

FILED

FEB 13 2015

**OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES**

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



APPEAL NO. 14F-9363

PETITIONER,

Vs.

FLORIDA DEPT OF
CHILDREN AND FAMILIES
CIRCUIT: 11 MIAMI-DADE
UNIT: 88073

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on December 24th, 2014 at 8:40 a.m.

APPEARANCES

For the Petitioner:  pro se

For the Respondent: Sylvia Stokes, Supervisor for the Economic Self-Sufficiency program.

STATEMENT OF ISSUE

The petitioner is appealing the respondent's action to deny her application for Medicaid/Medically Needy.

PRELIMINARY STATEMENT

The petitioner did not submit any documents into evidence for consideration.

The respondent submitted into evidence exhibits 1 through 5 for the hearing. The record was held open until the close of business January 5th, 2015 to allow the

respondent to submit additional documents. These were received within the allowed time frame, and the record was closed.

By way of written notice, the respondent informed the petitioner that her application for Medically Needy was denied. The reason stated is that "The value of your assets is too high for this program." A copy of the notice was provided during the post-hearing open record period and is Respondent's Exhibit 7; however, the first page, which reflects the date of the notice, was not provided. Therefore, the date the notice was issued is not known. The petitioner filed an appeal to challenge the respondent's action on November 3rd, 2014. Absent evidence to the contrary, the appeal is considered to be timely filed.

FINDINGS OF FACT

1. Prior to the action under appeal petitioner was enrolled in the Medically Needy Program through August 2013. The petitioner has not received any type of Medicaid benefits since then.

2. The petitioner, a single person household 75 year of age, applied for Medicaid/Medically Needy on August 4th, 2014. As part of the application and eligibility determination process, the respondent must explore and verify all factors of eligibility which include, but are not limited to meeting the asset limits.

3. As part of the eligibility determination process, the respondent reviewed electronic notifications from its Data Exchange Inquiry Asset Verification (DEAV) system. DEAV notified respondent that the petitioner is co-owner on accounts at JP Morgan Chase Bank and Wells Fargo. As of August 6th, 2014, the JP Morgan Chase

account showed a balance of \$13,978.22, and the Wells Fargo account showed a balance of \$1,043.98. Asset information provided through the Data Exchange system is considered to be verified upon receipt. The petitioner did not dispute these balances.

4. The respondent's position is that the balance of the JP Morgan Chase Bank, titled [petitioner; petitioner's mother] exceeds the asset limit of \$5,000; therefore, the petitioner is not eligible for Medicaid/Medically Needy.

5. The petitioner contends that her name appears on this account solely because she manages her parents' financial affairs. The petitioner's Social Security check is deposited into this account, but the petitioner also contends that amount of her check (\$529.58, less the Medicare premium deduction) is so nominal that it hardly accounts for the high balance. The petitioner further argues that the balance is higher on this account than it would be because there have been no mortgage payments on her house, since her house is in foreclosure. However, the money will eventually be used to meet other necessary household expenses. Therefore, the petitioner feels that the accounts in question should not be considered to be hers, and that her application for Medicaid/Medically Needy should be approved.

CONCLUSIONS OF LAW

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

7. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code R. 65-2.056.

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

9. 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.

10. 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.

11. 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 title of the JP Morgan Chase account appears as [petitioner; petitioner's mother] thereby making the asset available to the petitioner. The asset is countable in accordance with the controlling authority.

12. 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...

(a) For Medicaid for the Aged or Disabled Demonstration Waiver (MEDS-AD), an individual whose income is equal to or below 88 percent of the federal poverty level must not have resources exceeding the current Medically Needy resource limit specified in Rule 65A-1.716, F.A.C.

13. Fla. Admin. Code 65A-1.716, Income and Resource Criteria, sets forth the Medically Needy monthly asset limit for an individual at \$5,000 for a single-individual household.

14. According to the above controlling authorities, the Medicaid program at issue has a resource limit which must be met before an individual or couple can be determined eligible. In the instant case, the petitioner has two bank accounts with balances totaling \$15,022.20. Because this total exceeds the Medically Needy asset limit of \$5,000, the hearing officer concludes that the petitioner is not eligible for this benefit. Therefore, the respondent correctly followed rule in denying the petitioner's application, and this appeal is hereby denied.

DECISION

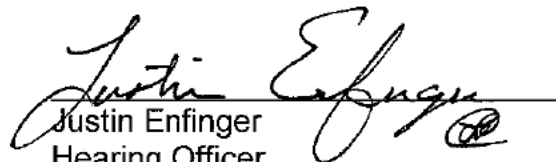
Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is denied and respondent's action is affirmed.

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 13th day of February, 2015,

in Tallahassee, Florida.



Justin Enfinger
Hearing Officer
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Copies Furnished To: [REDACTED] Petitioner
Teresa Zepeda, Circuit 11 ESS