

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

FILED

JUL 07 2009

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 08F-07221

PETITIONER,

Vs.

CASE NO. 1240730616

FLORIDA DEPT OF CHILDREN AND FAMILIES

CIRCUIT: 15 Palm Beach

UNIT: 88322

RESPONDENT.
_____ /

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on June 30, 2009, at 10:30 a.m., in Lake Worth, Florida. The petitioner was not present. Representing the petitioner was _____, attorney, _____ was representing _____ the petitioner's daughter and attorney in fact. Representing the respondent was Terry Verduin, attorney, Circuit 15 Legal. Appearing as a witness was Latonya Smith, Benefit Recovery Program. The hearing was continued a total of three times in order that the parties might reach an amicable resolution.

ISSUE

At issue is whether the respondent was correct in establishing an overpayment claim of \$130,476.70 in the Institutional Care Program (ICP)

Medicaid for the period March 2006 through August 2008 due to the petitioner failing to report all assets or resources. The respondent has the burden of proof.

FINDINGS OF FACT

1. The petitioner is an eighty-one year old (DOB) resident of a nursing facility in Palm Beach County, Florida. In 2006 an application was submitted, on her behalf, for ICP Medicaid benefits.
2. As part of the eligibility determination process, the respondent must consider, among all factors, the petitioner's assets. The asset limit is \$2,000. After reviewing same, the respondent determined eligibility for ICP Medicaid and the case was approved.
3. The application was submitted on the petitioner's behalf because she is totally disabled and her doctors have declared her to be incapacitated.
4. Subsequent to the eligibility determination, the petitioner's daughter informed the respondent that her mother had 164 shares of British Petroleum (BP) stock. The respondent determined that during the overpayment period in question, the value of the stock exceeded the \$2,000 limit making the petitioner ineligible.
5. Because the asset limit was exceeded, the petitioner should not have been approved for the ICP Medicaid. The respondent is seeking recoupment of the overpayment that was established.

6. The respondent explains that once an overpayment is determined, the information is sent to the Public Consultant Group (PCG) to arrange for a payment schedule with the petitioner. The PCG is contracted by the respondent to collect the outstanding overpayments. To date the PCG has not set this schedule.
7. When it was determined that the petitioner held the BP stock, it was sold for a total \$8,775. This check was sent to the respondent in the hopes that it would settle the entire claim, as this was the asset in question.
8. The respondent returned the check because it was marked, in the memo area, as paid in full. The check was then returned again to the respondent, without the memo, along with a payment schedule of \$5 per month to settle the claim.
9. The respondent explains that the minimum payment is \$25 per month.

notes that the petitioner's total monthly income, her personal needs allowance, (that amount of monthly income she is allowed to keep), is only \$35.
10. further explains that it would be a hardship if the petitioner had to pay \$25 of the \$35 she is allowed to keep. The \$5 represents 14 percent of her total income.

CONCLUSIONS OF LAW

Fla. Admin. Code 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.

65A-1.712 SSI-Related Medicaid Resource Eligibility Criteria states in 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....

In this instant case, the respondent correctly considered the petitioner's stock as an available asset. Because the value of said stock exceeded the limit of \$2,000, the overpayment claim was established. This is considered an inadvertent household error because the possession and ownership of the stock was unknown at the time when the application was submitted.

Benefit Recovery Collection Resource Guide July 1, 2005, states in part:

Medicaid Overpayment

Medicaid overpayment policies contained in this manual are based on Medicaid eligibility criteria as presented in Section 42 CFR 435, Chapter 10C-8, of the FAC and 414.41, F.S.

COLLECTION PROCEDURES

The BR worker is responsible for benefit reduction activities on active cases with cash assistance, RAP or food stamp claims. The private contractor is responsible for collection activities for inactive cash assistance, RAP and food stamp claims, as well as all Medicaid, RAP Medicaid, SSI-Related Medicaid and Low Income Housing Energy Assistance Program (LIHEAP) claims.

HARDSHIP

The hardship policy can only be applied to agency error cash assistance claims. This policy cannot be applied to other cash assistance error types or any other assistance programs.

According to policy, the respondent may not consider hardship in the ICP

Medicaid Program. This is reiterated in **65A-1.900 Overpayment and Benefit**

Recovery as:

(1)(g) Extreme hardship: Extreme hardship policy applies only to cash assistance agency errors.

Fl. Stat. s. 414.41 Recovery of payments made due to mistake or

fraud states in part:

(1) Whenever it becomes apparent that any person or provider has received any public assistance under this chapter to which she or he is not entitled, through either simple mistake or fraud on the part of the department or on the part of the recipient or participant, the department shall take all necessary steps to recover the overpayment. Recovery may include Federal Income Tax Refund Offset Program collections activities in conjunction with Food and Consumer Service and the Internal Revenue Service to intercept income tax refunds due to clients who owe food stamp or WAGES debt to the state. The department will follow the guidelines

in accordance with federal rules and regulations and consistent with the Food Stamp Program. The department may make appropriate settlements and shall establish a policy and cost-effective rules to be used in the computation and recovery of such overpayments.

7 C.F.R § 273.18 states in part:

(a) General. (1) A recipient claim is an amount owed because of:

(i) Benefits that are overpaid.

(2) This claim is a Federal debt subject to this and other regulations governing Federal debts. The State agency must establish and collect any claim by following these regulations.

(4) The following are responsible for paying a claim:

(i) Each person who was an adult member of the household when the overpayment ... occurred....

(b) Types of claims. There are three types of claims:

An _____ is

(2) Inadvertent household error (IHE) claim. any claim for an overpayment resulting from a misunderstanding or unintended error on the part of the household.

(3) Agency error (AE) claim. any claim for an overpayment caused by an action or failure to take action by the State agency.

Upon review, the issues here are whether there was an overpayment to be recouped and whether this hearing officer has the authority to determine the amount of monthly payments to be made. There was an overpayment.

However, the collection authority, PCG, has yet to make a determination as to the amount of monthly payment it would accept. The representative is willing to include the \$8,775 and monthly payments of \$5, based upon the total monthly income of \$35 the petitioner receives.

There is no authority or jurisdiction given to the hearing officer to enforce minimum payments. But it is also noted that this hearing officer could not find a policy that determines a \$25 minimum payment.

DECISION

The appeal is granted insofar as PCG should determine if the requested payment schedule is acceptable. The payment request should be forwarded to them for a determination. This hearing officer would note that 14 percent of total income received, \$5, is a substantial amount.

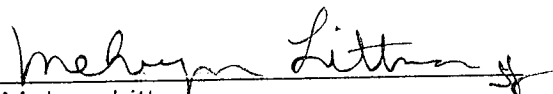
As for the overpayment itself, the respondent's action is affirmed.

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 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 indigency 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.

FINAL ORDER (Cont.)
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DONE and ORDERED this 7th day of July, 2009,
in Tallahassee, Florida.



Melvyn Littman
Hearing Officer
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Tallahassee, FL 32399-0700
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