

## STATE HEARING DECISION

ODHS 4005 (Rev. 9/94)

County <b>RICHLAND</b>	District Hearings Section <b>COLUMBUS</b>	Assistance Group Name		Assistance Group Number
Place of Hearing <b>RICHLAND CDJFS</b>	Initial Hearing Date <b>11/12/2003</b>	Rescheduled Postponed to <b>12/08/2003</b>	Rescheduled Postponed to <b>12/08/2003</b>	Rescheduled Postponed to <b>12/08/2003</b>

Appellant/Representative	Appellant Representation
	Local Agency Representation <b>Pam Walls, income maintenance (IM) worker; Deborah Conklin, IM supervisor</b>

Date Notice Mailed <b>10/17/2003</b>	Date Received by Local Agency	Date Received by ODHS <b>10/23/2003</b>	Date Appeal Summary Received	Date Scheduling Notice Mailed <b>11/28/2003</b>
---	-------------------------------	--	------------------------------	--

Appeal Number(s)/Program(s) <b>1144425/FS, 1144426/DFA, 1144427/MED, 1144428/DMA</b>
---

### Notice to Appellant

This is the state hearing decision in your case. All papers and materials introduced at the hearing or otherwise filed make up the hearing record. The hearing record will be maintained by the Ohio Department of Job and Family Services.

**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 state why you think the hearing decision is wrong. You can complete the appeal request form included with this decision. Your written request or appeal form 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, or your representative, may request a free copy of the hearing record and recording of the hearing by calling the Bureau of State Hearings at 1-866-635-3748 (select option 1 from main menu).

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

(1) Appeal No. 1144425, Food Stamps. The Richland County Department of Job and Family Services (Agency) issued notice on 9/8/2003 that the assistance group's food stamp certification would expire on 10/31/2003. The Appellant on 10/10/2003 completed a re-application for food stamps. The Agency on 10/17/2003 issued notice proposing termination of food stamps on the basis of the assistance group's resources exceeding the food stamp resource limit. The food stamp certification expired 10/31/2003. The food stamp assistance group consists of the Appellant and his wife. The resource limit for a food stamp assistance group containing a disabled member is \$3,000. The food stamp issue under appeal is whether the Agency was correct when it proposed termination of food stamps. After consideration of evidence and applicable rules, the Hearing Officer finds that the Agency's action was correct. The Hearing Officer recommends that the food stamp appeal be overruled.

(2) Appeal No. 1144426, Disability Financial Assistance. The Agency on 10/17/2003 issued notice

NVK

Appeal(s) <b>OVERRULED 1144425, 1144426, 1144427, 1144428</b>	Date Issued <b>04/15/2004</b>	Compliance
---	----------------------------------	------------

**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.)*

Appeal Number(s) 1144425, 1144426, 1144427, 1144428
--

proposing termination of disability financial assistance (DFA) effective 11/30/2003 on the basis of the DFA family group's resources exceeding the DFA resource limit. The DFA assistance group consists of the Appellant; the DFA family group consists of the Appellant and his wife. The resource limit for DFA is \$1,000. The DFA issue under appeal is whether the Agency was correct when it proposed termination of DFA. After consideration of evidence and applicable rules, the Hearing Officer finds that the Agency's action was correct. The Hearing Officer recommends that the DFA appeal be overruled.

(3) Appeal No. 1144427, Medicaid. The Agency on 10/17/2003 issued notice proposing termination of Medicaid for the Disabled (MA-D) effective 11/30/2003 on the basis of the assistance group's resources exceeding the Medicaid resource limit. The MA-D Medicaid assistance group consists of the Appellant. The resource limit is applied to the Appellant's resources and his wife's resources. The Medicaid resource limit for a couple is \$2,250. The Medicaid issue under appeal is whether the Agency was correct when it proposed termination of MA-D Medicaid. After consideration of evidence and applicable rules, the Hearing Officer finds that the Agency's action was correct. The Hearing Officer recommends that the Medicaid appeal be overruled.

(4) Appeal No. 1144428, Disability Medical Assistance. The Agency on 10/17/2003 issued notice denying disability medical assistance (DMA) on the basis of the DMA family group's resources exceeding the DMA resource limit. The DMA assistance group consists of the Appellant; the DMA family group consists of the Appellant and his wife. The resource limit for DMA is \$1,000. The DMA issue under appeal is whether the Agency was correct when it denied DMA. After consideration of evidence and applicable rules, the Hearing Officer finds that the Agency's action was correct. The Hearing Officer recommends that the DMA appeal be overruled.

