

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

In the matter of:

<u>Case Number:</u>	<u>County:</u>	
5059914779	SUMMIT	
<u>Appeal:</u>	<u>Program:</u>	<u>Disposition:</u>
1310973	MED	OVERRULED
No Compliance Required		
Decision Date:	03/06/2007	
Request Date:	10/10/2006	
Hearing Officer:	DALE ZIVIC	

State Hearing Decision

ISSUE SECTION

As a need based program, Medicaid eligibility is subject to verification of resources. Appellant was apprised of necessary verifications but failed to provide them. The appeal should be overruled as documentation does not support that notwithstanding the failure to verify resources, there continue to be resources unaccounted for by appellant's representatives.

PROCEDURAL MATTERS

Appellant requested a state hearing from the Bureau of State Hearings on 10/10/06 (see exh. 1). The hearing was scheduled on 10/17/06 for 11/1/06. The hearing was attended by appellant's attorney, the agency hearing officer, Debra Hull and the worker of record, Lynn Zaber. An appeal summary was submitted prior to the hearing. The record was left open for submission of additional evidence by appellant's attorney.

FINDINGS OF FACT

1. Appellant is a nursing home resident for whom an application was filed on 5/15/06 for Medicaid vendor payment.
2. Previously, appellant was a defendant in a suit brought about by the nursing home in which she resides for payment of past care.
3. The judgment entry from this litigation, (Exhibit A), ordered that an annuity created in 5/04 be dissolved and deposited into an IOLTA account. From that account, a total of \$107,923.00 be paid for all past nursing care of \$84,182, interest of \$7,500 and additional funds of \$16,241 for future charges.
4. The remainder of the funds in this IOLTA account of \$133,531.80 was to be disbursed to appellant "who shall use these funds to cover the on-going costs of her continuing nursing home care."
5. The face to face interview was conducted with appellant's POA who is her nephew and the agency requested documentation of the distribution of the \$133,531.80 as it appears that the funds were not held for future nursing home care, but were disbursed by the POA.
6. Appellant's POA provided no documentation of the disbursement of funds, so that on 9/19/06 the application was denied.

STATE HEARING DECISION CONTINUATION

7. Disregarding the order of the court to retain \$133,531.80 for appellant's future nursing home care, the POA distributed the funds for bills accrued while appellant appealed the original denial of a 5/04 Medicaid application that was ultimately denied due to a disqualifying transfer. That denial was appealed through the state hearing process, administrative appeal process and ultimately litigated in the court of common pleas.
8. Appellant's attorney, who was the only person present at this and the previous state hearing, presented to the agency a listing by the POA of where the funds were disbursed (Exh. B).
9. The list contains 12 payments for "Bank Charges, Taxes, Drugs, Gifts, Cash to Louis, Dr. Romig, Appeals-Schafer, Dr. Kerek, Wheelchair, Dr. Weissfeld, Personal Needs Account and Repayment of loan for Garth". Of these 12, cancelled checks (presumably, as the back of the checks are not provided) are provided for: "Rose Howes" (who is not part of the list of 12) **dated 8/22/04** in the amount of \$110, "Dr. Romig" **dated 5/1/04** in the amount of \$1650, and "Mitchell's Wheelchair Service" **dated 8/31/04** in the amount of \$76. These are Exhibits C-E.
10. Appellant's attorney also presented some receipts for Dr. Weissfeld, **payment date 3/31/05** for \$27.54, Dr. Kerek **payment date in 2005** for \$54.92 and 7 receipts listed as "personal account" with varying dates, **7/03, 10/03, 9/22/?, 2/13/04, 4/19/04, 9/9/04 and 3/27/06** totaling \$940. These are Exhibits F-H.
11. Exhibit K is a statement from IRS documenting that at some time prior to the date of this letter, 12/27/04, appellant paid \$9,352 in past due taxes. Date of payment is unknown.
12. Appellant receives Medicare, AARP private medical insurance (as evidenced on Exhibits F and G). No mention was made of what, if any, of appellant's medical bills were subject to coverage under these two insurances.
13. Appellant receives social security of approximately \$1100 monthly. No mention was made as to how appellant's income was or was not used for her monthly expenses including nursing home care. Given the suit brought about by the nursing home, it is not evident that she was paying the social security to the nursing home.
14. Of particular concern is the disbursement by the POA to himself in the amount of \$87,015.54 noted as "Repayment of loan for Garth"; (Exhibit B).
15. Appellant's attorney faxed Exhibit 2 on 11/8/06 which is the POA's credit union account statement for 4/04 showing a transfer of \$87,000 from one of his accounts on 4/24/04 into his checking account.
16. Exhibit 3, faxed on 11/8/06 is the POA's checking account statement for 5/04 showing transaction of check #1667 in the amount of \$87,015.54 on 5/7/04.
17. Exhibit I, is that check made out to "Standard Life of Indiana" and designated for "Annuity".
18. Exhibit J, is a check (#1666) written on 4/23/04 from a joint account of appellant and the POA, to "Standard Life of Indiana" in the amount of \$187,804.84 and designated for "Annuity".
19. According to these two checks, the purchase price of the original annuity in 5/04 was \$274,820.38 (\$187,804.84 + \$87,015.54).
20. According to the annuity contract which was Exhibit A of the hearing decision issued on 7/13/04 (#1178413), the purchase price of the annuity was \$257,220.38, not \$274,820.38 which is a difference of \$17,600. I asked appellant's attorney to provide the reverse sides of the two checks used to purchase the annuity to show that they had been transacted. The only evidence provided to show that the checks were transacted was a bank statement for the check in the amount of \$87,015.54 (Exh. 3). Despite assurances by the attorney, proof of the transaction of the other check was not provided.

