

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF HUMAN SERVICES
APPEALS OFFICE
600 New London Avenue
Cranston, Rhode Island 02920
(401) 462-2132/Fax# (401) 462-0458
TDD# (401) 462-3363**

Docket # 13-1838
Hearing Date: July 9, 2014

Date: July 17, 2014

ADMINISTRATIVE HEARING DECISION

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

THE DHS PROVIDER MANUAL: MEDICAL ASSISTANCE
SECTION : 0354.05 Resource Limits
0392.15.20 Community Spouse Allocation
0392.15.20.05 Calculation of Community Spouse Allocation
0392.15.20.10 Excess Shelter Allowance
1038.20.05 Standard Utility Allowance

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 (the Appellant), your attorney, the Agency representative, her Supervisor, and the Policy Unit.

Present at the hearing were: Your attorney, John C. Revens, Esq., your wife and Joyce Paterson, the Agency representative.

ISSUE: Does the joint resources that are owned by the Appellant and his wife at the time of application exceed the resource limit?

DHS POLICIES:

Please see the attached APPENDIX for pertinent excerpts from the Rhode Island Department of Human Services Policy and Provider Manuals.

APPEAL RIGHTS:

Please see attached NOTICE OF APPELLATE RIGHTS at the end of this decision.

DISCUSSION OF THE EVIDENCE:

The Agency Representatives testified:

- The agency issued a notice to the Appellant dated October 2, 2013 informing him that he was not eligible for RI Medical Assistance due to having resources in the amount of \$48,081.76 which is more than the SSI related standard resource limit of \$4,000.00, per DHS Code Rule § 0354.05. The Appellant is \$44,081.76 in excess of the standard.
- The Appellant filed a Request for Hearing on October 31, 2013.
- The agency replied to the Request for Hearing, stating that the total joint resources owned by the Appellant (applicant) and his wife exceeded the resource limit at the time of application.
- On July 1, 2014 the Appellant filed an application and on October 2, 2014 the agency received verification of the Appellant's assets and at which time the MA-4 (agency's exhibit 1), showing the attribution of resources and the notice of denial issued to the Appellant (agency's exhibit 2).
- Agency presented a computer printout from InRhodes, the "Community Spouse Resource Allowance" for March 1, 2014 (agency's exhibit 3). This screen shot shows the resources description and the amount for each resource of the Appellant's spouse.
- Agency presented a computer printout from InRhodes, the "Community Spouse Resource Allowance" for July 1, 2014 (agency's exhibit 4). This screen shot shows the resources description and the amount for each resource of the Appellant's spouse.
- The agency presented a dividend payment from Frontier Communications for March 8, 2013 (agency's exhibit 5); a dividend payment from AT & T for July 10, 2013 (agency's exhibit 6); a dividend payment from Verizon dated July 10, 2013 (agency exhibit 7); a dividend payment from Vodafone Group Plc for June 14, 2014 (agency's exhibit 8); a dividend payment from Comcast Corp. for July 24, 2014 (agency's exhibit 9); a checking account statement from Centerville Bank for February 14, 2014 thru March 13, 2013 (agency's exhibit 10); account information from Teradata for September 13, 2013 (agency's exhibit 11); a financial confirmation report from NCR Corp. for September 17, 2013 (agency's

exhibit 12); and account information from LSI for September 13, 2013 (agency's exhibit 13).

- The "Community Spouse Resource Allowance" screen for March 1, 2013 (agency's exhibit 3) was the month that the Appellant had been institutionalized, showing that the total joint resources amount was \$91,107.06, of which \$45,553.53 was going to be protected for the community spouse (the Appellant's wife).
- The "Community Spouse Resource Allowance" screen for July 1, 2013 (agency's exhibit 4) was the month that the month that the Appellant's application had been filed. This showed that the total joint resources amount was \$96,163.52, of which \$48,081.76 will now protected for the community spouse.

