

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF HUMAN SERVICES
APPEALS OFFICE
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Docket # 15-1025
Hearing Date: June 25, 2015

Date: July 29, 2015



ADMINISTRATIVE HEARING DECISION

The Administrative Hearing that you requested has been decided in your favor. During the course of the proceeding, the following issue(s) and agency policy reference(s) were the matters before the hearing:

**THE DHS POLICY MANUAL: MEDICAL ASSISTANCE
SECTION 0354.05 RESOURCE LIMITS, SECTION 0382.15.10.10 JOINT
CHECKING, 0382.15.10.15 PRESUMP. OF OWNER, ONE ACCOUNT,
0382.15.10.30 DETERMINING ACCESS to FUNDS, 0382.15.10.40
REBUTTAL PROCEDURES, 0382.15.10.45 EVIDENCE for a
SUCCESSFUL REBUTTAL**

The facts of your case, the agency policy, and the complete administrative decision made in this matter follow. Your rights to judicial review of this decision are found on the last page of this decision.

Copies of this decision have been sent to the following: you, and agency representatives: Joyce Paterson, Cheryl Lafazia, Tom Conlon, and the Policy Unit.

Present at the hearing were: your sons, daughter-in-law and Joyce Paterson (agency representative).

ISSUE: Did the appellant's resources exceed the agency's resource limit for the LTC/MA program by \$16,428.77 as of February 1, 2015?

DHS POLICIES:

Please see the attached **APPENDIX** for pertinent excerpts from the Rhode Island Department of Human Services Policy Manual.

DISCUSSION OF THE EVIDENCE:

The agency representative testified:

- The agency representative stated that the agency notified the appellant by notice dated April 3, 2015 that her application filed for the month of February 2015 was denied due to excess resources in the amount of \$16,428.77.
- The agency representative testified that the agency received an application for LTC/MA on February 26, 2015 from the appellant. The application included copies of the bank statements that were held in her name at the time of application.
- The agency representative stated that the bank account resources totaled \$20,428.77 as of February 1, 2015. The application was therefore denied as the resource limit for a single individual for the LTC/MA program is \$4000.00.
- The agency representative submitted a copy of the appellant's bank statement from Bank of America indicating the total balance of a Checking account, 2 Money Market savings accounts and a Certificate of Deposit account was \$20,428.77 as of February 1, 2015.
- The agency representative stated that rebuttal forms were not submitted regarding any of the accounts attributed to the appellant. She spoke with the family about what information was needed and at the time the family was not able to provide the rebuttal information.
- The agency representative stated that she received a subsequent application from the appellant during May 2015 and eligibility was determined for the LTC/MA program effective May 1, 2015.
- The agency determined that based on the resources from February 1, 2015 the appellant was required to "spend down" \$16, 428.77 in order to establish eligibility for May 1, 2015.
- The agency attributed all of the funds in the Bank of America accounts as available to the applicant.
- The agency determines the value of available assets as of the first of the month in which the application is received.

The appellant's representative testified:

The contention is that only one of the accounts from the Bank of America statement should not be attributed to the appellant. The Certificate of Deposit ending in account #7733 is not in the appellant's Social Security number and was established with her son Robert's resources.

She stated that at the time the CD was established it came from a different bank and the statements continue to be sent to her. She stated that she has contacted Bank of America and requested a letter about the history of the account and was told that a history of the account could not be provided because the account was so old.

She stated that the bank representative told her that the bank could not provide the original application for the CD. The bank representative also told her that it would take 4-6 weeks to send out verification that the CD is held under Robert's Social Security #. She has yet to receive the verification from the bank. She stated that is the reason she did not provide the agency with information about the CD at the time of the application.

She stated that she does not always get a 1099 IRS form every year because the CD is rolled over. The CD is in the Social Security # of the appellant's son Robert and has been since the account was established.

She stated that all of the other Bank of America accounts are in the Social Security # of the appellant. She stated that the balance of the CD ending in #7733 at the time of application was \$3465.91, which is the CD owned by Robert.

She stated that she was not aware that Robert's CD appeared on the appellant's bank statement as she was getting a separate monthly statement for Robert's CD in the mail.

FINDINGS OF FACT:

1. The agency determined that the appellant was not eligible for LTC/MA benefits as of February 1, 2015 due to excess countable resources.
2. The agency sent the appellant a notice of denial of LTC/MA benefits dated April 3, 2015 for the month of February 2015.
3. This record of hearing was held open through July 27, 2015 to allow the appellant's representative additional time to submit rebuttal information about a CD held in the name of the appellant's son.

CONCLUSION:

The issue to be decided is whether the appellant's resources exceeded the agency's resource limit for the MA/LTC Program for the month of February 2015.