STATE HEARING DECISION CONTINUATION

21. Appellant's attorney was the only individual providing testimony on behalf of appellant at the original hearing in 2004 and at this hearing in 2006.
22. Appellant's attorney testified that the \$87,015.54 was reimbursement to the POA for a loan made by the POA to the appellant for the purchase of the original annuity.
23. During the first hearing, as is now in this hearing, there has been no rational explanation by appellants attorney to the questions of: "Why would a 93 year old woman purchase an annuity of over \$250,000 that rendered a monthly payment of \$191?" and "Why would the POA lend appellant money to supplement appellant's initial investment of \$187,000 +, in order to facilitate the greater purchase?"
24. Appellant's attorney's testimony during the first hearing was that the nephew (POA) purchased appellant's home three years prior but did not pay her until giving her \$52,000 which in turn was used to supplement appellant's available resources in purchasing the annuity (see original hearing decision for appeal 1178413, finding #16).
25. The 7/13/04 decision found that the combination of the POA's contribution of \$52,000 plus appellant's contribution did not calculate correctly in the purchase of an annuity of \$257,220.38 (which amount was verified by the annuity contract).
26. Appellant's attorney during the 2004 hearing was unable to explain where the entire amount of monies used to purchase the annuity came from.
27. Appellant's attorney now testifies that the purchased annuity was in the amount of \$274,820.38 (which contradicts the original contract for \$257,220.38 presented at the first hearing) and that this amount consisted of the POA's contribution of \$87,015.64 and appellant's assets of \$187,804.84.
28. Appellant's attorney also testifies that appellant's POA is entitled to recover (whatever) the amount of money that was "loaned" to appellant for the purchase of the annuity despite the fact that at the first hearing she testified that the money given to the aunt to supplement the purchase of the annuity and was remuneration for the home for which he took possession from the aunt three years prior.
29. The POA's accounting of the distribution of appellant's total assets of \$133,531.80 still leaves a balance in appellant's possession of \$25,599.83 which remains to exceed the resource limit of \$1500 for an individual as of the date of the denial by the agency, 9/20/06.
30. At the hearing, Appellant's attorney was advised to reapply for Medicaid as the existence of the \$25,599.83 would render ineligibility even if the other disbursements were considered proper. A reapplication would ensure that notwithstanding the outcome of this decision, appellant would be assured of not losing potential eligibility should all assets be deemed validly disbursed.
31. On 11/8/06 appellant's attorney submitted a copy of a check and receipt (exhibits 4 and 5) from the nursing home for payment of \$25,599.83; the period of coverage for this payment is unknown.
32. Medicaid was denied on 3/20/06 due to resources in excess of the limit of \$1500.

CONCLUSIONS OF POLICY

A failure to cooperate in the application process and/or with the verification requirements shall result in a denial of Medicaid. Ohio Admin. Code § 5101:1-38-01(E) (2004).

A failure occurs when information or verifications are not provided after the county has advised the assistance group what is needed to determine eligibility. Ohio Admin. Code § 5101:1-38-01(E) (1) (2004).

