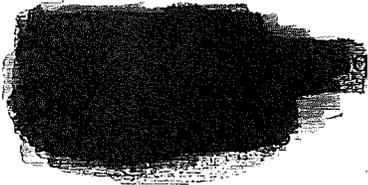


STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF HUMAN SERVICES
APPEALS OFFICE
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Docket # 15-285
Hearing Date: April 2, 2015

Date: June 4, 2015



ADMINISTRATIVE HEARING DECISION

The Administrative Hearing that you requested has been decided. 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: 0300.25.15, 0354.05, 0380.40, 0380.40.05, 0380.40.10

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: your attorney, and agency representatives: Joyce Paterson, Ted Dobek, Thomas Conlon, and the Policy Unit.

Present at the hearing were: the appellant's daughter, your attorney and Joyce Paterson (agency representative).

ISSUE: Do the appellant's resources exceed the agency's resource limit for the Medical Assistance/Long Term Care Program (MA/LTC)?

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's attorney by notice dated December 4, 2014 that the appellant's eligibility for RI Medical Assistance would end on December 22, 2014 to excess resources in the amount of \$81,587.32. The notice states that the appellant is \$77,587.32 in excess of the \$4000.00 resource standard.
- The agency December 4, 2014 notice also states that at the time of eligibility determination (1/1/14) the community spouse's resource allowance was \$81,882.89. Verification of [REDACTED]'s resources on 9/1/14, after her husband's death shows \$783.07. Please document what became of [REDACTED]'s funds as soon as possible but not later than 12/24/14.
- The appellant's Medical Assistance/LTC eligibility began effective January 1, 2014 for nursing home payment. A community spouse allowance for [REDACTED] was determined at that time to be \$81,882.89. The appellant's spouse passed away August 10, 2014.
- The agency representative stated that the agency requested verification of what resources existed at the time of [REDACTED]'s death. The agency did receive verification of bank accounts at Greenwood Credit Union. (Copies of bank statements submitted).
- The agency representative stated that the accounts submitted total \$932.52. She stated that it is not clear to the agency where the rest of the money went. The appellant's representative did submit some documentation on December 29, 2014. The payments from the December 29, 2014 listing were made before [REDACTED] died.
- The representative stated that it was not possible to determine what [REDACTED]'s resources were at the time he passed away. The appellant was initially determined eligible January 1, 2014 after providing documentation that she had spent down her share of the resources to the \$4000.00 limit.
- The agency representative stated that the agency determined that as of the month of continuous institutionalization, January 2013, the one-half share of the total joint resources attributed to the community spouse was \$81,882.89.
- The agency representative stated that at this time the agency has not been provided with sufficient documentation to verify what became of the \$81,882.89 that was attributed to the community spouse subsequent to his passing on August 10, 2014.

The appellant's attorney testified:

- He stated he is aware that the Community Spouse Resource Allowance, CSRA, was determined by the agency to be \$81,882.89 effective January 2013, which was the first month of institutionalization.
- He stated that the appellant began her payment for care to Greenwood House before [REDACTED] died. The spousal share attributed to the appellant was used entirely by payment to Greenwood House.
- He stated that after the Medicaid application was filed during January of 2014 two guardianship accounts were opened. One account for [REDACTED] and the other account for [REDACTED].
- He stated that the CSRA determination from the agency was received much later than 45 days from the date of the January 2014 application. He stated that he had established what he believed would be the CSRA based on the assets available at that time.
- He stated that at the time of the application he shifted [REDACTED]'s assets to his account with his daughter Paula as joint tenant in order to protect his one-half of the assets which otherwise would have gone through an entire meltdown of all the assets.
- He stated that the appellant's daughter has been living with [REDACTED] all of her life and [REDACTED] had been receiving care through an adult day care program.
- He stated that the guardianship account was established because [REDACTED] has been living in the home as a caretaker child and we needed to get the probate court to allow her to transfer the real estate that she has lived in with her parents.
- He stated that he received the agency CSRA determination in November 2014 many months after it was requested. At the time of [REDACTED]'s death his assets had been put into a joint account with his daughter at Greenwood Credit Union.
- He stated that a small amount of [REDACTED]'s assets went into an account that is currently under guardianship. He stated that the guardianship for [REDACTED] is still pending with the City of Warwick.
- He stated that whatever resources that the agency determines would be available are going to be an unavailable resource until the probate court determines where those assets go. He stated that there are ongoing bills that have to be paid from the guardianship account.

