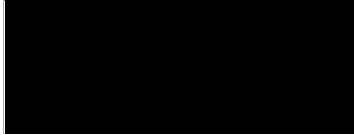


STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

FILED

APR 22 2015

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES



PETITIONER,

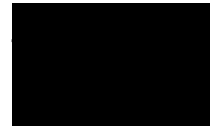
vs.

FLORIDA DEPT OF CHILDREN AND FAMILIES
CIRCUIT: 05 Marion
UNIT: 88001

RESPONDENT.

APPEAL NO. 15F-00013

CASE NO.



FINAL ORDER

Pursuant to notice, an administrative hearing in the above-referenced matter convened before Patricia C. Antonucci in Ocala, Florida on February 24, 2015 at approximately 10:30 a.m.

APPEARANCES

For the Petitioner:  Petitioner

For the Respondent: Cindy Sarver, Eligibility Specialist, ACCESS Supervisor,
Department of Children and Families

STATEMENT OF ISSUE

At issue is whether Respondent, the Department of Children and Families (DCF or 'the Department') properly terminated Petitioner's Medically Needy/Share of Cost and Qualified Medicare Beneficiary (QMB) Medicaid benefits. Also at issue is whether it was proper for DCF to deny Petitioner's December application to reinstate those same benefits.

PRELIMINARY STATEMENT

By notice dated January 14, 2015, both parties were notified that this matter would convene via teleconference on February 2, 2015. On or about January 21, 2015, the Office of Appeal Hearings received a request from Petitioner for an in-person hearing, to convene before noon. Said request noted that Petitioner wears hearing aids in both ears, has difficulty with telephone correspondence, and experiences back pain as the day progresses.

By notice dated February 2, 2015, an in-person hearing was scheduled for 10:30 a.m. on February 24, 2015. On the designated date, the undersigned hearing officer, Petitioner, and DCF Senior Worker, Edith Ward, appeared in a conference room in Ocala, Florida. Cindy Sarver, representing Respondent, joined the hearing via teleconference. Petitioner confirmed that he did not require any additional accommodations to participate in the proceedings.

Respondent's Exhibits 1 through 9, inclusive, and Petitioner's Exhibits 1 through 8, inclusive, were entered into evidence. Respondent noted that Petitioner had submitted two, additional applications for Medicaid on February 11 and February 20, 2015, which remained pending as of February 24th. The parties were instructed to notify the undersigned if review of those applications subsequently resolved the instant appeal. As of the date of this Order, no further correspondence has been received.

FINDINGS OF FACT

1. Petitioner is an 82-year old man, born [REDACTED] His wife is a 78-year old woman, born [REDACTED]

2. Prior to the initial action at issue, Petitioner was receiving Medically Needy and QMB Medicaid benefits for himself and his wife (hereinafter referred to collectively as "Petitioner"), through the Department of Children and Families.

3. By Notice of Case Action dated October 30, 2014, Petitioner was informed that these Medically Needy and QMB benefits would end on November 30, 2014, because, "[t]he value of your assets is too high for this program[.] Assets have been discovered which you failed to disclose."

4. By letter dated November 12, 2014 and addressed to DCF, Petitioner stated:

My wife and I went TF Bank, [REDACTED] where we are holding money of my wife... brother [S.S.B.] and under four thousands in other two banks. We were advised by TD Bank Supervisor [REDACTED] who is also a Notary that we make such a statement before her and she would put her Notary stamp. A letter of my wife brother was also presented to... [REDACTED] which is in file with them.

In return my wife brother gives \$100 per month.

Kindly review our above mentioned case as we need your help Medically Needy Benefits. We are hand to mouth and literally have no money.

5. Also sent to Respondent was a letter dated October 22, 2014, addressed to TD Bank in [REDACTED] Florida. Said letter, signed by S.S.B., states, in pertinent part:

My sister [N.S.] and her husband [Petitioner] have a checking account with you Number [REDACTED]. The funds of this account belong to me while I have fully authorized to operate the account as they are instructed by me.

6. Records of correspondence kept by the Department reflect that Petitioner contacted DCF on December 1, 2014 regarding termination of his Medicaid. Per the Running Record Comments from that date, the Department case worker:

[Petitioner was] advised they were closed due to over assets // client stated that the bank accts belong to brother- in – law and he pays them to watch over his accounts // advised client to submit docs and to re-apply for benefits.

7. It is not clear why the Department worker Petitioner advised Petitioner to reapply, but did not inform him that he retained the right to appeal termination of benefits.