The Appellant Attorney presented:

- That all of the dividends in which the agency presented, agency's exhibits 5 through 13, are all in only the name of the Appellant's wife, which she acquired as a gift from her grandparents as a young girl and prior to the marriage of the Appellant and his wife.
- The only joint asset in which both the Appellant and his wife own are the two bank accounts with Centerville Bank which don't add up to \$450.00 as of July 1, 2013.
- The Appellant's spouse testified that she is not willing to liquidate those stocks that the agency presented to pay for the Appellant's care.
- The dividends paid to the Appellant's spouse are her only source of income other than her monthly social security; there are no pensions, annuities, IRAs or 401ks that the Appellant's wife has.
- The Appellant's spouse received dividends for the calendar year 2013, which calculate to be: Vodafone \$276.62 (Appellant's exhibit 1); AT&T \$2,170.80 (Appellant's exhibit 2); Verizon \$332.00 (Appellant's exhibit 3); Verizon \$253.15 (Appellant's exhibit 4); JP Morgan (Alcatel-Lucent) \$7.37 (Appellant's exhibit 5); Frontier Communication \$1.52 (Appellant's exhibit 6); Comcast \$135.31 (Appellant's exhibit 7). These dividend checks paid to the Appellant's spouse for the calendar year 2013 total \$3,176.77.
- The Appellant's spouse receives \$3,176.77 annually from her shares of dividends, which when broken down by 12 monthly payments equals \$264.73 per month; that this along with her monthly Social Security of \$746.00 is her only source of income.
- That the Appellant's spouse is entitled to under the community spouse allocation provision (0392.15.20 & 0392.14.20.05) a basic allowance of \$1,938.75 for calendar year 2013; she is also entitled to excess shelter expenses that are \$581.63 (pursuant to 0392.15.20.10);
- There is a monthly mortgage payment due for the martial domicile to Centerville Bank in the amount of \$228.37 per month (Appellant's exhibit 8).
- There are Fire Tax due to the Western Coventry Fire District, the annual amount due \$222.36 (Appellant's exhibit 9).

- There are real estate taxes due to the Town of Coventry for the marital domicile in which the Appellant and his wife shared prior to the Appellant being institutionalized that totaled \$2,750.69 for 2013 (Appellant's exhibit 10).
- There is also home owner's insurance for the marital domicile in Coventry that has an annual premium that totals \$1,940.53 (Appellant's exhibit 11).
- The Appellant has a social security income monthly totaling \$1,761.00 (Appellant's exhibit 12) minus \$50.00 for personal needs allowance.
- The Appellant's spouse has a social security income monthly totaling \$746.00 (Appellant's exhibit 13).

FINDINGS OF FACT:

- The agency issued a notice to the Appellant (and his wife) dated October 2, 2013 informing him that he was not eligible for RI Medical Assistance due to having resources in the amount of \$48,081.76 which is more than the SSI related standard resource limit of \$4,000.00, per DHS Code Rule § 0354.05. The Appellant is \$44,081.76 in excess of the standard.
- The Appellant filed a Request for Hearing on October 31, 2013.
- The agency reply to the Request for Hearing, stating that the total joint resources owned by the Appellant (applicant) and his wife exceeded the resource limit at the time of application.
- On July 1, 2014 the Appellant filed an application and on October 2, 2014 the agency received verification of the Appellant's assets and at which time the MA-4 (agency's exhibit 1), showing the attribution of resources and the notice of denial issued to the Appellant (agency's exhibit 2).
- Agency presented a computer printout from InRhodes, the "Community Spouse Resource Allowance" for March 1, 2014 (agency's exhibit 3). This screen shot shows the resources description and the amount for each resource of the Appellant's spouse. Those resources are:

○ Frontier dividend	146.30
○ Frontier dividend	111.65
○ AT&T dividend	42,378.84
○ Verizon dividend	5,560.76
○ Verizon dividend	7,292.80
○ Vodafone dividend	27,926.50
○ Comcast dividend	4,452.64
○ Centreville Bank (checking)	635.09
○ Centreville Bank (savings)	463.96
○ Teradata dividend	1,393.44
○ NCP dividend	661.92
○ LSI dividend	83.16
	\$91,107.06 total joint resources
- The Appellant's spouse is allowed to 50% of the total joint resources, which equals \$45,553.53
- Agency presented a computer printout from InRhodes, the "Community Spouse Resource Allowance" for July 1, 2014 (agency's exhibit 4). This screen shot

shows the resources description and the amount for each resources of the Appellant's spouse. Those resources are:

○ Frontier dividend	150.48
○ Frontier dividend	114.84
○ AT&T dividend	42,041.16
○ Verizon dividend	6,079.26
○ Verizon dividend	7,972.80
○ Vodafone dividend	32,873.75
○ Comcast dividend	4,409.16
○ Centreville Bank (checking)	238.49
○ Centreville Bank (savings)	200.98
○ Teradata dividend	1,205.52
○ NCP dividend	791.76
○ LSI dividend	85.32
	<u> </u>
	\$96,163.52