- He stated that he believes the guardianship account is going to contain minimal assets. The bulk of [REDACTED] assets went to his daughter by right of survivorship from the Greenwood account. The daughter is the caretaker child, she had lived with [REDACTED] and he needed her to provide care for him at home and when he died his daughter inherited his assets; they did not go into probate.
- He stated that there was another Greenwood Credit Union account which had a balance of about \$5000.00 that is held in a guardianship account. After the guardianship fees are approved by the probate court and sanctioned by the department those assets would flow over to the appellant.
- He stated that [REDACTED] had a term life insurance policy that had an approximate value of \$30,000.00 and the appellant is the beneficiary. The policy has not been processed but he expects that [REDACTED] will be over resource at the time she receives the policy proceeds.
- He stated that he expected that based on the CSRA determination that he could protect for [REDACTED] by the \$81,882.89 but now the agency argument is that other than the \$4000.00 the appellant has to spend the rest of the assets.
- He stated that it was his understanding that he had provided the agency with the information about the bank accounts and the subsequent ownership of [REDACTED]s.
- He stated that he can provide documentation to show that at the time of Mr. [REDACTED] de [REDACTED] by right of survivorship the bulk of his assets went to his daughter. He stated that the remaining assets are unavailable until he receives a probate court determination. He needs to close out the guardianship and then open up a probate. At that time the life insurance proceeds plus whatever is left over the department will be notified within 10 days of the resources owned by the appellant.
- He stated that he will provide the agency with a detailed breakdown of Mr. [REDACTED]s assets. He stated that there is no attempt to try and shift any of the assets other than what was held by the joint bank accounts.

FINDINGS OF FACT:

1. The agency determined that the appellant was not eligible for MA/LTC benefits as of December 22, 2014 due to excess countable resources.
2. The agency sent the appellant a closing notice of MA/LTC benefits on December 4, 2014. The agency notice states that due to resources in the amount of \$81,587.32 the

appellant was no longer eligible for MA/LTC. The appellant's spouse deceased August 10, 2014.

3. The appellant filed a timely request for a hearing, which was received by the agency on January 2, 2015.

4. The appellant's attorney requests an additional 30 days to allow him to submit additional information regarding the appellant's resources.

5. This record of hearing was held open through June 1, 2015 to allow the appellant's representative to submit the Probate Court ruling regarding the remaining assets held by the estate.

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 December 2014.

There is no dispute as to the fact that the agency determined that the appellant and her spouse had total joint resources in the amount of \$163,765.00 on January 1, 2013 the appellant's point of continuous institutionalization.

The agency therefore determined that the community spouse resource allowance was \$81,882.00 effective January 1, 2013. The agency determined the appellant eligible for MA/LTC effective January 1, 2014 after verification was submitted that her half of the resources had been spent down to less than \$4000.00.

The appellant's spouse deceased on August 10, 2014. The agency sent the appellant a notice dated December 4, 2014 notifying her that her eligibility for MA/LTC would end on December 22, 2014 due to excess resources in the amount of \$77,587.32.

The agency requested documentation of the community spouse's resources as of September 1, 2014. The agency attributed all of the community spouse resource allowance as determined on January 1, 2013 to the appellant as sufficient documentation of all the resources had not been provided to the agency at the time the appellant requested a hearing on this matter on January 2, 2015.

The appellant's attorney requested that this record of hearing be held open for 30 days (through May 4, 2015) to allow him to submit further information about the ownership of the spouse's resources at the time of his death.

