

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. 15F-06547
15F-09347

CASE NO. 

FLORIDA DEPARTMENT
OF CHILDREN AND FAMILIES
CIRCUIT: 09 Orange
UNIT: 66292

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned telephonically convened an administrative hearing in the above-referenced matter on September 3, 2015, and reconvened on September 15, 2015, at 2:45 p.m.

APPEARANCES

For the petitioner:  pro se

For the respondent: Katherine Ambrose, ACCESS Supervisor

STATEMENT OF ISSUE

At issue is whether the respondent properly terminated petitioner's SSI-Related Medically Needy (MN) Share of Cost (SOC) and Qualified Medicare Beneficiary (QMB) Medicaid benefits. The respondent carries the burden of proof by the preponderance of evidence.

PRELIMINARY STATEMENT

By notice dated July 20, 2015, the respondent notified the petitioner that her MN SOC and QMB benefits would end on July 31, 2015 citing "The value of your assets is too high for these Programs."

During the September 3, 2015 hearing, it was determined that testimony was needed from ACCESS Policy Program Office; therefore, the parties agreed to reconvene the hearing.

Appearing as witness for the respondent on September 15, 2015, was Reginald Schofield, ACCESS Senior Human Services Program Specialist.

Petitioner submitted one exhibit, entered as Petitioner Exhibit "1". Respondent submitted six exhibits, entered as Respondent Exhibits "1" through "6". The record closed on September 15, 2015.

FINDINGS OF FACT

1. Prior to the action under appeal, petitioner was receiving SSI-Related MN SOC, QMB, and Food Assistance benefits for herself.
2. On July 6, 2015, the petitioner recertified for Food Assistance, MN SOC and Medicare Savings Plan (QMB). Food Assistance is not the issue.
3. Respondent explained that during the recertification process, the Department discovered the petitioner's financial account balance was greater than reported on her previous application.

FINAL ORDER (Cont.)

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4. Respondent referenced information obtained by the Department through the data exchange inquiry asset verification system. The information reflects balance summaries for the financial account jointly owned by the petitioner and her mother as follows:

DUAV
PAGE: 06
PERSON ID NUMBER: [REDACTED] CASE: [REDACTED]
NAME (LAST, FIRST MIDDLE, SUFFIX): [REDACTED]
DATE RECEIVED: [REDACTED] DATE RECEIVED: [REDACTED] A. ID: [REDACTED]
ASSET TYPE: [REDACTED] DATE RECEIVED: [REDACTED] DATE RECEIVED: [REDACTED] PAGE 04
ADDRESS: [REDACTED] NC-28202

0.00	0.00	0.00	0.00	0.00	0.00	0.00
0.00	0.00	0.00	0.00	0.00	0.00	0.00
0.00	0.00	0.00	0.00	0.00	0.00	0.00
0.00	0.00	0.00	0.00	0.00	0.00	0.00
0.00	0.00	0.00	0.00	0.00	0.00	0.00
0.00	0.00	0.00	0.00	0.00	0.00	0.00
0.00	0.00	0.00	0.00	0.00	0.00	0.00
0.00	0.00	0.00	0.00	0.00	0.00	0.00
0.00	0.00	0.00	0.00	0.00	0.00	0.00

5. Petitioner and her mother have a [REDACTED] with the financial institution

[REDACTED] The data exchange inquiry asset verification system showed a balance of \$45,375.55 on July 2015.

6. Respondent determined the petitioner's joint account showing a balance of \$45,375.55 puts her over the asset limit for both the MN SOC and QMB Medicaid Programs.

7. On July 20, 2015, the respondent mailed the petitioner a Notice of Case Action ending her MN SOC and QMB as of July 31, 2015, due to the household assets were too high for these Programs.

8. Petitioner did not contest the balance on the account; she confirmed the account is unrestricted and that she has access to the account. During the hearing, the petitioner submitted a [REDACTED] statement from June 27, 2015 through July 29, 2015, showing a balance of \$43,378.73. Petitioner explained the respondent was aware of the joint financial account with her mother for the last three years. Petitioner argued that all the funds in the account belong to her mother.

9. The respondent mailed the petitioner a pending notice allowing the petitioner an opportunity to rebut the presumption of ownership/control of the asset.

10. The petitioner submitted documentation to the respondent to confirm the funds in the account belong only to the petitioner's mother. The petitioner was successful in proving the asset did not belong to her; however, she must also remove her name from the account. Once the petitioner's name is removed from the financial account, it will not be included in the petitioner's MN SOC and QMB Medicaid eligibility determination.

11. Petitioner did not wish to remove her name from the joint financial account and argued that her mother is [REDACTED]. Petitioner explained that she is in charge of paying the house bills and any improvements or repairs in the house. Petitioner believes she should be eligible for MN SOC and QMB Medicaid benefits because she is [REDACTED]

12. The respondent's witness explained petitioner must remove her name from the joint [REDACTED] account, and suggested other options such as obtaining power of attorney (POA) or payable on death (POD) for her mother so that she can continue to manage her mother's finances. The respondent explained there are no exceptions

identified in the Department's policy to suggest not counting financial institution accounts with no legal restrictions as an asset.

CONCLUSIONS OF LAW

13. 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.

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

15. Fla. Admin. Code R. 65A-1.710(5) defines the 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." 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." Petitioner was receiving Medicaid benefits under these two programs.