There is no dispute as to the fact that the appellant's son is named on a joint CD account with the appellant. The joint CD account with Bank of America held \$3465.91 as of February 1, 2015. The agency representative testified that at the time of application rebuttal forms were not submitted by the appellant and the account co-holder because the family did not have the required account information at that time.

The agency therefore determined that the money jointly held in the CD under review was attributed entirely to the appellant.

The appellant's daughter-in-law and son have testified and provided the required rebuttal forms and 1099 form to this record of hearing indicating that the CD ending in #7733 at Bank of America belongs entirely to the appellant's son Robert.

The applicant's statement submitted to this record states, "My son Robert asked me to put my name on a CD he opened at Bank of America, the money belongs to him, none of it is mine. It was on my bank statement because I have other accounts at the bank."

The co-holder's corroborative statement submitted to this record states, "My wife and I got caught in the State's banking crisis. Since then we decided not to utilize a single banking institute. I purchased a CD at Bank of America where my mother Anna Rossi did her banking. I added her name to my account. The CD is mine, the money was never my mother's."

The appellant's representatives also submitted a copy of an IRS 1099-INT interest income form indicating that the CD ending in #7733 earned interest income under the Social Security # that belongs to the appellant's son Robert.

Review of agency policy specific to the rebuttal of ownership of either full or partial ownership of joint accounts determines that specific evidence is required. (DHS policy #0382-15.10.45). The applicant must provide a statement indicating the reasons for establishing the joint account, and the source of all funds. Agency policy (0382.15.10.15) also states that whenever an applicant is a joint account holder who has unrestricted access to the funds, all of the funds in the account are presumed to be the resources of the applicant.

The appellant's son has provided sufficient evidence that all of the resources held in the Bank of America CD ending in #7733 are attributed to him for purposes of determining LTC/MA eligibility for the appellant.

Based on the evidence submitted and statements made by the appellant's representatives at hearing it is determined that the evidence provided establishes that none of the funds, held in the Bank of America CD ending in #7733 are owned by the applicant. As the appellant was required to include the CD \$3,465.91 amount as part of her resource reduction she will be allowed an applied income credit towards her cost of care at the nursing facility.

After a careful review of the agency's policies, as well as, the evidence and testimony given, the Hearing Officer finds that the agency was correct in counting the account assets

Real Property and Personal Property \$2,000 \$3,000

Property Essential for Self-Support Excluded

Burial Spaces Excluded

Life Insurance \$1,500 \$1,500(each)

Burial Set-Aside Up to \$1,500 Individual & Spouse (See Limits in Section 0356.45).

Home and Adjoining Land Excluded as a resource if living in it. RESOURCE LIMITS 0354.05

Automobile One is potentially excludable based on use. Otherwise, the FAIR MARKET VALUE up to a threshold of \$4,500 is excluded. (Section 0356.30)

RSDI Retroactive Payments Excluded for up to six (6) months under provisions in Section 0356.60.

* Note: The Low Income Aged and Disabled Coverage Group (Section 0370.70), entitled to the Categorically Needy scope of services, is subject to the Medically Needy Resource Limit.

MEDICALLY NEEDED RESOURCE LIMITS - ALL GROUPS RESOURCE LIMITS 0354.05

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RESOURCE INDIVIDUAL COUPLE

Basic Limit \$4,000 \$6,000

Life Insurance \$4,000 Face Value for each individual. If Face Value(s) exceeds this threshold, evaluate as per Section 0356.20.

Burial Set-Aside** Up to \$1,500 each individual (See limits in Section 0356.45).

Automobile One is potentially excludable based on use. Otherwise, the FAIR MARKET VALUE up to a threshold of \$4,500 is excluded.

0354.05
(Section 0356.30)

RESOURCE LIMITS

RSDI Retroactive Payments Excluded for up to six (6) months under provisions in Section 0356.60.

Tangible Personal Property (personal valuables, antiques, jewelry, pleasure boats, etc.) \$5,000 threshold limit per household.

Joint Checking and Savings

0382.15.10.10

REV: 06/1994

Whenever the applicant is a joint account holder who has unrestricted access to the funds in the account, ALL of the funds in the account are PRESUMED to be the resources of the applicant or deemor. The applicant or deemor will be offered the opportunity to submit evidence in rebuttal of this presumption. A successful rebuttal will result in finding that the funds (or a portion of the funds) in the joint account are not owned by the applicant or the deemor and , therefore, are not the resources of the applicant.

Presump of Owner, One Account 0382.15.10.15
REV: 06/1994

When only one holder of a joint account is an applicant who has unrestricted access to the funds in the account, explain to the applicant that ALL of the funds in the account are presumed to be the applicant's. This presumption is made regardless of the source of the funds.

