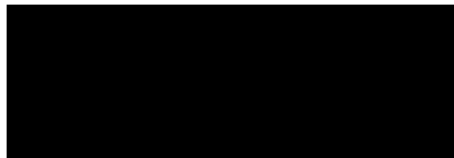


STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

FILED

JUN 12 2014

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES



APPEAL NO. 14F-02247

PETITIONER,

Vs.

CASE NO. 

FLORIDA DEPT OF
CHILDREN AND FAMILIES
CIRCUIT: 18 Brevard
UNIT: 55207

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned telephonically convened an administrative hearing in the above-referenced matter at 9:50 a.m. on May 9, 2014.

APPEARANCES

For the Petitioner:



, pro se

For the Respondent:

Jamalia Scott, ACCESS
economic sufficiency specialist

STATEMENT OF ISSUE

At issue is respondent's action to deny petitioner Medically Needy Medicaid benefits.

PRELIMINARY STATEMENT

By notice dated March 14, 2014 respondent notified petitioner his February 11, 2014 Medically Needy application was denied; due to exceeding the asset limit for the program. Petitioner timely requested a hearing to challenge the denial.

Appearing as observers were Sharon Newell, ACCESS supervisor, and Larry Labelle, hearing officer. Petitioner did not submit exhibits into evidence. Respondent submitted six exhibits into evidence, entered as Respondent Exhibits "1" through "6". Petitioner did not receive respondent's evidence and elected to proceed with the hearing (instead of rescheduling) without the evidence. The record was held open until end of business day on May 9, 2014 for respondent to submit additional evidence. The evidence was received timely and entered as Respondent Exhibit "7". The record was closed on May 9, 2014.

FINDINGS OF FACT

1. Prior to the action under appeal petitioner was enrolled in the Medically Needy Program. Petitioner submitted a recertification application for Food Assistance (FA) and Medicaid benefits on February 11, 2014. The application lists petitioner, [REDACTED] [REDACTED] (wife) and [REDACTED] (mother-in-law) in the home. The application lists a Chevy Trail Blazer as the only household asset. Petitioner (age 60) does not have minor children in the home and receives Social Security Disability Income. Medicaid for petitioner is the only issue.
2. On February 13, 2014, respondent mailed petitioner a Notice of Case Action requesting petitioner and his wife sign a Financial Release Form.
3. Petitioner and his wife submitted a signed Financial Release Form dated February 19, 2014.
4. As part of the eligibility process, respondent reviewed electronic notifications from the Data Exchange Inquiry Asset Verification (DEAV). DEAV notified respondent that petitioner's wife is co-owner on accounts at TD Bank, JP Morgan Chase Bank and Bank

of America. The Bank of America account showed a \$41,653.23 balance in February 2014.

5. On March 14, 2014 respondent mailed petitioner a Notice of Case Action notifying his February 11, 2014 Medically Needy application was denied, "Reason: The value of your assets is too high for this program."

6. On April 28, 2014 respondent completed a supervisory review with petitioner regarding the hearing request. Respondent informed petitioner of the DEAV notification from Bank of America on a checking account for his wife. Petitioner explained that his wife does not have access to the money. Respondent requested petitioner provide verification from Bank of America stating petitioner's wife does not have access to the account identified on DEAV.

7. On April 29, 2014 petitioner provided bank statements from Bank of America. The statements identified a Platinum Money Market Savings account and a Classic Interest Checking account. The money market account lists owners as: [REDACTED] ITF [REDACTED], ITF [REDACTED] and ITF [REDACTED]. The checking account lists owners: [REDACTED] or [REDACTED], ITF [REDACTED], ITF [REDACTED], [REDACTED]. Ending balances in the accounts on March 11, 2014 were:

Money Market Savings
\$140,259.03

Classic Interest Checking
\$41,584.30

8. Petitioner asserted that his name is not on the above accounts; therefore he does not have access to the money. And his wife's name is on the accounts because petitioner's mother-in-law is elderly; however, his wife does not have access to the

money. Petitioner asserted that his wife will only have access to the accounts when her mother passes away.

9. Respondent stated that because the checking account reads [REDACTED] or [REDACTED] this indicates petitioner's wife has access to the account. And since [REDACTED] is married to petitioner the asset amount is considered in his Medicaid redetermination. Respondent explained the asset limit to be eligible for adult Medicaid is \$5,000 for an individual and \$6,000 for a couple. And the \$41,584.30 checking account amount exceeds the asset limit to be eligible for Medicaid.

CONCLUSIONS OF LAW

10. 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.

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

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

13. Fla. Admin. Code § 65A-1.701, defines resources:

(28) Resources: Cash or other liquid assets, or any real or personal property that an individual owns and could convert to cash to be used for their support and maintenance. Resources is synonymous with assets.

14. Fla. Admin. Code § 65A-1.303, Assets, states in part:

(1) Specific policies concerning assets vary by program and are found in federal statutes and regulations and Florida Statutes.

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

(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.** (emphasis added) 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.

15. The above authority defines ownership of an asset as "Any individual who has the legal ability to dispose of an interest in an asset owns the asset." In this case, the

checking bank statement from Bank of America lists owners as "[REDACTED] or [REDACTED]"; thereby making the asset available to petitioner's wife [REDACTED]. The asset is countable in accordance with the authority.

16. Fla. Admin. Code § 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...

(e) For Medically Needy, an individual or couple cannot have resources exceeding the applicable Medically Needy resource limit set forth in subsection 65A-1.716(3), F.A.C...

17. Fla. Admin. Code § 65A-1.716 Income and Resource Criteria states:

(3) The resource limits for the Medically Needy program are as follows:

Family Size	Asset Level
1	\$5,000
2	\$6,000

18. The Bank of America bank statement (provided by petitioner) indicates \$41,584.30 ending balance in the checking account on March 11, 2014. The checking amount

exceeds the \$6,000 Medicaid asset limit for a couple and \$5,000 for an individual.

Therefore, petitioner is over the asset limit eligibility for Medicaid.

19. Petitioner argued that he does not have access to his mother-in-laws money and his wife name is on the accounts because the mother-in-law is elderly. Petitioner further argued that his wife also does not have access to the money. Petitioner did not provide verification from Bank of America stating petitioner's wife does not have access to the money.

20. In careful review of the cited authorities and evidence, the undersigned concludes respondent followed ruled in denying petitioner Medically Needy Medicaid due to exceeding the asset limit.

DECISION


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

DONE and ORDERED this 12th day of June, 2014,

in Tallahassee, Florida.



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:  Petitioner
ACCESS Keith Carpenter