

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF HUMAN SERVICES
APPEALS OFFICE
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Docket # 13-1376
Hearing Date: January 9, 2014

Date: September 3, 2014



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
SECTIONS: 0380.45, 0380.45.05, 0380.45.10, 0382.05**

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: Cheryl Lafazia, Jane King, Thomas Conlon, and the Policy Unit.

Present at the hearing were: your spouse, your attorney, and Cheryl Lafazia (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 appellant was active on the agency Core Waiver program and he sold property on July 15, 2013. Information about the sale of the property was provided to the agency at that time. (copy of the property purchase and sales agreement submitted).
- A portion of the proceeds from the sale of the property were attributed as being available to the appellant and that is why his Core Waiver eligibility ended due to excess resources.
- The agency determined that the appellant had \$17,203.05 after allowable expenses were deducted from his share of the property proceeds. She stated that the agency determined that the appellant's one half share of the property proceeds to be \$31,901.10.
- She stated that he LTC Chief Casework Supervisor reviewed the case with the caseworker and determined what bills would be allowed to reduce the countable resources attributed to the appellant. She stated that the property was sold for \$64,582.20 half of which went to the appellant.
- She stated that from the appellant's share of \$31,901.10 the agency deducted allowable expenses of \$14,698.05 and the result was that the agency attributed \$17,203.05 to the appellant at the time of the agency closing notice. (copy of the allowable expenses submitted).
- She stated that the agency sent the appellant a closing notice dated July 31, 2013 indicating that the appellant's case would be closed effective August 13, 2013 due to excess resources in the amount of \$7328.30. The notice states that the appellant is \$3328.30 in excess of the agency standard resource limit of \$4000.00.
- The agency representative stated that the July 31, 2013 notice was not correct as the system did not calculate the cash panel of \$17,203.05 that was entered into the system. The actual excess resource amount at the time of the July 31, 2013 notice is \$13,203.05 ($\$17,203.05 - \$4000.00 = \$13,203.05$).

The appellant's representative testified:

- He stated that the appellant was a dentist and the property that was sold was his former dental office [REDACTED] in Cranston, RI. The property was for sale for a long time and the building was in poor condition and was located in a marginal

neighborhood. The sellers could not find another dentist who was interested in buying the property.

- He stated that at the time the property was sold the appellant's principal residence mortgage was outstanding and his spouse had accumulated significant credit card bills. There were also a lot of bills related to the property that were overdue including federal taxes, real estate taxes, utility bills, property maintenance bills, which totaled many thousands of dollars.
- He stated that all of the outstanding bills were sent to the agency for review. At the time of the property transaction he was not aware of the Medicaid closing issue. He was not aware of the agency notice or that the appellant had an appeal of the notice.
- He stated that going back to reconstruct the agency action and to try and make some sense of it he has a letter from a CPA firm that the appellant and his spouse were referred to with regard to the 2013 tax obligation because this was rented business property. The property was depreciated for tax purposes and the CPA estimated that there would be \$6000.00 in Federal and State taxes due. The CPA also billed \$1500.00 for tax projection work and the preparation of the [REDACTED] Federal and Rhode Island tax return. (Copy of the CPA letter submitted).
- He stated that there were no funds set aside to pay for a funeral for the appellant. He advised the appellant's spouse to make those arrangements because she had not done so before as she never had cash available to do so prior to the sale of the property.
- The appellant's spouse was not able to pay the mortgage on the house she lives in, so her daughter and other family members had been giving her money to pay the mortgage. He was able to refinance the mortgage on the house and extend the term balance of the loan and reduce her monthly payment so she was able to stop borrowing money from her daughters.
- He stated that the new mortgage was in place before the appellant's spouse defaulted on 2 large credit card debts. He was able to negotiate with one of the credit card companies and got them to take 50 cents on the dollar as a lump sum payment. The spouse had accumulated a \$17,000.00 credit card debt to fund her living expenses for the past several years while she was caring for the appellant.
- He stated that the spouse entered into a pre-arranged funeral contract with the Trainor Funeral Home on October 3, 2013 and paid \$7,722.00 for the funeral contract. (Copy of contract submitted).
- He stated that the spouse has another credit card bill from Capital One in the amount of \$8,130.22 and he has tried to negotiate a lump sum payment with that

creditor. He stated that because the credit card was paid up to date the creditor would not agree to a lump sum payoff. As a result this bill is outstanding today.

