

STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

FILED

SEP 04 2009

OFFICE OF APPEAL HEARING
DEPT. OF CHILDREN & FAMILIE

APPEAL NO. 09F-04007

PETITIONER,

Vs.

CASE NO. 1053434944

FLORIDA DEPT OF CHILDREN AND FAMILIES
CIRCUIT: 18 Brevard
UNIT: 66394

RESPONDENT.

FINAL ORDER

Pursuant to notice, an administrative hearing was convened telephonically before the undersigned at 1:45 p.m. on August 12, 2009. The petitioner was not present but was duly represented by her niece, _____, assisted by _____, nursing facility staff _____, local business office manager, and _____, of the corporate office. Bobbi VanCott, ACCESS supervisor, represented the respondent.

ISSUE

At issue was whether or not Institutional Care Program (ICP) denials were correct for months of June through December 2008 due to excess assets. As an applicant, the petitioner had the burden of proof.

FINDINGS OF FACT

1. The petitioner applied for ICP coverage several times in 2008 and again in January 2009. The respondent denied eligibility for all the requested months

of 2008. The respondent determined the asset value between March and December 2008 was above \$2000 at all times.

2. The petitioner's niece handled the applications. She did not realize the petitioner owned some Manulife stock until about October 2008. As soon as she became aware of the asset, she arranged for its liquidation and use.

3. The ownership and liquidation were complicated because the asset changed names in 2004. Previously it was John Hancock stock. Once the petitioner's niece became aware of the situation, she got advice from a John Hancock representative, and she resolved the asset problem.

4. For the time between March and December 2008, the lowest value of the stock was \$2336.80, reached in November 2008. This is undisputed. (There was a burial account purchased for \$2500 in April 2008, so creation of a burial account could not be used as a point of resolution.)

5. In January 2009, the stock was liquidated and the resource was used. The respondent authorized ICP for January 2009 and ongoing because the assets were lower than the \$2000 standard for the ICP.

6. The niece did not have access to the petitioner's Internal Revenue Service information.

7. The petitioner was not comatose during 2008. There was no evidence of asset encumbrance through a lien.

CONCLUSIONS OF LAW

Federal guidelines at 20 C.F.R. § 416.1201 (a) define resources:

...For purposes of this Subpart L, resources means cash or other liquid assets or any real or personal property that an individual (or spouse, if any) owns and could convert to cash to be used for his or her support and maintenance.

Section 416.1205 (c) establishes the "Limitations on resources" setting the standard at \$2000 for an individual. Florida Administrative Code 65A-1.712

further addresses **SSI-Related Medicaid Resource Eligibility Criteria:**

(1) Resource Limits. If an individual's total resources are equal to or below the prescribed resource limits at any time during the month the individual is eligible on the factor of resources for that month. The resource limit is the SSI limit specified in Rule 65A-1.716, F.A.C....

Florida Administrative Code 65A-1.716 informs:

- (5) SSI-Related Program Standards
(a) SSI (42 U.S.C. §§ 1382-1383c) Resource Limits:
1. \$2000 per individual.

In accord with state and federal regulations, the Department's guidelines at **Florida Integrated Public Policy Manual 165-22**, inform as follows:

1640.0205 Asset Limits ...

2. For ICP ... the asset limit is \$2000 for an individual ...

1640.0319 Comatose Individual (MSSI, SFP)

Any asset owned by a comatose individual will be excluded when there is no known legal guardian or other individual who can access the asset.

1640.0408 Determining Asset Value (MSSI, SFP)

The countable value of an asset is the equity an individual or couple has in the asset. In some cases, the asset value counted toward the applicable asset limit is first reduced by an allowable excluded amount.

Equity value is the amount that an asset can expect to sell for on the open market in the particular geographic area involved (that is the fair market value of the asset), less any legal debt on the asset. Debts are any form of legal indebtedness against the asset in question, such as:

1. mortgages,
2. liens,
3. loans,
4. purchase contracts, or
5. security interests.

...

Outstanding checks that have not cleared the bank yet are considered a form of legal indebtedness against the asset.

Within state and federal guidelines, \$2,000 is the maximum asset standard for an individual in this situation. These standards appear in Florida Integrated Public Policy Manual 165-22, Appendix A-9 and Florida Administrative Code 65A-1.716, as referred to in 65A-1.712, cited previously. At all times, the assets exceeded such, unless assets could be reduced for some permissible reason. The petitioner's niece argued that there should be some method of mitigation in a situation of this sort.

After careful review of facts and regulations, it cannot be concluded that asset review should have been more favorable. The petitioner was not comatose. Her assets were not legally encumbered and the value exceeded standards until January 2009. It is evident that once the niece became aware of the problem and a solution, then the asset was released and used. However, it cannot be concluded that eligibility standards were met. While the situation is unfortunate, ineligibility due to asset value was correct under the guidelines.

DECISION

The appeal is denied and the respondent's action is affirmed.

NOTICE OF RIGHT TO APPEAL

This decision is final and binding on the part of the Department. If the petitioner disagrees with this decision, the petitioner may seek a judicial review.

FINAL ORDER (Cont.)

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To begin the judicial review, the petitioner must file one copy of a "Notice of Appeal" with the Agency Clerk, Office of Legal Services, Bldg. 2, Rm. 204, 1317 Winewood Blvd., Tallahassee, FL 32399-0700. The petitioner must also file another copy of the "Notice of Appeal" with the appropriate District Court of Appeal. The Notices must be filed within thirty (30) days of the date stamped on the first page of the final order. The petitioner must either pay the court fees required by law or seek an order of indigency to waive those fees. The Department has no funds to assist in this review, and any financial obligations incurred will be the petitioner's responsibility.

DONE and ORDERED this 4th day of September 2009, in

Tallahassee, Florida.



J W Alper
Hearing Officer
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Copies Furnished To:

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