

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

In the matter of:

<u>Case Number:</u>	<u>County:</u>	
5074427401	CUYAHOGA	
<u>Appeal:</u>	<u>Program:</u>	<u>Disposition:</u>
1386694	MED	SUSTAINED
Compliance Required		
Decision Date:	03/19/2008	
Request Date:	12/06/2007	
Hearing Officer:	LYNNE SOLAK	

State Hearing Decision

ISSUE:

I (APPEAL 1386694, MEDICAID)

Eligibility for Medicaid for nursing home vendor payment is dependent, in part, on the outcome of a resource assessment of the value of available resources. The agency has determined the value of the available resources at the time of the appellant's institutionalization in 7/07 is \$177,405.48. Is this amount correct?

The value of available resources as of 7/07 is incorrect. Since the home is not in the name of the appellant or his spouse, but rather in the trust's name, the hearing officer is persuaded that it is not considered an exempt homestead property and is instead an available resource within the trust. As a result, the resource assessment for 7/07 is incorrect and will need to be recalculated.

PROCEDURAL MATTERS:

Notice of the resource assessment was issued on 11/14/07. The appellant's authorized representative disputes the resource assessment and requested a state hearing. The state hearing request (Exhibit 1) was received by the Bureau of State Hearings on 12/6/07. The hearing was originally scheduled for 1/8/08. Upon a show of good cause, the hearing was rescheduled and heard on 3/13/08. An appeal summary (Exhibit A) was received from the agency on 3/13/08.

The appellant's authorized representative, Richard Myers, attended the hearing; the agency was represented by the appellant's current caseworker, Azeemah Kaleem (3758) from the Cuyahoga County Department of Job and Family Services.

FINDINGS OF FACT:

1. A living trust was established in February of 2003 (see Exhibit 2).
2. The trust is revocable.
3. The appellant is the grantor of the trust (refer to Exhibit 2).
4. The appellant and his spouse are the trustees of the trust (refer to Exhibit 2).
5. The home where the appellant and his spouse resided was transferred to the trust in 9/04.
6. The appellant's spouse remained a resident of that home until her institutionalization in 7/07.
7. The appellant remains a resident of the home.

STATE HEARING DECISION CONTINUATION

8. The spouse is an institutionalized individual.
9. The spouse's first period of institutionalization began in 7/07.
10. An application for Medicaid vendor payment was made in 9/07.
11. At that time, the agency completed a resource assessment for 7/07.
12. As of 7/07, the deed to the home was in the trust's name (refer to Exhibit 3).
13. The value of the home is \$190,100 (see Exhibit 3).
14. The agency calculated the value of available resources for 7/07 as \$177,405.48 (see Exhibit B).
15. This value does not include the value of the home included in the trust.

CONCLUSIONS OF POLICY:

Policy:

If the institutionalized spouse applies for Medicaid at any time, the amount of resources that were allocated to the community spouse as a result of the resource assessment is used to determine the amount of current resources that is allocated to both spouses. A resource assessment is completed based upon the beginning of the first continuous period of institutionalization, not the date(s) of application for Medicaid. Only one resource assessment is completed per couple regardless of how often an individual has been institutionalized or has applied for Medicaid. At the time of application for Medicaid a determination of the institutionalized spouse's and community spouse's current combined resources is computed. The community spouse is entitled to the amount of resources that were allocated to the community spouse by the resource assessment. Ohio Admin. Code § 5101:1-39-36 (A) (2002)

A trust, or legal instrument or device similar to a trust, is considered a self-settled trust established on or after August 11, 1993 if it meets all of the following criteria: the assets of the individual were used to form all or part of the corpus of the trust; the trust was not established by a will; and, the trust was established by the individual, the spouse of the individual, a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or on behalf of the spouse of the individual, or a person, including a court or administrative body, acting at the direction or upon the request of the individual or the spouse of the individual.

For a revocable self-settled trust of this type, the corpus of the trust is considered a resource available to the individual. Ohio Admin. Code § 5101:1-39-27.1 (C)(2) (2006)

"Home" means any property in which an individual has an ownership interest in and which serves as the individual's principal place of residence. "Home" includes the structures and land appertaining to the home property. Appertaining land must be contiguous to adjoin the land on which the home property is located and must not be separated by intervening land property owned by others.

For the value of the home to be exempt, the home must be the individual's or the spouse's principal place of residence; and, the deed to the home must be in the individual's or spouse's name. Ohio Admin. Code § 5101:1-39-31 (B)(2), (C)(1) (2006, 2007)

Analysis:

STATE HEARING DECISION CONTINUATION

The agency completed a resource assessment as of the spouse's first period of institutionalization in 7/07. The resource assessment resulted in a resource valuation of \$177,405.48 but did not include the value of a home resided in by the appellant.

The appellant's attorney argues the value of the home should be included in the resource assessment because it does not meet the definition of an exempt homestead property by virtue of the fact the deed to the home is not in the appellant's or his spouse's name. At the time of the spouse's first period of institutionalization in 7/07, the property deed is in the name of the trust. The regulation outlining the criteria necessary for the value of the home to be exempt indicates that not only does the spouse or the appellant need to be residing in the home, but the deed to the home must be in the spouse's or appellant's name. Since the deed is not in the appellant's or spouse's name, it does not meet the criteria to be an exempt resource. Its status as a non-exempt resource does not change with it being a part of the corpus of a revocable self-settled trust. The value of the home should, therefore, be included in the resource assessment for 7/07. As a result, the resource assessment for 7/07 of \$177,405.48 is incorrect and will need to be recalculated to include the value of the home as of 7/07.

HEARING OFFICER'S RECOMMENDATIONS:

I (APPEAL 1386694, MEDICAID) Based on the record before me, I find the appeal should be SUSTAINED. The resource assessment for 7/07 is incorrect. The agency should complete a new resource assessment for 7/07, including the value of the home as an available, countable resource. The appellant and his authorized representative should be notified of the new resource assessment in writing, affording them all appeal rights.

FINAL ADMINISTRATIVE DECISION AND ORDER:

I (APPEAL 1386694, MEDICAID) Finding the hearing officer's decision to be supported by the evidence, the recommendations above are adopted.

COMPLIANCE IS REQUIRED: Ohio Admin. Code § 5101:6-7-03(B)(1)(a) requires compliance with this decision 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

March 19, 2008

STATE HEARING DECISION CONTINUATION

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's Exhibits:

1. Hearing request (1 page)
2. 2/03 Trust (19 pages)
3. 8/07 Auditor's page (1 page)

CDJFS Exhibits:

- A. Appeal summary (1 page)
- B. 7/07 resource assessment (2 pages)

Papers and Effects:

Miscellaneous documents submitted by the agency (48 pages)