- He stated that in this situation the spouse would have to stop paying the Capital One payment and once the card is far enough in arrears then the creditor would agree to 50 cents on the dollar payoff.
- The bills on the Capital One credit card are all household related bills. The appellant's mortgage has gone down from \$1400.00 per month to \$580.00 per month. The creditor may potentially sue the appellant for non-payment and put an execution on the house. The appellant's spouse would be in a position to where she would have to sell the property and the appellant would then end up in a nursing facility. It is less expensive for Medicaid for the appellant to remain in the community as the home care cost is substantially less than a nursing home.
- The reason the appellant appealed the agency action is because it does not seem to make any practical sense for the appellant not to purchase a funeral contract as when he passes away there would be no funds to cover that expense.
- He stated that at this time the appellant and his spouse do not know what the taxes will be because it is possible that some of the medical expenses paid by the spouse may be deductible and offset some of the tax liability. The appellant's share of the taxes as well as the funeral cost should be applied to reduce his excess resource amount.
- He stated that he knows that the Medicaid regulation states that allowable debt cannot have been incurred more than 3 months prior to an individual being determined eligible for Medicaid. He does not know exactly when the appellant was determined eligible for Medicaid but he is sure that most of the bills incurred on the credit cards were incurred 90 days prior to the appellant being determined eligible for Medicaid.
- He stated that as a last resort, as he explained the goal is to keep the appellant and his spouse in their home, he had the spouse sign a spousal refusal statement. He has only used this one other time in a case where a client had taken care of his spouse for 10 years at his own expense and the argument was that he had saved Medicaid about a million dollars by caring for his spouse without assistance.

FINDINGS OF FACT:

1. The agency determined that the appellant was no longer eligible for MA/LTC benefits as of August 13, 2013 due to excess countable resources. The agency sent a notice to the appellant dated July 31, 2013 stating that his resources in the amount of \$13,203.05 are more than the standard resource limit.

2. The agency July 31, 2013 notice informed the appellant that he was \$13,203.05 in excess of the agency \$4000.00 resource standard. (Note: that this amount was stipulated by both parties as the agency determined amount as the original agency notice incorrectly indicated excess resources in the amount of \$7328.30)
3. The appellant's representative submits that the appellant has subsequently reduced his resources to within agency eligibility standards by purchase of a burial contract on October 3, 2013, by credit card payments and property tax payments.
4. This record of hearing was held open through August 24, 2014 to allow the appellant's representative time to review the agency eligibility determination and respond to the record.

CONCLUSION:

The issue to be decided is whether the appellant's resources exceeded the agency's resource limit for the MA/LTC Program at the time of the agency decision to close his Medicaid eligibility effective August 13, 2013.

There is no dispute as to the fact that the appellant's resources exceeded the agency \$4000.00 standard as of August 13, 2013.

Review of agency policy specific to resources determines that for an individual to qualify for MA/LTC the total allowable resources cannot exceed \$4000.00. The agency determined the value of the appellant's resources based on the verification of resources submitted by the appellant at the time of the July 31, 2013 closing notice.

The agency representative testified that when the appellant was active on the agency Core Waiver program he sold property on July 15, 2013. The agency reviewed the information provided on the sale of the property and determined that a portion of the proceeds from the sale were attributed to the appellant.

The agency determined that following review of the sales agreement the appellant share of the transaction was \$31,901.10. The agency reviewed a list of deductions from the proceeds of the sale and determined that as of July 31, 2013 the appellant had remaining assets of \$17,203.05. The agency deducted the \$4000.00 resource amount for countable resources of \$13,203.05.

The appellant's representative submits that the appellant and his spouse sold the appellant's former dental office [REDACTED] during July 2013. The property had been for sale for a long time and was in poor condition and located in a marginal neighborhood. He stated that at the time the commercial property was sold the appellant's principal residence mortgage was outstanding and his spouse had accumulated significant credit card debt. He also stated that there were a lot of bills related to the property that were overdue including federal taxes, utility bills, property maintenance bills, which totaled many thousands of dollars.

He submitted a letter from the appellant's accountant indicating that there would be an estimated \$6000.00 in Federal and State taxes due on the commercial property. The accountant also billed the appellant \$1500.00 for tax preparation work. He stated that the appellant's spouse purchased a pre-arranged funeral contract for the appellant on October 3, 2013 and paid \$7,722.00 for the contract.

He stated that the appellant's spouse has a credit card with an outstanding balance of \$8130.22. He stated that the appellant's mortgage has been refinanced and the monthly payment has gone down from \$1400.00 to \$580.00. He argues that the creditor may potentially sue the appellant for non-payment and put an execution on the house. The appellant's spouse would then be in a position where she would have to sell the property and the appellant would end up in a nursing home. It is less expensive for Medicaid for the appellant to remain in the community as the home care cost is substantially less than a nursing home.

The appellant's representative submits that the appellant's share of the taxes, outstanding credit card debt, as well as the funeral cost should be applied to reduce his excess resource amount. He stated that as a last resort, as he explained the goal is to keep the appellant and his spouse in their home, he had the spouse sign a refusal statement.

