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

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 07F-02863

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION
DISTRICT: 11 Dade
UNIT: AHCA

RESPONDENT.
_____ /

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned-hearing officer on July 18, 2007, at 9:34 a.m., at the Caleb Service Center, in Miami, Florida. The petitioner was present, but was represented at the hearing by her mother. Also present on behalf of the petitioner was her sister, _____.

The Agency was represented by Erica Woodard, registered nurse specialist, Agency For Health Care Administration (AHCA). Present as witness for the Agency, via the telephone, was Dr. Robert Buzzio, physician reviewer, from KePRO South. Also present via the telephone, as a witness for the agency was Teresa Ashley, review operations supervisor from KePRO.

ISSUE

At issue is the Agency's action of April 27, 2007, to deny the petitioner eight hours of Home Health Aide (HHA) services of 180 hours requested, for the period of April 4,

2007 through June 2, 2007, because the medical care as described to them is not medically necessary. The Agency has the burden of proof.

FINDINGS OF FACT

1. The petitioner, who was nine years of age at time of review, has severe and numerous medical problems that require medical services as provided through the Agency For Health Care Administration's (AHCA) Medicaid State Plan. The petitioner's condition(s) are outlined in Respondent Composite Exhibit 1. AHCA will be further addressed as the respondent.

2. KePRO has been authorized to make Prior (service) Authorization Process decisions for the respondent. The Prior Authorization Process was completed for the petitioner by KePRO.

3. On April 26, 2007, the provider, _____, s, requested 180 hours of HHA services, four hours daily, Monday through Friday. Because only 172 hours were needed for the certification, eight hours were denied due to provider miscalculation of hours.

4. During the reconsideration process, the provider informed KePRO that the petitioner's mother was previously working part-time, but now works from 8:00 a.m. to 5:00 p.m., Monday thru Saturday, and that she is the only caregiver. The provider notes that Home Health Aide needed to assist the petitioner with personal care and activities of daily living. The provider requested four additional hours of HHA services on weekends also.

5. On June 6, 2007, based on the new information provided, KePRO approved four additional hours on Saturdays, for a total of 304, but denied four hours requested for

Sundays. KePRO noted that there was no clinical or social explanation for HHA assistance on Sundays.

6. The petitioner's representative agrees with this decision. She explained that she requested the hearing because she thought that the HHA service had been cancelled.

CONCLUSIONS OF LAW

Fla. Stat. ch. 409.901(14) **Definitions** states in part:

"Medicaid agency" or "agency" means the single state agency that administers or supervises the administration of the state Medicaid plan under federal law.

Fla. Stat. ch. 409.901(4) **Home Health Care Services** states in part:

The agency shall pay for nursing and home health aide services, supplies, appliances, and durable medical equipment, necessary to assist a recipient living at home.

Fla. Admin. Code 59G-1.010, which applies to the Florida Medicaid Program states in part:

(166) "Medically necessary" or "medical necessity" means that the medical or allied care, goods, or services furnished or ordered must:

(a) Meet the following conditions:

1. Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain;
2. Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs;
3. Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational;
4. Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available; statewide; and
5. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider.

Fla. Admin. Code 59G-4 **Home Health Services** states in part:

(1) This rule applies to all home health agencies licensed under Chapter 400, Part IV, F.S., and certified by the Agency for Health Care Administration for participation in the Medicaid program for home health care.

(2) All home health agency providers enrolled in the Medicaid program must be in compliance with the Florida Medicaid Home Health Services Coverage and Limitations Handbook, October 2003, incorporated by reference, and the Florida Medicaid Provider Reimbursement Handbook, CMS-1500, which is incorporated in Rule 59G-4.001, F.A.C. Both handbooks are available from the Medicaid fiscal agent.

(3) When terminating, reducing, or denying private duty nursing or personal care services, Medicaid will provide written notification to the recipient or the recipient's legal guardian. The notice will provide information and instructions regarding the recipient's right to request a hearing.

The respondent, through KePRO, took action on April 27, 2007, to deny the petitioner eight hours of home health aide services of 180 hours requested, for the period of April 4, 2007 through June 2, 2007. This decision was based on the information as provided by the petitioner's service provider and the petitioner's medical necessity need of the request for the service.

During the reconsideration process, KePRO approved 304 hours but denied four hours of HHA service. The petitioner's representative agreed with this stipulation.

