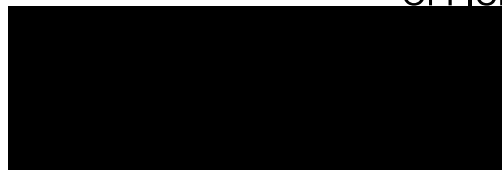


Feb 01, 2016

Office of Appeal Hearings
Dept. of Children and Families

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



APPEAL NO. 15F-9029

PETITIONER,

VS.



FLORIDA DEPT OF CHILDREN AND FAMILIES
CIRCUIT: 11 DADE
UNIT: 88601

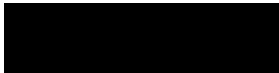
RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on November 30th, 2015 at 9:15 a.m. in Miami, Florida.

APPEARANCES


For the Petitioner:  the petitioner's wife.

For the Respondent: John Roche, Operations Management Consultant for the Economic Self-Sufficiency program.

STATEMENT OF ISSUE

The petitioner is appealing the respondent's action to terminate her Medicaid (Medically Needy) and Qualified Medicare Beneficiary (QMB) benefits. The respondent carries the burden of proving its position by a preponderance of the evidence.

PRELIMINARY STATEMENT

Appearing as a witness for the petitioner was , the petitioner's daughter.

Serving as a translator was Oneida Gamboa of ESS.

Petitioner's Exhibit 1 was moved into evidence.

Respondent's Exhibits 1 through 6 were moved into evidence. Additionally, the respondent submitted pages of policies from the Department's Policy Manual. The hearing officer made administrative note of these, but did not move them into evidence.

By way of a Notice of Case Action (Spanish version) dated October 16th, 2015, the respondent informed the petitioner that her September 24th, 2015 application for Medically Needy and QMB benefits was denied. The reason stated on the notice is that the value of the assets was too high to qualify for the programs. On October 28th, 2015, the petitioner filed a timely appeal to challenge the respondent's action.

FINDINGS OF FACT

1. Prior to the action under appeal, the petitioner was a recipient of both benefits. This fact was undisputed.

2. The petitioner submitted an application to recertify for his benefits on September 24th, 2015. As part of the recertification process, the respondent is required to explore, and if deemed necessary, verify certain factors of eligibility which include the value of all assets.

3. Upon securing the appropriate signed authorization from the petitioner, the respondent placed an inquiry of assets ownership through its Data Exchange system. The Data Exchange system collects information from various sources, to be used in determining an individual's eligibility for ESS benefits.

4. On October 15th, 2015, the respondent received a response from the Data Exchange system indicating that the petitioner was the owner of five (5) accounts as follows: a [REDACTED] at Bank of America with a balance of \$41,549.14; a [REDACTED] at Bank of America with a balance of \$374,792.68; a [REDACTED] at Bank of America with a balance of \$1,523.46, and a [REDACTED] with a balance of \$30.63. The respondent did not submit any viable verification of these balances; however, the petitioner did not dispute either the existence or the balances of these accounts.

5. The respondent explained that the Medically Needy program has an asset limit of \$6,000, and the QMB program has an asset limit of \$10,930. As the total of the balances of the petitioner's accounts, \$411,116.43 exceeds these amounts, the petitioner is no longer eligible for either of these benefits.

6. The petitioner asserted that the money in the accounts was left for the petitioner's minor granddaughter (who is not part of the petitioner's household) by the latter's mother (petitioner's daughter) who passed away in November 2012. The monies, originally a life insurance policy, were converted into trust funds purportedly titled in the petitioner's (and the petitioner's other daughter present who was present at the hearing) in trust for the petitioner's granddaughter. The petitioner alleges that she neither owns these funds nor has access to them.

7. The respondent acknowledged that policy does allow the petitioner the opportunity to rebut ownership of these accounts, but had no evidence that this procedure was followed prior to terminating benefits. The respondent agreed to be in

touch with the petitioner following the hearing, and to allow the petitioner the opportunity to verify that she does not own or have access to these funds. Should the petitioner prevail in her rebuttal, the respondent will establish eligibility for both the Medicaid (or Medically Needy, whichever is applicable) and the Qualified Medicare Beneficiary (QMB) programs, preserving the application date of September 24th, 2015.

CONCLUSIONS OF LAW

8. The Department of Children and Families Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties, pursuant to §120.80, Fla. Stat. This order is the final administrative decision of the Department of Children and Families under § 409.285, Fla. Stat.

9. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code R. 65-2.056, which states in part, “(3) The Hearing Officer must determine whether the Department’s decision on eligibility or procedural compliance was correct at the time the decision was made. The hearings are de novo hearings, in that, either party may present new or additional evidence not previously considered by the department in making its decision.”

10. Fla. Admin. Code R. 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.

11. Fla. Admin. Code R. 65A-1.712, SSI-Related Medicaid Resource Eligibility Criteria, states in relevant part:

(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:

(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.

12. Fla. Admin. Code R. 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.

(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.

13. The Department's Public Assistance Policy Manual, Passage

1640.0302.04, Proof Needed to Rebut Ownership states as follows:

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 *[emphasis in original]*, 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 *[emphasis in original]*, 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.

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.

14. The above-cited authority defines the owner of an asset as “any individual who has the legal ability to dispose of an interest in an asset.” In the instant case, as the petitioner’s name appeared on the assets in question, the respondent presumed that the petitioner owned the assets, and therefore, considered the assets available to the petitioner.

15. However, as established in the Findings of Fact, the petitioner asserted that she has no access to the funds in the accounts in question. According to the above guidelines, when such a situation is alleged, the

respondent must allow the petitioner to challenge the respondent's presumption. The respondent, by its own admission, was unable to determine whether or not the petitioner was afforded this opportunity, and agreed to allow the petitioner this opportunity following the hearing.

16. Therefore, the case is hereby remanded to the respondent for corrective action. If it has not already done so, the respondent will, within ten days from the date of this order, issue written notice to the petitioner, allowing her at least ten days to prove that the funds in the accounts in question are inaccessible to the petitioner. The petitioner will need to cooperate in this process. If the petitioner successfully proves this allegation, the respondent will exclude the assets from consideration and re-evaluate the petitioner's eligibility accordingly. The respondent will issue new notice informing the petitioner of the outcome of this procedure, and the notice must include appeal rights should the petitioner disagree with the outcome.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, this appeal is remanded to the respondent for corrective action as described above, to be taken within ten days from the date of this order.

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

FINAL ORDER (Cont.)

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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 indigence to waive those fees. The Department has no funds to assist in this review, and any financial obligations incurred will be the petitioner's responsibility.

DONE and ORDERED this 01 day of February , 2016,

in Tallahassee, Florida.



Justin Enfinger
Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
Office: 850-488-1429
Fax: 850-487-0662
Email: Appeal.hearings@myFLfamilies.com

Copies Furnished To [REDACTED] Petitioner
Office of Economic Self Sufficiency