8. On December 2, 2014, Petitioner filed a new application for Medicaid Benefits.

9. Via Notice of Case Action dated December 31, 2014, Petitioner was informed that his December 2nd application had been denied as “the value of your assets is too high” for both Medically Needy and QMB Medicaid.

10. Running Record Comments from December 30, 2014 document that Petitioner requested a hearing based on denial of Medicaid via certified letter to the Ocala DCF Storefront. On that same date, the caseworker notated, “Case is currently in pending status... copy of letter requesting [hearing] sent to scan email...cc supervisor and senior.”

11. Per Running Record Comments dated December 31, 2014:

This case was denied... on the 28th day... not allowing the client to submit proof of assets belong to the clients brother... The case was denied too early and did not allow client to provide proof that assets do not belong to her.... Have repended case giving client opportunity to verify availability of bank accounts.

12. By letter dated January 2, 2015, the Department requested that Petitioner provide additional information by January 12, 2015, noting:

Information has been received that current[ly] have two open bank accounts. ACCOUNT NO: [REDACTED] with TD Bank and ACCOUNT NO: [REDACTED] with Bank of America. Please verify the names of all people on the two accounts and the availability of the money in each of the accounts to you.

13. In response to this notification, on or about January 6, 2015, Petitioner submitted to Respondent a sworn, notarized statement, indicating:

... the funds in TD and Bank of America belong to my wife older brother who lives in Canada which we are holding in our name for him. In return for we get \$100 per month from him, which is a lot of money for us.... If you wish we can get in touch with him asking him to transfer his money to Canada. Then, of course, we lose the benefit \$100 monthly.

14. Running Record Comments from January 8, 2015 show that Petitioner again contacted Department, and was advised to submit additional information regarding ownership of the accounts. Specifically, the records note:

Once this info is rc'd depending [sic] on info rec'd... [Petitioner] and wife may need to close the accounts with their names to get funds out of their names— There is no penalty for this so could potentially be eligible back to original date of denial if correct info rec'd.

15. On January 9, 2015, Respondent issued a second request for information, asking that same be submitted by January 20, 2015. Specifically, Respondent noted:

We need the actual bank account statements for the 2 accounts in question— Please sent in the 2 most current months including all pages for both accounts— Please note the statement you sent in about the ownership of the funds is not sufficient—we will need a statement from the reported owner of the funds stating he does own the funds and why your names are the only ones on the accounts— He will need to explain the monthly deductions from the accounts and where the deposits are coming from—Once we have received this information we can re-evaluate your case BUT we may need further action on your part to remove your names from the accounts – You will be advised of any further action necessary once we receive the requested bank statements and ownership statements.

...

If you do not contact us or provide the requested information, we will be unable to determine your eligibility. We will deny your application or your benefits may end.

16. On January 13, 2015, Petitioner re-submitted the statement written by S.S.B. (dated October 22, 2014), along with a one-page account summary from TD Bank (numbered page 1 of 2) and a two-page account activity printout from Bank of America (numbered pages 1 and 2 of 4). Petitioner also filed a cover letter, which states, in part:

From Canada my wife and I get \$550 each per month as our retirement old age pension in Canadian Dollars. The total pension for both amounts to \$1100 in Canadian dollars. When converted to USA dollars at the current exchange rate plus banks margin of 4 cents. The net pension for us results to \$975. My wife brother who is authorized to draw our pension allows us to draw \$1100 USA from his Bank of America account for our day to day expenses. The account in TD bank is dormant, and we only operate as instructed by him.

...

If you advise us to remove our names from the Bank accounts we shall do that but our pension from Canada shall be reduced by \$175 per month on conversion to [U.S.] dollars.

17. Petitioner reiterated this request via letter dated January 23, 2015, noting, in part: "I replied to you on January 13, 2015, enclosing two bank statements and a copy of a letter from my wife older brother with respect to the names on those bank accounts verifying that those accounts belong to him, but could be operated by my wife or me as per his instructions."

18. By Notice of Case Action dated January 26, 2015, Petitioner was informed that his December 2014 application for Medicaid benefits was denied as he was over-assets.

19. On or about February 11 and February 20, 2015, Petitioner again re-applied for Medicaid benefits.

20. By letter dated February 9, 2015, Petitioner notified the Department that the funds in the TD Bank account were sent to his brother-in-law in Canada, leaving an account balance of \$58.59, but that “if you advise I can close the account in TD Bank.” Within the same letter, Petitioner noted that the Bank of America account is diminishing “as bills are paid from this account.” Attached balance statements reflect a TD Bank account balance of \$58.59, and a Bank of America account balance of \$4,662.29 (as of February 6th). The Bank of America account statement also demonstrate a balance in excess of \$7,469.00 throughout January of 2015.