This hearing officer continued the held open period (through June 1, 2015) to allow the appellant's attorney to submit documentation from the Probate Court regarding disposition of the resources under review.

The appellant's representative submits the following to the record by letter dated June 1, 2015:

1. As of [REDACTED]'s death on August 10, 2014, he had various bank accounts at the Greenwood Credit Union in Warwick, Rhode Island. Two accounts, a checking account [REDACTED] had a balance of [REDACTED] and a savings

account [REDACTED] had a balance of \$20,124.05 (see supporting documents). These joint accounts were titled to Andrew and his daughter, [REDACTED], with rights of survivorship. Both account balances were funds allowed Andrew with the CSRA determination. We contend that on Andrew's death the remaining funds were transferred to Paula.

2. Besides the joint accounts, there were two other accounts held for Andrew under a guardianship action established by the Warwick Probate Court. Paula was appointed his guardian. Those accounts (also at Greenwood Credit Union) were a checking # [REDACTED] and a savings # [REDACTED]. The date of death balance in the checking account was \$12,798.68 and \$30.05 in savings.
3. On May 21, 2015 the Warwick Probate Court approved the First and Final Account submitted by Andrew's guardian. (See copy attached). The net funds left in the Guardianship account, which included checking and savings balance and interest amounted to \$6,001.73. These funds were transferred to the decedent's accounts for the Estate of [REDACTED] (Warwick Probate #2015-140). See copies of final bank statement for guardianship and new account statement for the decedent's estate.
4. It is expected that the decedent's estate will be open until sometime in early December, 2015, at which time all remaining estate funds will be paid out to Paula [REDACTED] as guardian for her mother, Isabel. In the meantime it is our contention that those assets are unavailable at this time.
5. I should point out, [REDACTED] is a beneficiary of a life insurance policy owned by the decedent. It is expected that her guardian will receive those death proceeds within the next few months, at which time we will promptly notify the Department of those resources. Therefore in lieu of this additional information we respectfully request that [REDACTED] be deemed eligible for Medical Assistance as previously requested.

Review of agency policy specific to spousal resources determines that (per policies #0380.40, 0380.40.05, 0380.40.10, 0380.40.15):

REV: 06/1994

The evaluation of resources of an institutionalized spouse with a community spouse first determines:

- o The total joint resources of the couple; then,
- o The spousal share of the resources; and,
- o The community spouse resource allowance.

The computation of the community spouse resource allowance is based on the couple's total joint resources at the beginning of the period of continuous institutionalization.

The total joint resources of the married couple with an institutionalized spouse are deemed available to the institutionalized spouse for the purpose of eligibility determination. Total Joint Resources
REV: 06/1994

0380.40.05

1

The total joint resources of an institutionalized spouse and community spouse are ALWAYS EVALUATED AS OF THE FIRST OF THE MONTH IN WHICH A CONTINUOUS PERIOD OF INSTITUTIONALIZATION BEGINS, regardless of the actual date on which the evaluation is conducted.

The total joint resources are equal to the combined resources of the couple, regardless of whether they are owned partly or wholly by either spouse. The evaluation of specific resources follows the policies set forth in Section 0382.

The procedures for evaluating total joint resources differ depending on whether the initial evaluation is conducted in advance of a Medical Assistance application at the individual's request (Advance Determination), or is conducted as part of a Medical Assistance application.

Spousal Share
REV: 06/1994

0380.40.10

1

The spousal share is equal to one-half of the value of the couple's total joint resources as of the beginning of a period of continuous institutionalization. The value of the spousal share remains fixed at the value computed as of the beginning of the period of continuous institutionalization, regardless of changes in resources which may occur between the beginning period of institutionalization and the time of the MA eligibility determination.

The agency correctly determined the resources attributed to the appellant and the community spouse as of the point of continuous institutionalization beginning January 1, 2013. The agency requested resource information at the time the community spouse deceased during August 2014.

