



# Ohio Department of Job and Family Services

## Administrative Appeal Decision

**APPELLANT:****CASE NO.** □**APPEAL No(s).** 1160439 & 1160440**DOCKET No.** 2004-AA-0327

By letter received March 25, 2004, Appellant, through Representative, has requested an Administrative Appeal of a state hearing decision rendered March 10, 2004. The issue raised on this Administrative Appeal is whether the Ottawa County Department of Job and Family Services (Agency) was correct in proposing to terminate Medicaid benefits for resources in excess of program limitations. The state hearing decision found that homestead property has not been transferred or listed for sale within the allowable time following institutionalization, that the value of the property exceeds resource limitations, and overruled the appeal. This Administrative Appeal Decision Affirms the state hearing decision.

### SUMMARY OF CASE

The hearing record indicates Appellant receives Medicaid benefits through Agency including nursing facility vendor payment. Appellant was admitted to a hospital January 13, 2003, and was transferred to the nursing facility (NF) January 16, 2003. Application for Medicaid was filed on behalf of Appellant February 19, 2003. Agency conducted a face-to-face interview with Representative February 19, 2003. Agency approved Medicaid with vendor payment April 7, 2003. Appellant was residing in the homestead property up until the admission to the hospital. Agency determined that the six-month time period for which the homestead remains exempt expired July 13, 2003. Appellant did not have a spouse, child under the age of twenty-one, or a child over the age of sixty-five dependent upon Appellant for housing or a sibling residing in the home. The homestead property was no longer Appellant's principal place of residence as of July 13, 2003. Agency notified Representative October 6, 2003, that it would be necessary to list the homestead property for sale by October 16, 2003. Agency did grant an extension of the deadline until January 10, 2004. Agency learned that Appellant's home had not been listed for sale by January 10, 2004. Appellant's home has an appraised value of \$96,839.60, as found by the county auditor. Because that amount exceeds the Medicaid resource limitation of \$1,500, Agency proposed to terminate Medicaid benefits by notice mailed January 13, 2004.

Representative contacted Agency December 29, 2003, inquiring about the homestead exemption as Appellant's daughter had been living with Appellant and providing care for two years. Daughter had contacted Agency indicating a family member wanted to purchase the home. Daughter asserted Agency never advised of the homestead exemption. Daughter asserted she had lived with Appellant since 1998 or 1999 and had provided care that avoided the need for NF care. Daughter asserted she should not have to sell the home because Agency failed to advise of the potential exemption. Daughter admitted that the family member who had expressed a desire to purchase the property was unable to effect a sale. Daughter further asserted the home was transferred to daughter February 6, 2004, which had not been reported to Agency prior to the hearing. Representative asserted daughter could have taken advantage of the exemption had she been informed.

#### HEARING DECISION

The state hearing decision found that Appellant's property has not been listed for sale or transferred and is, therefore, still available to Appellant; that the value of the property is over the maximum resource limit of \$1,500; and that Agency is correct to propose termination of Medicaid benefits including NF payment.

#### REQUEST FOR ADMINISTRATIVE APPEAL

Representative asserts essentially that Appellant's condition would have required NF care as early as 1999, but that the care provided by Appellant's daughter prevented institutionalization until January 16, 2003; that Agency was aware of the daughter living in the homestead property and should have advised of the homestead exemption available to daughter but, instead, advised the sale of the property.

#### ANALYSIS

Ohio Administrative Code (OAC) 5101:6-8-01 allows for an Administrative Appeal from a state hearing decision. The Administrative Hearing Examiner is required to examine the decision, the information supplied on appeal and the record and/or tape of the hearing if appropriate. If the initial decision contains no error that affects the outcome of the appeal the decision is to be affirmed. If the decision contains an error that resulted in an outcome adverse to the individual the decision is to be reversed. It is first noted that the state hearing decision inappropriately has included the names of the participants in the body of the decision placing those names at risk of exposure, and of breaching the principles of confidentiality in accordance with OAC 5101:1-1-03.