21. At hearing, Respondent referenced information obtained by the Department through a data exchange using Petitioner’s Financial Release. This information reflects balance summaries of both bank accounts, as follows:

Bank of America (all months 2014)					
July	August	September	October	November	December
\$13,516.79	\$10,479.33	\$8,391.77	\$6,481.91	\$15,518.18	\$12,542.53

TD Bank (all months 2014)					
July	August	September	October	November	December
\$52,278.48	\$52,280.63	\$115,637.03	\$115,640.47	\$103,645.22	\$103,649.93

22. Respondent confirmed that all noted balances in each account would be considered over-assets for both the Medically Needy and QMB Medicaid programs.

23. Petitioner did not contest these balances, but stated that the accounts – specifically, the TD Bank account – belonged to his brother-in-law. With regard to the

Bank of America account, Petitioner stated the brother-in-law kept about \$1,500.00 in the account, but the rest belonged to Petitioner and his wife. Petitioner further stated that the last time his brother-in-law had paid Petitioner \$100.00 for maintenance of the account was in September of 2014.

24. Respondent's position is that when an individual is listed as an account holder, he/she is presumed to have access to all funds within that account. Since Petitioner and his wife are the *only* named account holders, and because the Department has yet to receive a specific statement regarding B.S.S.'s ownership of the funds, full account statements, and an explanation regarding account activity, Respondent contends that Petitioner has not rebutted the presumption of ownership/control.

25. Petitioner states that he has complied with the Department's requirements and has depleted the account balances, such that he and his wife are now within the asset requirements. He references the Running Record Comment notation of January 8, 2015 as proof that his benefits should be granted retroactive to the date of denial. Petitioner is concerned that his wife, who has cancer, does not have medical coverage. The couple are incurring bills for Medicare and medical services, which they are unable to pay.

CONCLUSIONS OF LAW

26. 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 § 409.285, Fla. Stat.

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

28. In accordance with Fla. Admin. Code R. 65-2.060 (1), the burden of proof regarding termination of Medicaid is assigned to the Respondent, who cancelled Petitioner's benefits within a certification period. The burden of proof as to denial of Petitioner's December 2014 application is assigned to Petitioner, who seeks reinstatement of benefits. The standard of proof is "preponderance of the evidence."

29. Fla. Admin. Code R. 65A-1.710(5) defines a Medically Needy Program as, "A Medicaid coverage group, as allowed by 42 U.S.C. 139a and §1963d, for aged, blind or disabled individuals (or couples) who do not qualify for categorical assistance due to their level of income or resources." Per Fla. Admin. Code R. 65A-1.702(12)(a), the QMB program entitles eligible recipients "...only to Medicare cost-sharing benefits, including payment of Medicare premiums." These are the two programs under which Petitioner was receiving Medicaid benefits.

30. Eligibility Standards for these Medicaid programs are found in Appendix A-9 (April 2015) of the Department's Policy Manual, which reflects maximum asset value for a Medically Needy couple of \$6,000.00, and a maximum asset value for a QMB couple of \$10,930.00.

31. Petitioner's benefits were terminated on November 30, 2014. For the month of December 2014, *both* the TD Bank and Bank of America accounts reflect balances which would place Petitioner over the asset limits for Medically Needy *and* QMB (TD Bank balance of \$103,649.93 and Bank of American balance of \$12,542.53).

32. The portions of the account balances which Petitioner submitted along with his February 2015 application reflect consistent balances in both TD Bank and Bank of America accounts in excess of \$6,000.00 throughout January of 2015.

33. Before any portion of the account balances in December 2014 and January 2015 could be discounted as an asset to Petitioner, Petitioner would have to overcome a presumption of ownership and control over those funds.

34. The Department's Policy Manual is explicit in terms of presumption of ownership.

In reviewing joint ownership of accounts, the Manual notes:

1640.0301 Joint Ownership (MSSI, SFP)

Joint ownership exists when the legal right to dispose of an asset is shared by more than one individual.

1640.0302.01 Joint Ownership of Bank Accounts (MSSI, SFP)

When an individual is a joint account holder who has unrestricted access to the funds in the account, you must presume all of the funds in the account are owned by the individual. This presumption is made regardless of the source of the funds. If the individual alleges the funds in the account belong to someone else, you must allow the individual to submit evidence to challenge this presumption. If the challenge is successful, do not count the funds in the account as an asset to the individual for any month. (If the individual never owned the funds, they were never his.) If the challenge to the presumption of ownership is not successful, you must consider the funds as an asset to the individual. This policy applies to checking accounts, savings accounts, certificates of deposit and other jointly owned financial accounts.
(emphasis added)

35. In terms of rebutting the presumption, the Manual sets forth the following:

1640.0302.04 Proof Needed to Rebut Ownership (MSSI, SFP)

When an individual has unrestricted access to the funds in a joint account but does not consider himself an owner of part or all of the account funds, you must advise the individual that:

1. the funds are presumed to be his; and
2. he may rebut the presumption of ownership by presenting proof the funds belong to someone else.