After considering the evidence, the Fla. Admin. Code and all of the appropriate authorities set forth in the findings above, the hearing officer affirms the respondent's action.

DECISION

This appeal is denied as stated in the Conclusions of Law.

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

FILED
JUL 19 2007
OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

[REDACTED]

APPEAL NO. 07F-03343

PETITIONER,

Vs.

CASE NO. 1248468643

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
DISTRICT: 01 Santa Rosa
UNIT: BRP

RESPONDENT.

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on June 20, 2007, at 9:40 a.m., in Pensacola, Florida. The petitioner was not present but was represented by his granddaughter, [REDACTED]. The Department was represented by Kendra Parker, economic self-sufficiency specialist I and Candy Norman, supervisor, Benefit Recovery Program.

ISSUE

The petitioner is appealing the Department's action of May 23, 2007 to establish an overpayment claim of \$2,817 in the Medicaid program that occurred for the month of October 2006 due to agency error. The Department bears the burden of proof.

FINDINGS OF FACT

1. Prior to the action under appeal, the petitioner resided of [REDACTED] Nursing Home. The petitioner filed an application for Institutional Care Program (ICP) and Medicaid benefits for the month of October 2006 and ongoing. At the time of the application, the petitioner's total income consisting of Defense Finance and Accounting Services (DFAS) annuity of \$835 and Social Security benefits of \$1,205 exceeded the income standard for the ICP program of \$1,809. Therefore, he was not eligible to receive ICP benefits unless he established an irrevocable Medicaid income trust and funded the trust each month.

2. On October 30, 2006, the petitioner's representative closed the petitioner's money market account [REDACTED] at Suntrust Bank in the amount of \$2,077.66 and funded an irrevocable Medicaid income trust with the proceeds of that closure. The petitioner deposited an additional \$100 to the income trust for a total of \$2,177.66 on October 30, 2006.

3. The petitioner executed the trust document and submitted it to the Department. The Department sent the trust document to its district legal counsel for review and approval on December 11, 2006. The income trust document was approved by the Department's district legal counsel and the Department approved ICP and Medicaid benefits effective October 2006.

The petitioner's income was \$2,128.09. The petitioner funded the Income Trust account with an initial deposit of \$2,177.66 on October 30, 2006. The petitioner

deposited the income to the income trust in order to reduce his countable income to within the program income standard. The income outside the trust is considered countable income. The total countable income was less than \$749 which is the ICP-MEDS income limit.

A tier one monitoring was completed on January 25, 2007. As a result of the case review, the Department determined that it erred when it approved ICP and Medicaid for October 2006 because it incorrectly determined the petitioner's assets for that month. The Department determined that assets consisted of the Suntrust money market account [REDACTED] of \$2,077.66 and a Suntrust checking account [REDACTED] with a balance of \$3,243.83 as of October 30, 2006. The total asset balance exceeded allowable asset limit. As a result of the Department's error, a referral was made to the Benefit Recovery Program.

At the hearing, it was determined that the money market account balance on October 30, 2006 was zero. The Department further acknowledged that it did not subtract direct deposited income from the checking account [REDACTED]. Evidence presented by the respondent indicated that the balance should have been \$2,048.54 after subtracting direct deposited income of \$1,205.18 and interest income of \$.09 paid on October 24, 2006 (Respondent Exhibit 8). The correct total countable resources were \$2,048.54.

CONCLUSIONS OF LAW

20 C.F.R. §416.1201 in part states:

Resources; general. (a) Resources; defined. For purposes of this subpart L, resources means cash or other liquid assets or any real or personal property that an individual (or spouse, if any) owns and could convert to cash to be used for his or her support and maintenance.

The Department's online integrated policy manual, 165-22, section 1840.0205 sets forth the maximum asset limitation in the ICP-MEDS program as \$5,000.

Total countable assets for an individual or a couple must not exceed \$2,000 or \$3,000 respectively.

Exceptions to these asset limits include the following:

4. for ICP, PACE, and Hospice individuals (admitted to an institution on or after September 30, 1989) and for Assisted Living Waiver (ALW) individuals...with community spouses, the individual's assets must not exceed \$2,000...For ICP-MEDS, the asset limit cannot exceed \$5,000 for the institutionalized individual...

