

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

FILED

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OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES



PETITIONER,

Vs.

APPEAL NO. 14F-09405

CASE NO. 

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 19 St. Lucie
UNIT: 88500

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on January 13, 2015, at 1:03 p.m. All parties appeared telephonically from different locations.

APPEARANCES

For the Petitioner: 

For the Respondent: Erick Eckhardt, ACCESS supervisor.

STATEMENT OF ISSUE

The petitioner is appealing the denial of her application for the Medicaid/Medicare Buy in Program.

PRELIMINARY STATEMENT

By a Notice of Case action dated September 10, 2014, the respondent informed the petitioner that her application for Qualifying Individual1 (QI 1) was denied due to

excess assets. On November 4, 2014, the petitioner timely requested an appeal challenging the respondent's action.

The hearing was continued from December 3, 2014 per petitioner's request.

Petitioner's evidence was marked Petitioner's Composite Exhibit 1. The respondent's evidence was marked as Respondent's Composite Exhibit 1.

FINDINGS OF FACT

1. The petitioner is 80 years old and is receiving Medicare benefits. On September 5, 2014, the petitioner submitted a Medicaid/Medicare Buy-in Application requesting assistance with Medicare Part B premiums. On the application, she listed her assets as \$1,100 in her checking account and her car. She reported \$1,085 in monthly Social Security benefits.
2. Prior Data Exchanges received on April 1, 2014, returned information that the petitioner, during the period of December 2013 through March 2014, had \$29,000.55 in a bank account (ending [REDACTED]), \$6,234.13 in another (ending [REDACTED]), and \$455.55 in another (ending [REDACTED]). Petitioner was listed as the sole owner on the first two accounts with her son as the beneficiary. The son was listed as co-owner on the third account. The respondent considers asset information received from the Data Exchange Inquiry as verified upon receipt.
3. On September 9, 2014, the respondent processed the application and updated the case with the information received about petitioner's assets. A collateral contact was made with the petitioner confirming the existence of the accounts.
4. The asset limit for QI 1 Program benefits is \$7,160. It was determined that the petitioner's assets exceeded the asset limit for the Program. On September 10, 2014,

the respondent sent a notice the petitioner informing her that her Medicare Buy-in application was denied due to excess assets.

5. The petitioner asserted as follows. She has considerable medical bills for her oxygen tank and she cannot afford to pay them off. The assets were the proceeds from an estate sale in 2003 her son received. That the reason accounts ending [REDACTED] and [REDACTED] were in her name was to avoid probate court upon her son's death and to protect the accounts from son's ex-wife. Petitioner maintains that the monies were in her accounts for tax purposes (Petitioner's Composite Exhibit 1)

6. As of the date of the hearing, both accounts at issue have been closed. Most recently, the \$29,000.00 account has been closed and the funds converted into a cashier's check payable to her son. The respondent advised the petitioner to submit a new application for processing. Petitioner agreed to have an application mailed to her for completion.

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 R. 65-2.056.

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

10. The Fla. Admin. Code R. 65A-1.712, SSI-Related Medicaid Resource Eligibility

Criteria, sets forth:

(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., with the following exceptions:

11. The Fla. Admin. Code R. 65A-1.303, Assets, sets forth:

(2) Any individual who has the legal ability to dispose of an interest in an asset owns the asset.

(3) Once the individual's ownership interest of an asset(s) is established, the availability of that asset must be determined. Asset(s) determined not to be available are not considered in determining eligibility. Assets are considered available to an individual when the individual has unrestricted access to it. Accessibility depends on the legal structure of the account or property. An asset is countable, if the asset is available to a representative possessing the legal ability to make the asset available for another's support or maintenance, even though the representative chooses not to do so. Assets not available due to legal restrictions are not considered in determining total available assets unless the legal restrictions were caused or requested by the individual or another acting at their request or on their behalf.

12. In accordance with the federal regulations, eligibility standards for SSI-Related Program appear in the ACCESS Florida Program Policy Manual 165-22 (The Policy Manual) at Appendix A-9. Effective July 2014, the resource limit for a one-person assistance group applying for Medicaid/Medicare Buy in Program is \$7,160.

13. The petitioner had several bank accounts linked to her during the period of December 2013 through March 2014. At least one account with a \$29,000.55 balance was still active at the time of the application and the petitioner was listed as the sole owner with her son as the beneficiary.

14. At the time of the application, the petitioner's assets exceeded the \$7,160 asset limit for the petitioner to be eligible for QI 1 or the Medicaid/Medicare Buy in Program. A review of the rules did not find any exceptions to meeting the asset limit. It is concluded that the respondent's action to deny the petitioner's application for QI 1 benefits was within the rules of the Program as petitioner's assets exceed the resource limit for the Program the petitioner is seeking. The petitioner has a right to reapply at any time to have her eligibility determined based on her income and assets at the time of application.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is denied. The respondent's action is upheld.

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 petitioner is responsible for any financial obligations incurred as the Department has no funds to assist in this review.

FINAL ORDER (Cont.)
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DONE and ORDERED this 6th day of March, 2015,

in Tallahassee, Florida.



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Copies Furnished To: [REDACTED] Petitioner
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