The issue at hearing is whether the agency closing notice dated July 31, 2013 which ended the appellant's Core Waiver services due to excess resources owned by the appellant is correct.

The agency had ended the appellant's MA/LTC eligibility based on the determination that following the sale of jointly owned commercial property his assets exceeded the agency \$4000.00 standard by \$13,203.05. The agency submitted a copy of the purchase and sales agreement as well as an inventory of the allowed costs submitted by the appellant that were used to determine the attribution resources as of July 31, 2013. The agency allowed \$14,698.05 to be deducted from the proceeds attributed to the appellant at the time of the property sale.

The appellant's representative requests that the appellant be allowed to use the appellant's credit card debt totaling \$16,854.11, the cost of the appellant's pre-paid funeral contract in the amount of \$7722.00, and the cost of his estimated tax obligation and tax preparation fee to reduce the appellant's resources to the allowable standard.

Review of the bills submitted by the appellant determines that an additional \$2078.75 can be allowed to be deducted from the appellant's \$13,203.05 excess as these were allowable bills allowable paid prior to July 31, 2013.

Regarding the projected tax amount, tax preparation fee and credit card debt. Per agency policies 0380.45 & 0380.45.05:

**RESOURCE REDUCTION
REV: 06/1994**

0380.45

If an applicant or recipient is found to be ineligible due to excess countable resources as of the first moment of the month, s/he is notified that eligibility does not exist via the InRHODES

Eligibility Notice. Included with the Notice is a description of the possibility of resource reduction (form MA-6).

An applicant whose countable resources exceed the basic resource limitation may establish eligibility on the basis of resources if:

- o S/he incurs (or has incurred) outstanding allowable medical bills or other allowable expenses that equal or exceed his/her excess resources; AND,**
- o S/he reduces the excess resources to the appropriate resource limit by actually paying the allowable expenses or fees, and submitting verification thereof within thirty days of the date of the rejection or closing notice. Both the expenditure of the resource and submission of verification of the expenditure and the reduced resource must occur within the thirty day time period.**

The bills used to establish eligibility cannot be incurred earlier than the first day of the third month prior to the date of an application that is eventually approved. Allowable bills, which the applicant has paid and used to reduce resources, may not be the same bills that have been used to meet an income spenddown.

The agency representative must see the bills that have been actually paid in order to verify that resources have been properly reduced.

0380.45.05:

Date of Eligibility

0380.45.05

REV: 06/1994

An individual who reduces resources and is otherwise eligible will be eligible as of the date the incurred allowable expenses equalled or exceeded the amount of his or her excess assets, subject to verification that the excess resource was actually expended on the allowable expense. In no event shall the first day of eligibility be earlier than the first day of the month of application.

Although an applicant may reduce excess resources by paying an allowable expense that was incurred up to the first day of the third month prior to the date of an application, an applicant cannot establish eligibility by resource reduction in the retroactive period.

The kinds of changes that can occur are:

o **CHANGES IN VALUE OF EXISTING RESOURCES**

The value of an existing resource may increase or decrease. For example, the value of a share of stock may decrease by \$30 or increase by \$20.

o **DISPOSITION OR ACQUISITION OF RESOURCES**

An individual may dispose of an existing resource (e.g., close a savings account and purchase an item) or may acquire a new resource (e.g., an inheritance which is subject to the income-counting rules in the month of receipt).

o **CHANGE IN EXCLUSION STATUS OF EXISTING RESOURCES**

An individual may replace an excluded resource with one that is not excluded (e.g., sell an excluded automobile for nonexcluded cash) or vice versa (use nonexcluded cash to purchase an excluded automobile). Similarly, a time-limited exclusion (such as the period for exclusion of retroactive Title II benefits) may expire.

If countable resources exceed the limit as of the first moment of a month, the recipient is not eligible for that month, unless the resources are reduced by expenditure on certain allowable expenses, see Section 0380.45, RESOURCE REDUCTION.

The burial contract was purchased October 3, 2013. Per 0380.45.10 a burial contract is not considered an allowable expense to be used to reduce resources and establish eligibility. Per agency policy 0382.05 eligibility is determined as of the First Moment of the Month. In this matter the appellant's representative has not submitted allowable expenses that reduced the appellant's resources to \$4000.00 effective either August 1, 2013, September 1, 2013 or October 1, 2013. The appellant's representative has submitted additional allowable expenses to the record that reduce the appellant's excess resources to \$11,124.30 effective August 1, 2013.

The appellant's representative has provided sufficient documentation to verify that the appellant reduced his resources to \$11,124.30 effective August 1, 2013.

After a careful review of the agency's policies, as well as, the evidence and testimony given, the Hearing Officer finds that following review of additional resource reduction verification the agency was not correct in its calculation of the appellant's excess

resources. The appellant's excess countable resources effective August 1, 2013 are \$11,124.30.