The Department's online integrated policy manual 1840.0110 Income Trusts, includes ICP-MEDS as one of the programs that uses income trust policy.

The following policy applies only to the Institutionalized Care Program (ICP), institutionalized MEDS-AD, institutionalized Hospice, Home and Community Based Services(HCBS) and PACE. It does not apply to Community Hospice.

To qualify, an individual's gross income cannot exceed 300 percent of the SSI federal benefit rate (refer to Appendix A-9 for the current income standard). If an individual has income above the ICP income limit, they may become eligible for institutional care or HCBS if they set up and fund a qualified income trust. ...

The individual (or their legally authorized representative) must deposit sufficient income into the income trust account in the month in which the income is received to reduce their countable income (the income outside the trust) to within the program income standard...

Eligibility Standards for SSI-Related Programs at Appendix-9 of the Department's online integrated policy manual sets forth the Income limit for an individual as \$749 for the ICP-MEDS program and the Asset limit for an individual as \$5,000 for ICP-MEDS program.

Fla. Admin. Code 65A-1.712, SSI-Related Medicaid Resource Eligibility Criteria, states in relevant 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 Findings of Fact show that the petitioner's income exceeded ICP program eligibility limits. The Findings also show that the petitioner executed and funded a qualified Irrevocable Medicaid Income Trust account on October 30, 2006 with sufficient income to reduce countable income outside the trust. The countable income outside the trust was less than the MEDS-AD/ICP-MEDS income limit for an individual of \$749. Therefore, the petitioner met the income standards for ICP-MEDS program. The Findings further show that the petitioner's countable asset, in the form of a checking account, was less than the MEDS-ICP asset limit of \$5,000 for the month at issue. Therefore, the undersigned authority concludes the petitioner was eligible for ICP-MEDS program benefits and that the Department erred in its action to establish an overpayment claim for Medicaid benefits in October 2006.

DECISION

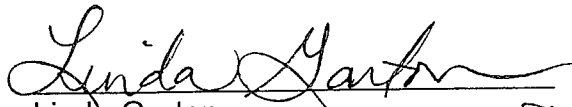
The appeal is granted. The Department is to void the overpayment claim in the Medicaid program for October 2006.


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.

DONE and ORDERED this 19th day of July, 2007,

in Tallahassee, Florida.


Linda Garton
Hearing Officer
Building 5, Room 203
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
850-488-1429

Copies Furnished To:  petitioner
1 DPOES: Jan Blauvelt
Elwood Barninger
Candy Norman

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

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

[REDACTED]

APPEAL NO. 07F-02913

PETITIONER,

Vs.

CASE NO. 1022194828

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
DISTRICT: 02 Washington
UNIT: 88115

RESPONDENT.

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on June 13, 2007, at 1:30 p.m., in Bonifay, Florida. The petitioner was not present but was represented by her daughter and power of attorney, [REDACTED]. The Department was represented by Nancy Riley, supervisor, Access Florida.

ISSUE

The petitioner is appealing the Department's action of March 25, 2007 to deny Institutional Care Program (ICP) benefits for the months of January and February 2007 because asset value exceeds program eligibility limits. The Petitioner bears the burden of proof.

FINDINGS OF FACT

Prior to the action under appeal, the petitioner resided in an assisted living center. On November 22, 2006, she was admitted to the [REDACTED] Rehabilitation and

Convalescent Care Nursing Center (WCCC) located in ██████████ Florida. An application for ICP was filed on behalf of the petitioner by the social work department of the nursing facility on November 29, 2006. On January 5, 2007, the application was denied because the petitioner did not verify unearned income.

A second application was filed by the social work department on February 7, 2007 requesting retroactive ICP coverage from November 2006 and ongoing. The petitioner's daughter was not in direct contact with the respondent but supplied all requested information to the social worker representing her mother. During the application process, the petitioner's income was being deposited to her bank account and no patient responsibility was paid to the nursing facility. As a result, the petitioner's bank account balance accumulated and exceeded the asset value for the ICP program. The assets at issue consisted of savings at Regions Bank, savings at Tyndall Federal Credit Union and checking at Tyndall Federal Credit Union and a preneed burial contract. The respondent did not present evidence to show the value of the preneed burial contract or whether or not it was irrevocable.