16. Eligibility Standards for these Medicaid Programs are found in Appendix A-9 of the Department's Program Policy Manual, which reflects the maximum asset value for a Medically Needy individual is \$5,000.00, and the maximum asset value for a QMB individual is \$7,280.00.

17. Fla. Admin. Code R. 65A-1.303 explains considerations on assets involved:

(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.

18. The Code of Federal Regulations, 20 C.F.R. § 416.1208, explains how funds held in financial institution accounts are counted:

(a) General. Funds held in a financial institution account (including savings, checking, and time deposits, also known as certificates of deposit) are an individual's resource if the individual owns the account and can use the funds for his or her support and maintenance. We determine whether an individual owns the account and can use the funds for his or her support and maintenance by looking at how the individual holds the account. This is reflected in the way the account is titled...

(b) Individually-held account. If an individual is designated as sole owner by the account title and can withdraw funds and use them for his or her support and maintenance, all of the funds, regardless of their source, are that individual's resource. For as long as these conditions are met, we presume that the individual owns 100 percent of the funds in the account. This presumption is non-rebuttable.

(c) Jointly-held account—(1) Account holders include one or more SSI claimants or recipients. If there is only one SSI claimant or recipient account holder on a jointly held account, we presume that all of the funds in the account belong to that individual. If there is more than one claimant or recipient account holder, we presume that all the funds in the account belong to those individuals in equal shares...

(2) Account holders include one or more deemors. If none of the account holders is a claimant or recipient, we presume that all of the funds in a jointly-held account belong to the deemor(s), in equal shares if there is more than one deemor. A deemor is a person whose income and resources are required to be considered when determining eligibility and computing the SSI benefit for an eligible individual (see §§ 416.1160 and 416.1202).

(3) Right to rebut presumption of ownership. If the claimant, recipient, or deemor objects or disagrees with an ownership presumption as described in paragraph (c)(1) or (c)(2) of this section, we give the individual the opportunity to rebut the presumption. Rebuttal is a procedure as described in paragraph (c)(4) of this section, which permits an individual to furnish evidence and establish that some or all of the funds in a jointly-held account do not belong to him or her. Successful rebuttal establishes that the individual does not own some or all of the funds. The effect of successful rebuttal may be retroactive as well as prospective.

Example: The recipient's first month of eligibility is January 1993. In May 1993 the recipient successfully establishes that none of the funds in a 5-year-old jointly-held account belong to her. We do not count any of the funds as resources for the months of January 1993 and continuing.

(4) Procedure for rebuttal. To rebut an ownership presumption as described in paragraph (c)(1) or (c)(2) of this section, the individual must:

(i) Submit his/her statement, along with corroborating statements from other account holders, regarding who owns the funds in the joint account, why there is a joint account, who has made deposits to and withdrawals from the account, and how withdrawals have been spent;...

(iii) Correct the account title to show that the individual is no longer a co-owner if the individual owns none of the funds; or, if the individual owns only a portion of the funds, separate the funds owned by the other account holder(s) from his/her own funds and correct the account title on the individual's own funds to show they are solely-owned by the individual. (emphasis added)

19. Department's Program Policy Manual, CFOP 165-22, passage 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.

When an individual is a co-owner of an account with someone who is incompetent or a minor, the corroborating co-owner statement is not necessary. You must obtain a corroborating statement from a third party who has knowledge of the circumstances. (emphasis added)

If there is no third party or the individual is unable to provide all bank verification, you must make a rebuttal determination based on the evidence submitted. Enter an explanation on CLRC why no written corroborating statement was obtained from the joint owner.

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

20. The Department's Program Policy Manual, CFOP 165-22, passage 1640.0302.05

Evaluating Evidence for Rebuttal (MSSI, SFP):

When all proof (per 1640.0302.04) 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.(emphasis added)**

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.

21. The above authority indicates if the individual has the power to liquidate the resource it is to be considered a resource. An individual's resources (assets) must be equal to or below the resource limit at some point during each time, that MN SOC and QMB Medicaid eligibility is determined. Petitioner was given the opportunity to rebut the presumption of ownership/control of the asset. Petitioner argued her mother was incompetent; therefore, the corroborating co-owner statement from the joint owner (mother) would not be necessary due to her current illness. The petitioner presented evidence from the financial institution — [REDACTED] to the respondent and demonstrated the money in said account does not belong to her. The petitioner successfully rebutted ownership of the joint account.

22. The authority and policy cited above explain that for an asset not to be considered in the Medicaid eligibility determination, an individual must successfully rebut ownership of the funds in a joint account **and** must also provide documentation from the financial institution showing his/her name has been removed from the account. As of the hearing date, petitioner had not removed her name from the joint financial account she has with her mother at [REDACTED]

23. Based upon the totality of the evidence, respondent has shown that both its decision to terminate SSI-Related Medically Needy SOC benefits and its decision to terminate QMB benefits were proper.

DECISION

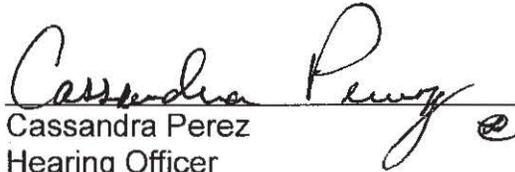
Based upon the foregoing Findings of Fact and Conclusions of Law, the appeals are denied and the Department's action is affirmed.

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

DONE and ORDERED this 10th day of November, 2015,

in Tallahassee, Florida.



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