### **PROCEDURAL MATTERS**

(1) The Bureau of State Hearings, Ohio Department of Job and Family Services (ODJFS), on 12/8/2003 conducted a state hearing for appeal number 1144425 (food stamps), appeal number 1144426 (disability financial assistance), appeal number 1144427 (Medicaid), and appeal number 1144428 (disability medical assistance).

(2) During the state hearing on 12/8/2003, the Appellant agreed to provide, as exhibit D, the application to the Probate Court of Richland County for authority to expend funds. The Hearing Officer on 12/11/2003 received, via fax, a one-page document entitled "Application for Authority to Expend Funds." The Hearing Officer labeled the document as exhibit D.

(3) During the state hearing on 12/8/2003, the Appellant agreed to provide, as exhibit E, the results of the petition pending before the court when those results became available. The record was left open to allow

Appeal Number(s) 1144425, 1144426, 1144427, 1144428
--

time for submittal of exhibit E. When a document was not received by the Hearing Officer before the deadline (other than the document entitled "Application for Authority to Expend Funds" and identified during the hearing as exhibit D), the Hearing Officer closed the record.

(4) Because the petition to expend funds and the results of that petition were identified as two exhibits during the hearing (exhibits D and E), the Hearing Officer was expecting to receive two separate documents. The Hearing Officer did not realize that the document submitted on 2/11/2003 entitled "Application for Authority to Expend Funds" was both the petition to expend funds and the court's denial. At the bottom of that document is a handwritten denial of the petition.

(5) The ODJFS Bureau of State Hearings on 1/20/2004 issued a state hearing decision overruling appeal number 1144425 (food stamps), appeal number 1144426 (disability financial assistance), appeal number 1144427 (Medicaid), and appeal number 1144428 (disability medical assistance).

(6) The Appellant appealed the 1/20/2004 state hearing decision.

(7) As a result of the Appellant's appeal of the state hearing decision, the chief administrative hearing examiner, on behalf of the director of the ODJFS, issued an administrative appeal decision on 2/19/2004 for appeal numbers 1144425, 1144426, 1144427, and 1144428 (docket number 2004-AA-0116).

(8) The administrative appeal decision affirmed in part, and vacated and remanded in part, the 1/20/2004 state hearing decision.

(9) The administrative appeal decision affirmed the hearing decision's findings in regard to the composition of the assistance group for food stamps, Medicaid, disability financial assistance (DFA), and disability medical assistance (DMA).

(10) The administrative appeal decision vacated and remanded for additional findings the hearing decision's finding that the funds in the Appellant's wife's estate must be considered an available countable resource for food stamps, Medicaid, DFA, and DMA.

(11) The administrative appeal decision instructed the hearing officer "to consider the Application for Authority to Expend Funds and determine whether this additional information affects the availability of the funds."

(12) The administrative appeal decision also vacated and remanded the state hearing decision "for a determination of the expiration date of the FS [food stamp] certification period as this date may affect any

Appeal Number(s) 1144425, 1144426, 1144427, 1144428
--

future overpayment claim determinations[.]"

(13) The administrative appeal decision ordered that a supplemental hearing be held.

(14) The supplemental hearing was scheduled for and heard on 3/18/2004 at the Richland County Department of Job and Family Services (Agency). The Appellant was represented by himself, his wife, and his attorney from the Community Legal Aid Services, Mansfield, Ohio. The Agency was represented by an income maintenance worker and an income maintenance supervisor. The Hearing Officer conducted the hearing by telephone from the Columbus Regional Office of the Bureau of State Hearings. Testifying parties were sworn in by the Hearing Officer.

### **FINDINGS OF FACT**

(1) The Appellant at the time of the adverse actions under appeal was forty-eight years, had been determined disabled by the CMS (county medical service), had a pending application for SSI (supplemental security income), and was residing with his wife.

(2) The Appellant and his wife were married on 5/16/2003.

(3) A guardianship for the Appellant's wife's estate was established by the Probate Court of Richland County on 4/29/2003 due to incompetence.

(4) The guardianship established on 4/29/2003 states the following: "The guardian's powers are: All powers conferred by the laws of Ohio and rules of this Court over the ward's: Estate Only[.] The above-named guardian has the power conferred by law to do and perform all the duties of Guardian as described. No expenditures shall be made without prior Court authorization." (page 1 of exhibit 2 of the 1/20/2004 state hearing decision)

(5) In regard to the Appellant's wife's estate, a "judgment entry ordering release of funds as it relates to routine maintenance expenses of the ward" was filed on 5/22/2003 with the Probate Court of Richland County. The judgment entry reads as follows: "No specific authority is needed by the guardian in order to pay the ward's rent of four hundred twenty-five dollars (\$425) per month together with the utilities including electric, telephone, water and sewer, and...Cable. Also, such authority extends to necessary transportation expenses in the amount of one hundred dollars (\$100) together with groceries and miscellaneous expenses of three hundred dollars (\$300) per month will be included in said maintenance expenditures. Lastly included is an amount representing...Mini Warehouse storage as well as...Life insurance bill and the...auto insurance[.]" (exhibit C of this hearing decision)

Appeal Number(s) 1144425, 1144426, 1144427, 1144428
--

(6) A successor guardianship for the Appellant's wife's estate was established on 7/23/2003 by the Probate Court of Richland County.

(7) The successor guardianship established on 7/23/2003 reads the same as the guardianship established on 4/29/2004 with the exception of the term "successor" added to the term "guardianship." (page 2 of exhibit 2 of the 1/20/2004 state hearing decision)

(8) The Richland County Department of Job and Family Services (Agency) issued notice on 9/8/2003 that the assistance group's food stamp certification period would expire on 10/31/2003.

(9) The Appellant on 10/10/2003 completed a re-application. At which time, the Appellant was receiving food stamps, disability financial assistance (DFA), and Medicaid for the Disabled (MA-D).

(10) During the re-application process, the Agency evaluated new eligibility for disability medical assistance (DMA) and continuing eligibility for food stamps, disability financial assistance (DFA), and Medicaid for the Disabled (MA-D).

(11) The food stamp assistance group consists of the Appellant and his wife; the Medicaid for the Disabled (MA-D) assistance group consists of the Appellant; the assistance group for disability financial assistance (DFA) and disability medical assistance (DMA) consists of the Appellant; and the family group for DFA and DMA consists of the Appellant and his wife. (1/20/2004 state hearing decision)

(12) The Agency on 10/17/2003 issued notice denying DMA and proposing termination of food stamps effective 10/31/2003 (the last day of certification), of DFA effective 11/30/2003, and of MA-D Medicaid effective 11/30/2003, on the basis of the assistance groups' of family groups' countable resources exceeding the resource limits for those four programs. (1/20/2004 state hearing decision)

(13) The value of the Appellant's wife's estate exceeds the food stamp resource limit of \$3,000 for an assistance group containing a disabled member; exceeds the Medicaid resource limit of \$2,250 for a couple; and exceeds the resource limit of \$1,000 for DFA and DMA.

(14) The food stamp certification period expired on 10/31/2003. The food stamp, MA-D Medicaid, and DFA benefits continued. The DFA benefits were terminated effective 2/29/2004. Benefits for food stamps and MA-D Medicaid were issued for the month of 3/2004.

(15) The successor guardian on 11/21/2003 filed with the Probate Court of Richland County an "Application for Authority to Expend Funds." The application stated the following: "Monthly prescription medication for

Appeal Number(s) 1144425, 1144426, 1144427, 1144428
--

Ward's husband [name of Appellant] Exhibit A[.] \$1,892.10[.] Ward's husband is losing his Medicaid coverage based upon his marriage to Ward and the requirement that her assets be included in determining his family resources, which now exceed the resource limit." (exhibit D of the 1/20/2004 state hearing decision)

(16) The Probate Court on 12/10/2003 denied the 11/21/2003 request. Handwriting on the bottom of the "Application for Authority to Expend Funds" reads in its entirety as follows: "Order denying expenditure. This 10th day of December, 2003, this cause came to be heard wherein the court, after a full evidentiary hearing, denies the same." The document is stamped "filed December 10, 2003" and is signed by a Probate Court judge. (exhibit D of the 1/20/2004 state hearing decision)

(17) The 11/21/2003 expenditure request and the court's 12/10/2003 denial occurred after the Agency issued the notices of adverse action on 10/17/2003.

(18) The Hearing Officer did not consider the "order denying expenditure" (handwriting at the bottom of the request) in the 1/20/2004 state hearing decision (reference "procedural matters" of this state hearing decision).

(19) The successor guardian of the Appellant's wife's estate must obtain prior authorization from the Probate Court to expend funds from the wife's estate, with the exception of the expenditures identified in the judgment entry filed on 5/22/2003 (reference finding of fact number 6 and exhibit C of this state hearing decision).

(20) There are no restrictions or limitations on the successor guardian's authority to make requests to the court for expenditures from the wife's estate.

(21) The attorney representing the Appellant at this hearing did not participate in the 11/21/2003 expenditure request, nor did he participate in the 12/10/2003 court denial of the expenditure request.

## **CONCLUSIONS OF POLICY**

### **Policy**

(1) The hearing officer for a state hearing for the Ohio Department of Job and Family Services (ODJFS) is required to base findings of fact exclusively on evidence introduced at the state hearing, or after the hearing and subject to examination and rebuttal by both parties. The hearing officer's conclusions of policy and recommendations are to be based solely on published ODJFS regulations, or local agency policy adopted pursuant to options authorized in state law, except when those regulations and policies are silent and reference to the Ohio Revised Code or other statutory source is necessary to resolve the issue. Ohio Admin. Code § 5101:6-7-01 (6/1/2003).

Appeal Number(s)

1144425, 1144426, 1144427, 1144428

- (2) For an assistance group containing a disabled member to be potentially eligible for the food stamp program, the countable resources of the assistance group "shall not exceed three thousand dollars." Ohio Admin. Code § 5101:4-4-01 (C) (6/1/2003).
- (3) For the food stamp program, "resources are exempted if the cash value is not accessible to the AG [assistance group.]" Resources are to be considered "inaccessible to the AG as long as they were truly unknown to the AG. At the point the AG discovers or is made aware of the resources that are legally available to them, the resources must be counted in determining the AG's eligibility for food stamps." Ohio Admin. Code § 5101:4-4-03 (E) (6/1/2003).
- (4) Countable resources for the DFA (disability financial assistance) and DMA (disability medical assistance) family groups "cannot exceed one thousand dollars." Ohio Admin. Code § 5101:1-5-03 (A) (2) (7/1/2003).
- (5) A resource is considered during the eligibility determination process for DFA or DMA when the resource is "available or accessible to the family group." For a resource to be a countable resource, "the family group must have the legal right to control and dispose of the property[.]" Ohio Admin. Code § 5101:1-5-30 (B) (1) (7/1/2003).
- (6) When an individual who is potentially eligible for Medicaid for the Disabled (MA-D) resides with his/her spouse, "all resources are combined and the couple is permitted resources of two thousand two hundred fifty dollars in addition to what is exempt" regardless of whether the spouse is or is not eligible for Medicaid. Ohio Admin. Code § 5101:1-39-34 (F) (12/15/1996).
- (7) In the Medicaid program, the term "resources" is defined 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." The Medicaid applicant/recipient is considered to have the legal ability to access property "even when action can be taken only by an agent, any person with power of attorney, a guardian whether court appointed or not, or any other court appointed fiduciary such as a conservator of the applicant/recipient" and "even if he or she is required to petition the court to withdraw funds for the individual's care." However, "even with ownership interest and legal ability to access property, a legal restriction against the property's use for the owner's own support and maintenance means the property is not a resource." Ohio Admin. Code § 5101:1-39-05 (A) (8) (11/7/2002).
- (8) Under the Medicaid program, when property can be accessed only through legal action and the applicant/recipient "is unable to access or liquidate property due to a legal impediment or due to conduct of

Appeal Number(s) 1144425, 1144426, 1144427, 1144428
--

another person, the CDJFS (county department of job and family services) shall refer the applicant/recipient to legal aid services or the prosecuting attorney's office to determine if they can help make the resource available." The CDJFS is required to obtain a written response to the referral. "If the written response indicates that a legal action can make part or all of the resource available, the applicant/recipient is required to pursue such a legal action." However, "if the applicant/recipient is unable to make the resource available because the cost of a legal action is prohibitive, or they were unsuccessful in their legal action, the resource is not counted." Ohio Admin. Code § 5101:1-39-05 (B) (7) (11/7/2002).