The petitioner's income was Social Security of \$816 (net), Department of Finance and Accounting Services (DFAS) of \$636 (net) and interest on her bank accounts. The total net income was approximately \$1,452. Based on the income reported, the Department determined the appropriate asset limit for ICP benefits to be \$2,000.

The Department received statements from the Tyndall Federal Credit Union (CU) and Regions bank showing direct deposited income into the credit union savings

account. For the month of January, the Department counted \$312.59 in the Regions checking, \$36.97 in the credit union savings and \$3,010.81 in the credit union checking account. For February 2007, the Department counted \$160.58 in the Regions account, \$37 in the credit union savings and \$4,510.01 in the checking account. The Department determined the petitioner's assets to exceed the allowable asset limit for the months of January and February 2007 and denied ICP benefits for those months. The Department acknowledged that it counted the balances shown on the bank accounts without first subtracting direct deposited income. Therefore, the balances used did not accurately reflect assets.

At the hearing, the respondent reviewed the bank statements and determined that the countable resources for January 2007 were as follows. The Regions checking account balance in January should have been \$207.26 after allowing for cancelled checks. The Tyndall Federal Credit Union savings account balance should have been \$36.94 and the checking account balance should have been \$1,511.94. The total asset for January 2007 was \$1,756.14.

The countable resources for February 2007 were as follows. The Regions checking account balance was \$101.52. The Tyndall Federal Credit Union savings balance should have been \$36.97 and the checking balance should have been \$3,010.81. The total asset for February 2007 was \$3,149.30. The Department did not indicate whether any of the excess resources were designated for burial.

The petitioner was concerned that the Department did not contact her regarding pending information and that the nursing home social services department would not send her a bill for the patient responsibility until a determination of eligibility was made by the Department. As a result, the petitioner's account balances accumulated allowing her resources to exceed allowable program limits. The petitioner contacted the Department and was advised that she must spend down the assets before March 2007 passed or the petitioner would continue to be ineligible. At that time the petitioner paid the nursing home \$5,000 reducing the countable resources to within applicable limits.

CONCLUSIONS OF LAW

20 C.F.R. §416.1201 in part states:

Resources; general. (a) Resources; defined. For purposes of this subpart L, resources means cash or other liquid assets or any real or personal property that an individual (or spouse, if any) owns and could convert to cash to be used for his or her support and maintenance.

20 C.F.R. §416.1205 sets forth the maximum asset limitation in the Institutional Care Program at \$2,000.00 for an individual.

Fla. Admin. Code §65A-1.303 in part states

Assets. (1) Specific policies concerning assets vary by program and are found in the program specific rule sections and codes of federal regulations. In general assets, liquid or non-liquid, are resources or items of value that are owned (singly or jointly) or considered owned by an individual who has access to the cash value upon disposition. Assets of each member of the SFU must be determined. A decision of whether each asset affects eligibility must be made. (2) Any individual who has the legal ability to dispose of 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 on the factor of assets. Assets are considered available to an individual when the individual has unrestricted access to the funds. 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 the individual's support and maintenance, even though the individual chooses not to do so...

Fla. Admin. Code 65A-1.712, SSI-Related Medicaid Resource

Eligibility Criteria, states in relevant 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.

Fla. Admin. Code 65A-1.716, Income and Resource Criteria,

states in relevant part.

(5) SSI-Related Program Standards.

(a) SSI (42 U.S.C. §§ 1382 – 1383c) Resource Limits:

1. \$2000 per individual.

Fla. Admin. Code 65A-1.712, SSI-Related Medicaid Resource Eligibility Criteria,

states in part:

(d) The individual, and their spouse, may designate up to \$2,500 each of their resources for burial funds for any month, including the three months prior to the month of application. The designated funds may be excluded regardless of whether the exclusion is needed to allow eligibility. The \$2,500 is not reduced by the value of excluded life insurance policies or irrevocable burial contracts. The funds may be commingled in the retroactive period.

The Findings of Fact show that the petitioner had a checking account, a share account at Tyndall Federal Credit Union and a checking account at Regions Bank. The

Findings of Fact also show that the petitioner had a preneed burial contract. The value of the pre-paid burial contract was not verified and there was no evidence to show whether any of the funds in the checking account were to be designated for burial. The undersigned authority reviewed the asset determination and finds that the Department erroneously failed to subtract income from the balances to arrive at the asset value. The Findings show that the balance in the bank accounts for January 2007, after deducting direct deposited income, did not exceed the asset limit of \$2,000 for the ICP Program. The undersigned authority is unable to determine if the assets were over the applicable program limit for February 2007 because there was no evidence to show that the petitioner was allowed to designate funds for burial.