- The agency presented a dividend payment from Frontier Communications for March 8, 2013 (agency's exhibit 5); a dividend payment from AT & T for July 10, 2013 (agency's exhibit 6); a dividend payment from Verizon dated July 10, 2013 (agency exhibit 7); a dividend payment from Vodafone Group Plc for June 14, 2014 (agency's exhibit 8); a dividend payment from Comcast Corp. for July 24, 2014 (agency's exhibit 9); a checking account statement from Centerville Bank for February 14, 2014 thru March 13, 2013 (agency's exhibit 10); account information from Teradata for September 13, 2013 (agency's exhibit 11); a financial confirmation report from NCR Corp. for September 17, 2013 (agency's exhibit 12); and account information from LSI for September 13, 2013 (agency's exhibit 13).
- That all of the dividends in which the agency presented, agency's exhibits 5 through 13, are all in only the name of the Appellant's wife, which she acquired as a gift from her grandparents as a young girl and prior to the marriage of the Appellant and his wife.
- The only joint asset in which both the Appellant and his wife own are the two bank accounts with Centerville Bank which add up to \$439.47 as of July 1, 2013.
- The Appellant's spouse receives \$734.00 per month from Social Security.
- The Appellant's spouse received dividends for the calendar year 2013, which calculate to be: Vodafone \$276.62 (Appellant's exhibit 1); AT&T \$2,170.80 (Appellant's exhibit 2); Verizon \$332.00 (Appellant's exhibit 3); Verizon \$253.15 (Appellant's exhibit 4); JP Morgan (Alcatel-Lucent) \$7.37 (Appellant's exhibit 5); Frontier Communication \$1.52 (Appellant's exhibit 6); Comcast \$135.31 (Appellant's exhibit 7). These dividend checks paid to the Appellant's spouse for the calendar year 2013 total \$3,176.77.
- The Appellant's spouse receives \$3,176.77 annually from her shares of dividends, which when broken down by 12 monthly payments equals \$264.73 per month; that this along with her monthly Social Security of \$734.00 is her only source of income.
- That the Appellant's spouse is entitled to under the community spouse allocation provision (0392.15.20 & 0392.15.20.05) a basic allowance of \$1,938.75 for

calendar year 2013; she is also entitled to excess shelter expenses that are \$581.63 (pursuant to 0392.15.20.10);

- There is a monthly mortgage payment due for the martial domicile to Centerville Bank in the amount of \$228.37 per month (Appellant's exhibit 8).
- There are Fire Tax due to the Western Coventry Fire District, the annual amount due \$222.36 (Appellant's exhibit 9).
- There are real estate taxes due to the Town of Coventry for the martial domicile in which the Appellant and his wife shared prior to the Appellant being institutionalized that totaled \$2,750.69 for 2013 (Appellant's exhibit 10).
- There is also home owner's insurance for the martial domicile in Coventry that has an annual premium that totals \$1,940.53 (Appellant's exhibit 11).
- The Appellant has a social security income monthly totaling \$1,761.00 (Appellant's exhibit 12) minus \$50.00 for personal needs allowance.
- The Appellant's spouse has a social security income monthly totaling \$734.00 (Appellant's exhibit 13).

The Hearing in this matter had originally been scheduled for January 30, 2014 and at the request of the Appellant's attorney, the Hearing was rescheduled. The Hearing was then rescheduled for February 27, 2014, March 19, 2014, April 17, 2014 and all rescheduled again at the request of the Appellant's attorney. The Hearing took place on July 9, 2014.

CONCLUSION:

The issue to be decided is whether the joint resources that are owned by the Appellant and his wife at the time of application exceed the resource limit?

In March of 2013 the Appellant entered into a nurse home facility and applied for medical assistance on July 1, 2013. On October 2, 2013 the agency received and reviewed the Appellant's assets, completing the MA-4 (agency's exhibit 1) and issued a Denial letter on the same day informing the Appellant that he was denial medical assistance for the month on July 2013. The reason for the denial was due having resources in the amount of \$48,081.76 more than the SSI related standard limit of \$4,000.00; that he was \$44,081.76 in excess of the standard, per policy § 0354.05.