To rebut the presumption of ownership, the individual must provide the following information:

First, the individual must provide a written statement and corroborating evidence from the financial institution(s) and other sources to substantiate:

1. any claims about ownership of the funds or interest from the funds;
2. the reasons for establishing the joint account;
3. whose funds were deposited into the account;
4. who made withdrawals from the account; and
5. information on how withdrawals were spent.

Second, the individual must provide a written statement from the joint owner(s) explaining their understanding of the ownership of the account(s); that is, claims of ownership, why the account was set up, who deposited funds, withdrew funds and used the account.

...

To successfully rebut ownership of a joint account, the evidence must clearly support that the individual is not a joint owner of the funds.

1640.0302.05 Evaluating Evidence for Rebuttal (MSSI, SFP)

When all proof (per 1640.0302.03) is received, you must evaluate the evidence to determine if it supports the individual's claim that someone other than the individual owns the asset. The evidence must clearly corroborate that the funds deposited to the account did not belong to the individual and were not used to meet his needs.

If the rebuttal evidence proves that the account funds (all or partially) were deposited, withdrawn and used by the other joint owner(s) only, the individual has successfully proven that he does not own (all or part of) the funds.

If the individual successfully rebuts ownership of all the funds in the joint account, the individual's name must be removed from the account, so he no longer has access to the funds in the account. (This is not considered a transfer of assets.)

Do not consider the funds in the account as an asset to the individual for any month (even for months prior to the month the individual's access to the account is removed). The individual must submit documentation of the original and revised (if any) account records showing his name has been removed.

Photocopies are necessary for the case file.

If the individual does not successfully rebut ownership of the account, you must consider the total joint account balance as an asset to the individual.
(emphasis added)

36. While Petitioner did provide a written statement from his brother-in-law, said statement did not explain why the accounts were set-up jointly, why the brother-in-law's name did not appear on the account as a co-owner, or how the funds were deposited

into and withdrawn out of the account. Nor was any statement from the financial institution, itself (i.e., TD Bank or Bank of America) provided.

37. As of the date of hearing, Petitioner and his wife were still listed as the sole owners of the TD Bank and Bank of America accounts. While Petitioner was correctly informed that retroactive coverage was *possible*, were he ultimately found to be within asset limits, such coverage is not automatic.

38. Per Policy Section 0440.0601, The Department is to: "Remind an individual verbally of the right to request a fair hearing any time he expresses a disagreement with any action taken. Do not limit or interfere with an individual's right to request a fair hearing." It is unfortunate that the Department worker who spoke with Petitioner on December 1, 2014 advised him to re-apply without informing him of his right to appeal the termination of Medicaid benefits. However, at the time of this correspondence, the effective date of the adverse action had already occurred. As such, it is not clear that the Department would've reinstated and continued Medicaid, pending the outcome of an appeal. (See Section 0440.0604, noting that benefits should be reinstated/continue "If an individual requests a hearing by the end of the last day of the month prior to the effective date of the adverse action....") For these reasons, and because the undersigned has incorporated review of the decision to terminate, the undersigned concludes that if the Department erred in failing to remind Petitioner of his right to a fair hearing on December 1, 2014, such error was ultimately harmless.

39. Petitioner's most recent (February 2015) application was still pending at the time of hearing, and the undersigned has not received an update regarding the status of that application. As such, it would be premature for her to rule on same. Should the

Department deny Petitioner's February application, Petitioner will retain the right to appeal that specific denial. Additionally, should the Department approve Petitioner's application but deny retroactive coverage, Petitioner reserves the right to appeal that determination, as well.

40. Petitioner is understandably concerned about his wife's health, and his dedication to her well-being is to be commended. In terms of uncovered medical bills for both Petitioner and his wife, Petitioner is encouraged to speak with DCF representatives and to explore alternate options for Medicaid, such a waiver programs or, if and when relevant, hospice care. With regard to Medicare issues, he is encouraged to contact the Social Security Administration directly.

41. Based upon the totality of the evidence, Respondent has shown that both its decision to terminate Medicaid benefits and its subsequent decision to deny re-application for same were proper.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, Petitioner's appeal is DENIED.

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 22nd day of April, 2015, in

Tallahassee, Florida.

Patricia C. Antonucci ¹

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