The appellant's representative has subsequently submitted documentation regarding the disposition of the resources that were attributed to the appellant's spouse at the time of his death. The representative also submitted documentation of "survivorship" and "guardianship" accounts. The resources remaining that are attributed to the appellant's spouse are held in a guardianship account attributed to the decedent's estate in the amount of \$6,001.73.

The appellant's representative submits that the decedent's estate will be open until sometime in early December 2015 at which time all remaining estate funds will be paid out

to [REDACTED] as guardian for the appellant. It is the representative's contention that those assets are unavailable at this time.

The appellant's representative also submits that the appellant is a beneficiary of a life insurance policy that was owned by her late spouse. The representative expects the death proceeds will be received by the guardian, at which time the Department will be notified of the amount of the resources.

After a careful review of the agency's policies, as well as, the evidence and testimony given, the Hearing Officer finds that the appellant's representative has provided sufficient documentation regarding the disposition of the resources attributed to the appellant's spouse at the time of his death. The representative has also provided documentation of the estate of the deceased spouse and subsequent probate court ruling to determine Medicaid eligibility for the appellant. The appellant's request for relief is granted.

ACTION FOR THE AGENCY:

The agency is to re-instate the appellant's MA/LTC eligibility effective from the date of closure indicated by the December 4, 2014 agency notice. The appellant must report any changes in the appellant's resources within 10 days to the agency per agency policy.

APPEAL RIGHTS (see last page)



Michael Gorman
Hearing Officer

APPENDIX

Cooperation Requirements
REV: 06/1994

0300.25.15

As a condition of eligibility, the MA applicant/recipient must meet certain cooperation requirements, such as providing the information needed for an eligibility determination, taking reasonable action to make income or resources available for support, assigning of rights to medical support or other third party payments for medical care, or pursuing eligibility for other benefits. Failure to

cooperate may result in a denial of eligibility or case closure.

RESOURCE LIMITS 0354.05
REV: 01/2002

Each determination of eligibility (new, reopening or redetermination) requires a review of resources, which includes sending at least one bank statement (AP-91). Resources are also reviewed at the time of a reported change, or when information is received which indicates a change has occurred, or that unreported resources may exist (Income Eligibility Verification System match, etc.). Resources must be verified by a review of documents related to the resource, with copies of the documentation kept for the case file.

The Resource limits for individuals and couples are:

CATEGORICALLY NEEDY RESOURCE LIMITS*

Resource	Individuals	Couples	
RESOURCE LIMITS		0354.05	
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

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.

COUNTABLE RESOUR, INSTIT SPOUS 0380.40
REV: 06/1994

The evaluation of resources of an institutionalized spouse with a community spouse first determines:

- o The total joint resources of the couple; then,
- o The spousal share of the resources; and,
- o The community spouse resource allowance.

The computation of the community spouse resource allowance is based on the couple's total joint resources at the beginning of the

period of continuous institutionalization.

The total joint resources of the married couple with an institutionalized spouse are deemed available to the institutionalized spouse for the purpose of eligibility determination.

Total Joint Resources 0380.40.05
REV: 06/1994

The total joint resources of an institutionalized spouse and community spouse are ALWAYS EVALUATED AS OF THE FIRST OF THE MONTH IN WHICH A CONTINUOUS PERIOD OF INSTITUTIONALIZATION BEGINS, regardless of the actual date on which the evaluation is conducted.

The total joint resources are equal to the combined resources of the couple, regardless of whether they are owned partly or wholly by either spouse. The evaluation of specific resources follows the policies set forth in Section 0382.

The procedures for evaluating total joint resources differ depending on whether the initial evaluation is conducted in advance of a Medical Assistance application at the individual's request (Advance Determination), or is conducted as part of a Medical Assistance application.

Spousal Share 0380.40.10
REV: 06/1994

The spousal share is equal to one-half of the value of the couple's total joint resources as of the beginning of a period of continuous institutionalization. The value of the spousal share remains fixed at the value computed as of the beginning of the period of continuous institutionalization, regardless of changes in resources which may occur between the beginning period of institutionalization and the time of the MA eligibility determination.

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.