### **Analysis**

The Appellant testified that the successor guardian is permitted make requests to the court for any expenditures and that the successor guardian is receptive to his and his wife's requests for making requests to the court. However, the Appellant also testified that the court will not authorize any expenditures for the Appellant from the Appellant's wife's estate. But, the Appellant was unable to provide any document stating that the court will deny or not authorize all expenditure requests for the Appellant. The Appellant stated that he was told the court would not authorize requests for him. To support his testimony, the Appellant provided an 11/21/2003 expenditure request and the court's 12/10/2003 denial of that request. The request was for "monthly prescription medication" for the Appellant in the amount of \$1,892.10. The Appellant could not provide any documentation showing the basis on which the court made its determination, other than providing a copy of Ohio Rev. Code § 2111.14, entitled "Duties of guardian of estate" (exhibit A of this hearing decision) and Ohio Rev. Code § 2111.50, entitled "Court is superior guardian and guardians must obey all orders; determination of ward's best interest" (exhibit B of this hearing decision). The denial in its entirety reads as follows: "Order denying expenditure. This 10th day of December, 2003, this cause came to be heard wherein the court, after a full evidentiary hearing, denies the same" (exhibit D of the 1/20/2004 state hearing decision).

Under the food stamp, Medicaid, DFA, and DMA rules cited under "policy" of this state hearing decision, a resource is a countable resource when the assistance group or family group has the legal ability to access the resource. The Medicaid program rule also says, "even with ownership interest and legal ability to access property, a legal restriction against the property's use for the owner's own support and maintenance means the property is not a resource." The Hearing Officer concludes that the assistance group or family group has the legal ability to access the wife's funds in the wife's estate and there is no "legal restriction against the property's use for the owner's own support and maintenance." The Hearing Officer comes to this conclusion for the following six reasons: (1) There are no restrictions on the successor guardian's authority to make requests for expenditures. (2) Although expenditures must be prior authorized by the court, the Appellant did not provide any document specific to his situation defining any limitations or restrictions placed by or on the court. (3) The court has authorized certain routine maintenance expenses, and because the Appellant and his wife live together, the Appellant, as well as his wife, benefits from those authorized expenses. (4) Although

Appeal Number(s) 1144425, 1144426, 1144427, 1144428
--

the Appellant provided the court's 12/10/2003 denial of the 11/21/2003 expenditure request, the Hearing Officer does not know the basis on which the court made its determination. (5) One court denial, with no explanation of the denial, is not convincing evidence that all expenditure requests directly benefitting the Appellant will be denied. (6) There is no convincing evidence that the denial was made because the expenditure would benefit the Appellant. The denial could have been made for any number of reasons.

The Hearing Officer concludes that the Appellant's evidence does not show that there is a legal restriction to using the funds in the estate for support and maintenance, and, therefore, the Agency's actions terminating or denying the four programs in question are correct. The value of resources exceed the resource limits for the four programs (food stamps, Medicaid, DFA, and DMA).

### **HEARING OFFICER'S RECOMMENDATIONS**

Based on the record before me, I find the food stamp appeal 1144425, the DFA appeal 1144426, the Medicaid appeal 1144427, and the DMA appeal 1144428 should be overruled. The Agency's actions are supported by regulations.

### **FINAL ADMINISTRATIVE DECISION AND ORDER**

Finding the hearing officer's decision to be supported by the evidence, the recommendations above are adopted.

Food stamp, DFA, Medicaid, and DMA appeals overruled.

### **APPENDIX**

Agency's Exhibits:

- (1) CRIS-E screens "CNHS, notice history" and "CNHD, notice history detail" (3 pages).
- (2) Statement by Agency Representative prepared for state hearing (1 page).
- (3) CRIS-E screen "CNHD, notice history detail" (3 pages).
- (4) CRIS-E screens "IQFS, food stamp issuance history," "IQMD, medical assistance issuance history," and "IQCH, cash issuance history" (3 pages).

Appellant's Exhibits:

- (A) Ohio Rev. Code § 2111.14 (2004), "Duties of guardian of estate" (1 page).
- (B) Ohio Rev. Code § 2111.50 (2004), "Court is superior guardian and guardians must obey all order; determination of ward's best interest" (2 pages).
- (C) Judgment entry of 5/22/2003 (1 page).

Appeal Number(s) 1144425, 1144426, 1144427, 1144428
--

Date Issued: 04/15/2004