The issue raised on Administrative Appeal relates to the treatment of the household property owned by Appellant as an available resource for purposes of Medicaid eligibility determinations. OAC 5101:1-39-31.1 provides that a home may be exempt from consideration as a resource provided the home is the principal place of residence for the individual. The rule permits temporary absences for up to six

months while retaining the status of principal place of residence. OAC 5101:1-39-31.2 states: "If an applicant/recipient resides in a medical institution six (6) months or longer and the applicant/recipient's spouse or relative, as specified below, is not resident in the home, the home is no longer considered to be homestead property or the principal place of residence." The rule provides further that: "the home continues to be considered the principal place of residence if any of the following individuals are residing in the home: the spouse, or the applicant/recipient's child who is under age 21 or blind or disabled, or the applicant/recipient's son or daughter who is age 65 or older and is financially dependent upon his parent for housing, or the applicant/recipient's sibling who has a verified equity and ownership interest in the home and resided in the ... home for at least one year immediately before the date the applicant/recipient was admitted to the medical institution." Representative has not asserted any of these qualifications have been met. The home may also continue to meet the exemption if it meets the qualifications as property essential for self-support. Representative has also not asserted that this provision applies.

Representative asserts that Agency should have advised Appellant's authorized representative that the property could have been transferred and been considered exempt from treatment as an improper transfer of resources. OAC 5101:1-39-05 requires the examination of resources held by an applicant or recipient including property that has not been sold or transferred. I can find no regulation that requires an agency to provide legal advice regarding the disposition of resources held in order to gain eligibility for Medicaid, nor should there be such a regulation as that could be considered the practice of law. The exemption cited by Representative applies only to property that has been transferred and the property in question remains in the possession of Appellant. OAC 5101:1-39-07(D) permits certain transfers of property to be excluded from consideration as "improper" and includes specified transfers of homestead property considered the "principal place of residence." A homestead property remains the principal place of residence for six months after the individual enters a NF. After six months the property is no longer considered to be the principal place of residence, thus, any transfer of that property would not be considered for this exemption, and the property must be sold. Agency advised Appellant and Appellant's authorized representative, by letter mailed October 6, 2003, after the expiration of the six months period of residence in the NF that the property must be listed for sale, which is correct advice. OAC 5101:1-39-31.3(B) states: "If a home is no longer the principal place of residence and it does not qualify as property essential for self-support ... it may remain exempt as a resource if the following requirements are met: (1) The individual must list the property for sale once the property no longer qualifies as either the principal place of residence or as property essential for self-support..."

It is noted for this record that there was no issue raised with Appeal Number 1160440 which was related to a determination of eligibility for Qualified Medicare Beneficiary (QMB) Medicaid benefits and the issue was not addressed in the state hearing. The issue will not be addressed in this Administrative Appeal Decision.

I cannot find that the state hearing decision is contrary to the weight of evidence or that the state hearing decision relies upon a misapplication of law or rule.

DECISION

The state hearing decision regarding a termination of Medicaid including NF vendor payment and related to Appeal Numbers 1160439 and 1160440 is AFFIRMED.

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James R. Skidmore, Attorney-at-Law  
Administrative Hearing Examiner

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Marcia K. Slotnick, Attorney-at-Law  
Chief Administrative Hearing Examiner  
Office of Legal Services on behalf of  
Thomas J. Hayes, Director

DATE OF ISSUANCE April 8, 2004

This Administrative Appeal Decision is the final administrative decision on your case from the Ohio Department of Job and Family Services. If you disagree with this decision, you may have the right to appeal to common pleas court pursuant to Section 5101.35 of the Ohio Revised Code. Your appeal must be filed within thirty days of the date this decision was issued to you. 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, Ottawa County Department of Job and Family Services  
Dorothy Smith, Office of Legal Services  
Hearings Supervisor  
Bureau of State Hearings  
Rick Keefer / Ann Shane  
Appellant  
Appellant's Representative