ACTION FOR THE AGENCY

The agency is to issue a revised notice to replace the July 31, 2013 notice. The revised notice is to indicate the excess resources to be \$11,124.30 effective August 1, 2013.


Michael Gorman
Hearing Officer

APPEAL RIGHTS (see last page)

APPENDIX

RESOURCE REDUCTION
REV: 06/1994

0380.45

If an applicant or recipient is found to be ineligible due to excess countable resources as of the first moment of the month, s/he is notified that eligibility does not exist via the InRHODES

Eligibility Notice. Included with the Notice is a description of the possibility of resource reduction (form MA-6).

An applicant whose countable resources exceed the basic resource limitation may establish eligibility on the basis of resources if:

- o S/he incurs (or has incurred) outstanding allowable medical bills or other allowable expenses that equal or exceed his/her excess resources; AND,
- o S/he reduces the excess resources to the appropriate resource limit by actually paying the allowable expenses, or fees, and submitting verification thereof within thirty days of the date of the rejection or closing notice. Both the expenditure of the resource and submission of verification of the expenditure and the reduced resource must occur within the thirty day time period.

The bills used to establish eligibility cannot be incurred earlier than the first day of the third month prior to the date of an application that is eventually approved. Allowable bills, which the applicant has paid and used to reduce resources, may not be the same bills that have been used to meet an income spenddown.

The agency representative must see the bills that have been actually paid in order to verify that resources have been properly reduced.

Date of Eligibility
REV: 06/1994

0380.45.05

An individual who reduces resources and is otherwise eligible will be eligible as of the date the incurred allowable expenses equalled or exceeded the amount of his or her excess assets, subject to verification that the excess resource was actually expended on the allowable expense. In no event shall the first day of eligibility be earlier than the first day of the month of application. Although an applicant may reduce excess resources by paying an allowable expense that was incurred up to the first day of the third month prior to the date of an application, an applicant cannot establish eligibility by resource reduction in the retroactive period.

The applicant will be required to verify that:

- o S/he incurred the necessary amount of expenses; and,
- o His or her excess resources were reduced to the allowable resource limit by expenditure of the excess resource on the allowed expense.

Allowable Expenses
REV: 04/2001

0380.45.10

Only certain expenses may be used to establish eligibility by reduction of excess resources. These expenses are as follows:

- o Medical expenses that would be allowed under the policy on the Flexible Test of Income. See Section 0390, FLEXIBLE TEST OF INCOME.
- o Certain fees required for: a) an individual to make income or resources available; or b) an incompetent individual, who needs a court-appointed guardian, to access or consent to necessary medical treatment,

including applying for Medical Assistance. Only the fees indicated in Sections 0380.45.10.05 through 0380.45.10.15 are allowable under this provision.

FIRST MOMENT OF THE MONTH RULE

0382.05

1

REV: 06/1994

Countable resources are determined as of the FIRST MOMENT OF THE MONTH (FOM). The determination is based on the resources the individuals own, their value, and whether or not they are excluded

as of the first moment of the month. The FOM rule establishes a point in time at which to value resources; what a person owns in countable resources can change during a month but the change is always effective with the following month's resource determination.

The kinds of changes that can occur are:

o CHANGES IN VALUE OF EXISTING RESOURCES

The value of an existing resource may increase or decrease. For example, the value of a share of stock

may

decrease by \$30 or increase by \$20.

o DISPOSITION OR ACQUISITION OF RESOURCES

An individual may dispose of an existing resource (e.g., close a savings account and purchase an item) or may acquire a new resource (e.g., an inheritance which is subject to the income-counting rules in the month of receipt).

o CHANGE IN EXCLUSION STATUS OF EXISTING RESOURCES

An individual may replace an excluded resource with one that is not excluded (e.g., sell an excluded automobile for nonexcluded cash) or vice versa (use nonexcluded cash to purchase an excluded automobile). Similarly, a time-limited exclusion (such as the period for exclusion of retroactive Title II benefits) may expire.

If countable resources exceed the limit as of the first moment of

a month, the recipient is not eligible for that month, unless the

resources are reduced by expenditure on certain allowable expenses,

see Section 0380.45, RESOURCE REDUCTION.

Resources are evaluated using the methodologies set forth in the remainder of Section 0382 for the various types of resources.

Each

type of resource has its own unique deductions, exclusions, and

methods for evaluation to determine its countable value. If not otherwise indicated, the countable value of a resource is the equity value (fair market value less legal encumbrances). Once the countable value of each resource (after the appropriate exclusions/deductions) is determined, the countable values of all resources (including deemed resources) are added together to determine the total countable resources for the institutionalized individual.

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.