At the time of determination, July 1, 2013, the total resources amount was \$96,163.53. The resources attributed to the spouse in the community is \$48,081.76 and the resources attributed to the institutionalized spouse, the Appellant, is \$48,081.77. The agency presented and the Appellant's attorney confirmed that the Appellant's spouse has several resources that are income generating. These resources are listed as:

- | | |
|---------------------|-----------|
| ○ Frontier dividend | 150.48 |
| ○ Frontier dividend | 114.84 |
| ○ AT&T dividend | 42,041.16 |
| ○ Verizon dividend | 6,079.26 |
| ○ Verizon dividend | 7,972.80 |
| ○ Vodafone dividend | 32,873.75 |

o Comcast dividend	4,409.16
o Centreville Bank (checking)	238.49
o Centreville Bank (savings)	200.98
o Teradata dividend	1,205.52
o NCP dividend	791.76
o LSI dividend	<u>85.32</u>
	<u>\$96,163.53</u>

All the these resources presented, excluding the Centreville Bank savings and checking accounts which are owned by both the Appellant and his spouse, belong solely to the Appellant's spouse (community spouse). These resources (stocks) had been acquired by the Appellant's spouse when she was a little girl, had been a gift from her grandparents and had been owned since prior to her marriage of the Appellant.

These resources (stocks) owned solely by the Appellant's spouse paid dividend, solely to the Appellant's spouse and did not have the name of the Appellant on them in any way. Also, these resources (stocks) paid dividends and in 2013 they paid \$3,176.77 total (or if broken down, \$264.73 monthly). These monthly dividend payments totaling \$264.73 and what the Appellant's spouse receives for social security, \$746.00, totaling \$1,010.37, is all the income in which the Appellant's spouse receives.

The Appellant's spouse, who remains in the community, still resides in the home that she shared with the Appellant prior to him being institutionalized. The residence that they once shared has some ongoing monthly expense, they are:

❖ Monthly mortgage payment	\$228.37
❖ Fire tax	\$18.53 (\$222.36 annually)
❖ Property tax	\$254.81 (\$2,750.69 annually)
❖ Homeowner's insurance	<u>\$161.71</u> (\$1,940.53 annually)
	\$663.42 per month

As a community spouse, she is allocated some resources. To determine how much she is allocated, it's calculated by adding the Basic Allowance of \$1,938.75 (as per policy § 092.14.20.05). The monthly expenses of \$663.42 are added together with the Standard Utility Allowance of \$601.00 (per policy § 1038.20.05) for the sum of \$1,264.42 and then the Excess Shelter Allowance of \$581.63 (per policy § 0392.15.20.10) is subtracted, leaving the Appellant's spouse, the community spouse, with an Excess Shelter Allowance of \$682.79. Once the Basic Allowance of \$1,938.75 and the Excess Shelter Allowance of \$682.79 are added together and total \$2,621.54.

The sum of \$2,621.54 is then subjected to having the Appellant's spouse's monthly social security payment of \$746.00 deducted from it as well as the monthly dividend income of the Appellant's spouse which is \$264.73, which equals \$1,610.81 and this figure is the Community Spouse's Allocation.

The Appellant has a monthly income of \$1,761.00 from social security. The Appellant is granted a \$50.00 pass though that he is allowed to keep and lowering his monthly net income to \$1,711.00. When the Community Spouse's Allocation is subtracted from the

Appellant's net monthly income, the Appellant's monthly Applied Income is established, which calculates to be \$100.19 per month and this amount of \$100.19 is the only amount available that can be applied to cover the Appellant's Medicaid. Therefore the Appellant is required to pay \$100.19 for each and every month retro to July 1, 2013 to be eligible for services.

The Appellant and his attorney are not contesting the numbers or their calculations. The issue in this matter was that the Appellant's spouse has an income producing resource and the agency is unable to resolve in the field therefore resolution could only be reached at Hearing. Mr. Revens, Esq. indicated that the stock dividends were gifts given solely to the Appellant's spouse when she was a child, prior to the marriage between the Appellant and his spouse; the spouse refuses to sell the stock to pay for the care that the Appellant is receiving; and even with the dividend income and the spouse's monthly social security income, she is still in need of support from the Appellant spouse.

In conclusion, for the Appellant to be eligible for medical assistance and after the financial information that he provided is properly calculated, he is required to pay \$100.19 for each month retro to the date of application, July 1, 2013 to be found eligible.

After a careful review of the Agency's policies, as well as the evidence and testimony given, this Appeals Officer finds that the appellant is over resource for medical assistance but if he wishes to become eligible, he would have to pay his Applied Income of \$100.19 for each month going back to July 1, 2013. The appellant's request for relief is therefore granted.

Thomas Bucacci
Appeals Officer