Determining Access to Funds 0382.15.10.30
REV: 06/1994

The determination of accessibility depends upon the LEGAL STRUCTURE of the account. Where an applicant is a joint holder

of a bank account and is legally able to withdraw funds from that account, (s)he is considered to have UNRESTRICTED ACCESS to the funds.

It is possible to have ownership interest in a bank account but have RESTRICTED ACCESS to the funds. An example of language which restricts access is: "In trust for John Jones and Mary Smith, subject to the sole order of John Jones, balance at death of either to belong to the survivor." In this example, only John Jones has unrestricted access. When it is clearly established that all funds in an account are legally accessible to the applicant only in the event of the death of the co-owner, the applicant's access to the funds is restricted and the funds are

Determining Access to Funds 0382.15.10.30
not a countable resource. Regardless of whether the applicant has unrestricted access to the resources of an individual whose resources must be DEEMED, the funds in the account are deemed resources to the applicant.

If unrestricted access is an issue which cannot be resolved with the evidence on hand, the agency representative requests the financial institution to provide additional information. This may include the exact language used in the document which established the account, a description of any legal restrictions on the individual's access to the funds, etc.

If there is a legal impediment to the access to funds which may be owned by the recipient, see policy on availability of resources, Section 0380.30.

Rebuttal Procedures 0382.15.10.40 1
REV: 07/2006

When a joint account is alleged or discovered during the applicant process, the agency representative explains the applicable ownership presumption to the applicants or deemors.

If the applicant disagrees with the presumption of ownership, the agency representative provides an explanation of the rebuttal procedure. If the individual chooses not to rebut the presumption of ownership, the resource determination proceeds in the usual manner.

If the individual wishes to rebut the presumption, the agency representative explains to the individual that all of the necessary rebuttal evidence must be submitted within thirty days.

An additional thirty day period is granted if the applicant establishes good cause for his or her inability to provide the

Rebuttal Procedures 0382.15.10.40 2
necessary documentation within the initial thirty day period.

IF the required information is not provided, the presumption of ownership issued to determine the value of resources.

Once the rebuttal evidence is submitted, the Resource Unit at the DHS Central office determines who owns the funds in the joint account and documents the findings for the record.

If the applicant is ineligible due to any other factor of eligibility (such as excess income) or if a successful rebuttal would not change a determination of ineligibility due to other excess resources, it would then be unnecessary to initiate the rebuttal procedure.

Evidence for a Success Rebut 0382.15.10.45
REV: 06/1994

In order for an applicant/recipient to rebut successfully the presumption of full or partial ownership, ALL of the following evidence is required:

- o A statement by the applicant or deemor on an AP-92 containing the penalty clause, giving his/her allegation regarding ownership of the funds, the reason for establishing the joint account, the date the account was made joint, the source of the funds, who made deposits and the source of the deposits, who made withdrawals from the account, how the withdrawals were spent, whose Social Security number was on the account; and,
- o Corroborating statements (on form AP-92A) from other account holder(s); and,

Evidence for a Success Rebut 0382.15.10.45

- o Submittal of the original and revised (if any) account records showing that the change above was made. Photocopies are necessary for the record; and,
- o The AP-92 from the applicant and the AP-92A(s) from the joint account holder(s) must provide the information

needed to establish that none of the funds, or only a portion of the funds, are owned by the applicant. The applicant must submit all available documentary evidence to support the statements in the AP-92 and AP-92A(s). The evidence should, if available, include a financial institution record, or other source document. A source document is a passbook or other document which shows deposits, withdrawals, and interest for the period for which ownership is being rebutted. The documentary evidence should support the allegations of ownership, and should not contradict the statements on the AP-92 and AP-92A.

It is the applicant's or deemor's responsibility to provide the required evidence. The district office provides assistance in obtaining the evidence only when the individual is unable to do so.

If the applicant alleges that there is no documentary evidence available, s/he must submit evidence to substantiate the allegation.

If the rebuttal is successful, a new account must be established in the name of the applicant which contains only the applicant's funds, or a change must be made in the account designation which removes the applicant's name from the account, or restricts the applicant's access to the funds in the account.

APPELLATE RIGHTS

This Final Order constitutes a final order of the Department of Human Services pursuant to RI General Laws §42-35-12. Pursuant to RI General Laws §42-35-15, a final order may be appealed to the Superior Court sitting in and for the County of Providence within thirty (30) days of the mailing date of this decision. Such appeal, if taken, must be completed by filing a petition for review in Superior Court. The filing of the complaint does not itself stay enforcement of this order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms.