Appeals clearly delineated the jurisdiction of ODJFS and of the probate court. The Court stated:

Pursuant to R.C. 5111.01, appellant may provide medical assistance to indigent persons under the Medicaid program. The determination of whether a person is entitled to this assistance is made by the county Department of Human Services. See R.C. 5111.012. If an individual wishes to appeal the determination of the county Department of Human Services, it must do so through the appeal procedure set forth in R.C. 5101.35, which gives the ultimate determination to the director of appellant. The director's decision may then be appealed to the common pleas court via R.C. 119.12. This statutory scheme sets forth a method of determining Medicaid eligibility where eligibility is initially determined by the

county Department of Human Services. It is only after an administrative decision has been issued that the common pleas court has jurisdiction over the Medicaid determination.

The probate court is [*12] a court of limited jurisdiction which can only exercise those powers conferred upon it by statute and by the Ohio Constitution. The probate court's jurisdiction is set forth in R.C. 2101.24, and it includes the power to issue orders and to convey interest in real property. Thus, the probate court's determination to permit the transfer of Stephen's property to appellees was within its jurisdiction; however, the probate court's determination of Stephen's eligibility for Medicaid is not.²

The matter currently before the Probate Court is the Appellant's Motion for Declaratory Judgment or Reformation of the Trust, not the Appellant's eligibility for Medicaid. Appellant's Action for Declaratory Judgment, insofar as it requests that the Court find that the trust is unavailable for Medicaid purposes, is requesting relief outside the Court's jurisdiction.

The determination of the Probate Court, however, could affect the determination of the Appellant's Medicaid eligibility. Ohio Admin. Code 5101:1-39-27.1(G) provides, in part, that a trust shall not be considered available:

(v) If any person obtains a judgment from a court of competent jurisdiction that expressly prevents the trustee from using part or all of the trust for the medical care, care, comfort, maintenance, welfare, or general well-being of the applicant/recipient, then the trust or that portion subject to the court order shall not be counted as a resource.

(vii) If the applicant/recipient presents a final judgment from a court demonstrating that he or she was unsuccessful in a civil action against the trustee to compel payments from the trust, then it shall not be counted as an available resource.

The action currently pending in Probate Court clearly does not meet the requirements of subsection (vii) as the Appellant is not attempting to compel payments from the trust. In fact, the purpose of the Probate Court action is an attempt to make the trust unavailable to the Appellant. However, the probate action could result in "a judgment from a court of competent jurisdiction that expressly prevents the trustee from using part or all of the trust" for the Appellant. For example, if the Court decides to reform the trust meet the requirements of O.R.C. 1339.51 as the Appellant

² In re Guardianship of Stowell, 1995 Ohio App. LEXIS 3198 (Ohio Ct. App. 1995)

requests, the trust would then be considered an exempt trust and would not be considered available under Ohio Admin. Code 5101:1-39-27.1(C)(3)(d). Currently, however, there is no such order from a court of competent jurisdiction, and it was appropriate for the Agency to review the availability of the trust for Medicaid purposes.

The Appellant objects to the use of the administrative hearing process and claims that it is attempting to usurp the authority of the Probate Court. As noted above, the *Stowell* case clearly delineates the jurisdiction of the probate court and ODJFS, making clear that issues of Medicaid eligibility are not properly within the probate court's jurisdiction. The issuance of the Medicaid termination notice after the initiation of the Probate action was not an attempt "to game" the system as the Appellant claims. The Agency was not notified prior to the Appellant initiating the probate action that this resource existed. Once aware of its existence, the Agency must determine its availability.³

5. AVAILABILITY OF THE TRUST

The Appellant argues that the state hearing decision erred in relying on Ohio Admin. Code 5101:1-39-27.1, instead of O.R.C. 5111.151, despite the fact that their provisions relating to the availability of the trust are nearly identical. As the hearing officer noted, Ohio Admin. Code 5101:6-7-01 clearly indicates that:

The hearing officer's conclusions of policy and recommendations shall be based solely on published ODJFS regulations, or local agency policy adopted pursuant to options authorized in state law, except when these regulations and policies are silent and reference to the Revised Code or other statutory source is necessary to resolve the issue.

This matter can clearly be resolved from a plain reading of 5101:1-39-27.1(b) which provides:

(b) Any portion of a trust in this category is an available resource only if the trust permits the trustee to expend principal or corpus or assets of the trust for the applicant/recipient's medical care, care, comfort, maintenance, health, welfare, general well-being, or a combination of these purposes.

The trust at issue clearly allows the Trustee, in her discretion to pay income and principal, "for the benefit of [the Appellant], daughter of the Grantor, for her support, maintenance and health." The

³ Ohio Admin. Code 5101:1-39(C)

Appellant's reliance on *Young v. ODHS*⁴ is misplaced as *Young* involved a trust containing language that limited the Trustee's ability to make payments for the purpose providing for anything which could otherwise be provided for her by governmental assistance. No such provision exists here, and in fact, use of such provisions is now prohibited by both the rule and the statute. Finally, the Appellant argued that the current rule should not be applied to this trust as it was created in 1983. Ohio Admin. Code 5101:1-39-27.1 speaks to the effective date of the rule:

(D) This rule supercedes all previous rules governing trusts and the CDJFS shall apply it prospectively to all determinations and redeterminations of eligibility for all applicants and recipients. Any determination or redetermination made in accordance with this rule shall not be affected by or governed by any prior eligibility determinations made under former rules governing trusts nor shall this rule be applied retroactively to determine an applicant/recipient's eligibility or liability for any prior period.⁵

The date at issue is not the date that the trust was established, but the date that Medicaid eligibility is being reviewed. The state hearing decision properly determined that the trust was an available asset to the Appellant.

DECISION

Accordingly, we hereby ORDER that the decision be AFFIRMED.



Margaret Adams
Administrative Appeal Officer

CONCUR:



Robert J. Frankart
Administrative Appeal Officer



Robert Mullinax, Attorney-at-Law
Chief Legal Counsel

DATE OF ISSUANCE March 27, 2006

⁴ *Young v. ODHS* (1996) 76 Ohio St. 3d 547

⁵ Ohio Admin. Code 5101:1-39-27.1

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 a 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 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, Franklin County Department of Job and Family Services
Hearings Supervisor, EAF, Bureau of State Hearings
Mary Mynatt
Appellant
Appellant's Representative