STATE HEARING DECISION CONTINUATION

The assistance group is required to cooperate with the application process. Ohio Admin. Code § 5101:1-38-01.2 (A) (2) (2004).

"The assistance group is responsible for providing the information necessary to establish eligibility and cooperate in the verification process, including providing all required verifications." Ohio Admin. Code § 5101:1-38-02 (A) (6) (2004).

If the assistance group refuses to cooperate with the eligibility determination, the application must be denied. If the assistance group or representative is aware of what verification is required, but refuses to provide them, the application must be denied or assistance terminated because eligibility cannot be established. Ohio Admin. Code § 5101:1-38-02 (A) (6) (a) (2004).

The Medicaid resource limit is \$1500 for an individual. Ohio Admin. Code §5101:1-39-05 (B)(9)

Ohio Admin. §5101: 1-39-05 defines "Resources" as cash, personal property, and real property that an individual and/or spouse has an ownership interest in, **has the legal ability to access in order to convert to cash** (if not already cash), and is not legally prohibited from using for support and maintenance.

Appellant's case now, as in the past, is a presentation of discrepancies, contradictions, vagaries, and unanswered responses to questions. I cannot find anything presented by appellant's attorney credible. She answers questions regarding contradictions as being personally ignorant of the facts and only relaying what the POA has told her. I question why, as a legal representative of appellant, she has no answers to these questions and why the POA, who lives locally, never appears for these hearings.

I find that the recovery of all but \$25,599.83 by the POA as reimbursements for his out of pocket expenses is unsupported on several accounts. First, he provides bills for a period of time that is outside the period that he claims he was covering her expenses (from 2004 to 2006). Secondly, he provides cancelled checks as evidence for reimbursement that are checks drawn on appellant's account for which he is co-signer. Thirdly, there is no explanation why he needed to cover her expenses since she had income and was apparently not making payments to the nursing home during this period of time. And finally, the issue of loan versus payment for appellant's house is a contradiction that has yet to be explained. The differing figures from hearing to hearing in terms of even the amount of the initial annuity purchase are not reconcilable. Very little in this case is concrete. As stated earlier, it remained that as of the date of denial on 9/20/06, appellant owned, at a minimum (and only if the attorney's explanation why the POA is entitled to the corpus of the remaining \$133,531.80 that was to be held for appellant's future nursing home needs) \$25,599.83 which exceeds the resource limit of \$1500.

The appeal should be overruled as the denial on 9/20/06, notwithstanding the allegation that this amount was spent on 11/7/06, was correct at that time.

HEARING OFFICER'S RECOMMENDATION

Based on the record and Agency policy before me, I recommend that appeal 1310973 be overruled; denial of Medicaid on 9/20/06 was correct.

FINAL ADMINISTRATIVE DECISION AND ORDER

STATE HEARING DECISION CONTINUATION

Since I find that the Hearing Officer's recommendation is supported by policy and the evidence, I hereby adopt the recommendation. Thus, appeal 1310973 is overruled.

Hearing Authority

March 6, 2007

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 CLEVELAND 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. 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

Appellant exhibits:

- 1-hearing request
- 2-POA credit union statement of transfer of \$87,000 to checking
- 3-checking account statement showing transfer receipt of \$87,000.
- 4-check to nursing home dated 11/7/06 for 25,599.83
- 5-receipt for nursing home for same

Agency exhibits:

- A. -judgment entry establishing IOLTA account
- B. -POA's list of disbursements
- C. -check to Rose Howes dated 8/22/04 from appellant's account
- D. -check to Dr. Romig dated 5/1/04 from appellant's account
- E. -check to Mitchell's Wheelchair dated 8/31/04 from appellant's account
- F. -receipt for payment to Dr. Weissfeld on 3/31/05
- G. -receipt for payment to Dr. Kerek on ?/23/05
- H. -nursing home receipts for personal account payments on 7/03,10/03,9/22/?,2/04, 4/04,9/04 and 3/06.
- I. -check to Standard Life of Indiana, date not shown, for \$87,015.54 from POA's checking account
- J. -check to Standard Life of Indiana dated 4/23/04 for \$187,804.84 from appellant's checking account
- K. -12/27/04 statement from IRS showing that prior to the date of this letter appellant paid \$9,352 in back taxes at some time (date unknown).