

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



APPEAL NO. 11F-02360

PETITIONER,

Vs.

CASE NO. 1245195417

FLORIDA DEPT OF  
CHILDREN AND FAMILIES  
CIRCUIT: 09 Osceola  
UNIT: 88299

RESPONDENT.

FILED  
Jun 29, 2011  
OFFICE OF APPEAL HEARINGS  
DEPT. OF CHILDREN AND FAMILIES

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**FINAL ORDER**

Pursuant to notice, the undersigned telephonically convened an administrative hearing in the above-referenced matter at 11:20 a.m. on May 12, 2011.

**APPEARANCES**

For the Petitioner: [REDACTED] petitioner's power of attorney and uncle

For the Respondent: Reginald Schofield, ACCESS supervisor

**STATEMENT OF ISSUE**

At issue is the Department's action to deny the petitioner's Institutional Care Program (ICP) Medicaid benefits for the month of January 2011 due to excess assets.

**PRELIMINARY STATEMENT**

By notice date February 25, 2011 the Department notified the petitioner his ICP Medicaid benefits for the month of January 2011 had been denied due to "The Value of

Your Assets is too High for this Program". On April 7, 2011 the petitioner timely requested a hearing to challenge the denial.

### **FINDINGS OF FACT**

1. The petitioner was admitted into the [REDACTED] Nursing Facility in July 2010. On January 25, 2011 an application for ICP Medicaid benefits was submitted to the Department on the petitioner's behalf.
2. Respondent Exhibit 3 shows an invoice from [REDACTED] Investors for a check in the amount of \$18,918.61 dated January 24, 2011. Respondent Exhibit 3 also identified the following:
  - a) Chase bank statement depositing \$18,918.61 on January 31, 2011.
  - b) cashier's check to [REDACTED] Funeral Home for \$5,544 dated February 1, 2011.
  - c) personal check to [REDACTED] for \$9,808.66 dated February 1, 2011.
  - d) two personal checks to [REDACTED] totaling \$1,566 dated January 29, 2011.
  - e) personal check to [REDACTED] for \$2,500 dated February 1, 2011.
3. The asset limit for ICP Medicaid benefits is \$2,000 for an individual (Respondent Exhibit 2). Based on the information provided by petitioner's representative on behalf of the petitioner identified above (#2); the Department denied ICP Medicaid benefits for January 2011 for the petitioner due to exceeding the \$2,000 asset limit.
4. The petitioner's representative does not dispute the aforementioned account balance in January 2011; however, she argued that the bank account belongs to her not the petitioner. Although she also does not dispute the \$18,918.61 was from an annuity belonging to the petitioner.

5. The petitioner's representative asked the Department to authorize January 2011 ICP Medicaid benefits for the petitioner in "Good Faith" due to [REDACTED] delay in issuing the annuity check.

6. The Department's representative explained the Department's policy is that they are required to look at availability of the asset in the month of application.

### **CONCLUSIONS OF LAW**

7. The Department of Children and Families, Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties, pursuant to Fla. Stat § 409.285. This order is the final administrative decision of the Department of Children and Families under Fla. Stat. § 409.285.

8. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code § 65-2.056.

9. In accordance with Fla. Admin. Code § 65-2.060 (1), the burden of proof was assigned to the petitioner.

10. Fla. Admin. Code 65A-1.712, SSI-Related Medicaid Resource Eligibility Criteria, states in relevant part:

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.

11. Fla. Admin. Code 65A-1.716, Income and Resource Criteria states in part:

(5) SSI-Related Program Standards.

(a) SSI (42 U.S.C. §§ 1382 – 1383c) Resource Limits:

1. \$2000 per individual...

12. The legal authorities cited above set forth the ICP benefit asset limits of \$2,000 per individual. The Findings of Fact show that in the month of January 2011 the petitioner exceeded the \$2,000 asset limit. Therefore, the undersigned concludes the Department followed rule in the denial of ICP Medicaid for the month of January 2011.

### **DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is denied and the Department'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. 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.

FINAL ORDER (Cont.)

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DONE and ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2011,  
in Tallahassee, Florida.

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Priscilla Peterson  
Hearing Officer  
Building 5, Room 255  
1317 Winewood Boulevard  
Tallahassee, FL 32399-0700  
Office: 850-488-1429  
Fax: 850-487-0662  
Email: Appeal\_Hearings@dcf.state.fl.us

Copies Furnished To: [REDACTED] Petitioner  
District 7 ACCESS Cassandra Johnson