According to the above authorities, 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. In addition, the regulations state the individual may designate up to \$2,500 of their resources for burial funds for any month, including the three months prior to the month of application regardless of whether the exclusion is needed to allow eligibility. The \$2,500 is not reduced by the value of excluded life insurance policies or irrevocable burial contracts.

DECISION

The appeal is granted. The Department's action is reversed and remanded. The Department is to reevaluate the asset value for January and February 2007 and apply applicable policy with regard to burial exclusion and exclusion of income in determining

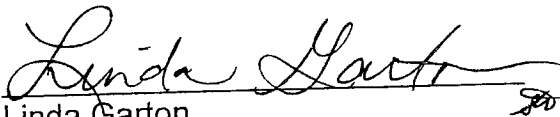
asset value. The petitioner is to be advised in writing, upon disposition, to include appeal rights.

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.

DONE and ORDERED this 5th day of July, 2007,

in Tallahassee, Florida.



Linda Garton
Hearing Officer
Building 5, Room 203
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
850-488-1429

Copies Furnished To:  Petitioner
2 DPOES: Denise Parker


JUL 17 2007

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

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

[REDACTED]

APPEAL NO. 07F-02506

PETITIONER,

Vs.

CASE NO. 1244202037

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
DISTRICT: 01 Okaloosa
UNIT: 88172

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on June 26, 2007, at 9:40 a.m., in Ft. Walton Beach, Florida. The petitioner was not present but was represented by her attorney, Steven Quinnell, of Chase Quinnell & Jackson, P. A. Testifying on behalf of the petitioner was her son, [REDACTED]. The respondent was represented by Eric Schurger, senior attorney, Circuit One, Department of Children and Families. Testifying on behalf of the respondent was Jo Ann Painter, economic self-sufficiency specialist I and Lenn King, adult payments supervisor.

The hearing was originally scheduled to be held on May 21, 2007 but was continued at the request of the petitioner.

ISSUE

1. At issue is the Department's action of October 2, 2006 to deny Institutional Care Program (ICP) and Medicaid benefits for the months of June through September 2006 based on the contention that asset value in the form of real property exceeded program eligibility limits. The status of real property as the petitioner's principal place of residence is at issue.

2. Also at issue is the Department's untimely delay in submitting the petitioner's request for a hearing and the petitioner's contention that she was subsequently harmed by that delay.

The petitioner bears the burden of proof.

FINDINGS OF FACT

The petitioner (age 84) lived in her own home in [REDACTED]. She was diagnosed with the early stages of Alzheimer's in 2004. On January 15, 2005 the petitioner moved into her son's home in [REDACTED] Florida. On the advice of their attorney, the petitioner's son and financial representative began transferring \$3,000 from the petitioner's funds to himself beginning February 2005. In addition, the petitioner paid her son \$2,000 monthly for rent.

The petitioner sold her home in [REDACTED] on May 31, 2005 and netted \$87,344.48. The petitioner spent down the proceeds from the sale of her home through systematic transfers to her son and for rent. In addition, the petitioner placed her household items in storage paying \$53 per month from January 7, 2005 through

May 2006 and \$68.90 per month from June 2006 through at least June 2007 (petitioner's exhibit 2). Her remaining liquid assets in November 2005 were approximately \$39,000 per petitioner's testimony.

In November 2005, the petitioner purchased a house in [REDACTED] for \$173,000. The down payment was \$62,652.24. This was paid by the petitioner's son from funds transferred to him by his mother. The remaining balance of approximately \$113,000 was subsequently paid off by the son. The house was listed solely in the petitioner's name. The petitioner moved her furnishings and personal belongings into the property in November 2005 but continued to rent the storage unit for belongings she would not need. The utilities were put in her name. At the time she purchased the property, the petitioner was unable to declare homestead exemption until the following year. The petitioner never declared the homestead exemption on the property.

The petitioner indicated that it was her intent to live in the [REDACTED] property and to make it her homestead. However, due to her deteriorating medical condition, the petitioner was unable to live independently in her home. The petitioner's family would take her to the property on holidays and during weekends. The family utilized the services of live in care to provide for the petitioner's need and to provide respite care so they could take care of basic necessities. The petitioner stayed at the [REDACTED] property approximately 7 days in November 2005, approximately 10 days in December 2005, 8 to 10 days in January 2006, and 3 days in February 2006. The petitioner resided with her son and his family in [REDACTED] the rest of the time and

continued to pay him \$2,000 rent. The petitioner's family accompanied her to her property in [REDACTED] and did not choose to allow contract help to be with her so far from home and her primary hospital and physicians (Respondent's Exhibit 1).

It became evident to the petitioner's family that her medical condition would require more permanent care. She returned to her son's home in [REDACTED] full time in February 2006 and shortly thereafter, was hospitalized. She transferred from the hospital to [REDACTED] Nursing and Rehabilitation Center in March 2006 and continues to reside there.

On June 12, 2006, the petitioner applied for ICP and Medicaid benefits. The petitioner reported income from Social Security of \$730. At the time of the interview, the petitioner's representative informed the Department that the petitioner owned property in [REDACTED] Florida and that the property was intended to be her homestead. The Department made every effort to determine if the property at issue could be excluded as the petitioner's homestead. Based on information provided by the representative, the Department determined that the property had not been homesteaded and was not her principal place of residence.

The Department determined the value of the petitioner's property was \$173,000 and that there were no liens or other indebtedness. The Department determined that the value of the petitioner's property exceeded the Institutional Care Program (ICP) asset limit of \$5,000 for an individual that has income below 88% of the poverty level. The petitioner's income is below the above referenced poverty level. On October 2,

2006, the Department notified the petitioner that her ICP and Medicaid benefits were denied based on excess assets.

The petitioner's property was listed for sale on October 17, 2006 and remains on the market. The petitioner reapplied for ICP and Medicaid benefits on October 17, 2006 and was subsequently approved beginning October 2006 because the property was excluded due to a bona fide effort to sell.

CONCLUSIONS OF LAW

20 C.F.R. §416.1201 in part states:

(a) Resources; defined. For purposes of this Subpart L, resources means cash or other liquid assets or any real or personal property that an individual (or spouse, if any) owns and could convert to cash to be used for his or her support and maintenance.

(1) If the individual has the right, authority or power to liquidate the property or his or her share of the property, it is considered a resource. If a property right cannot be liquidated, the property will not be considered a resource of the individual (or spouse)...

(2) For purposes of this Subpart L, the "equity value" of an item is defined as:

(i) The price that item can reasonably be expected to sell for on the open market in the particular geographic area involved; minus

(ii) Any encumbrances.

20 C.F.R. §416.1212, Exclusion of the home, in part states:

(a) Defined. A home is any property in which an individual (and spouse, if any) has an ownership interest and which serves as the individual's principal place of residence. This property includes the shelter in which an individual resides, the land on which the shelter is located and related outbuildings....

(c) If an individual changes principal place of residence. If an individual (and spouse, if any) moves out of his or her home without the intent to

return, the home becomes a countable resource because it is no longer the individual's principal place of residence. If an individual leaves his or her home to live in an institution, we still consider the home to be the individual's principal place of residence, irrespective of the individual's intent to return as long, as a spouse or dependent relative of the eligible individual continues to live there. The individual's equity in the former home becomes a countable resource effective with the first day of the month following the month it is no longer his or her principal place of residence.

Program Policy Manual appendix A-9 sets forth the maximum asset limitation in the Institutional Care Program (ICP-MEDS) at \$5,000 for an individual.

Florida Administrative Code §65A-1.303 in part states

Assets. (1) Specific policies concerning assets vary by program and are found in the program specific rule sections and codes of federal regulations. In general assets, liquid or non-liquid, are resources or items of value that are owned (singly or jointly) or considered owned by an individual who has access to the cash value upon disposition. Assets of each member of the SFU must be determined. A decision of whether each asset affects eligibility must be made. (2) Any individual who has the legal ability to dispose of 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 on the factor of assets. Assets are considered available to an individual when the individual has unrestricted access to the funds. 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 the individual's support and maintenance, even though the individual chooses not to do so...

The Department's online Integrated Policy Manual 165-22, Section 1640.0534 states in part:

Home property is excluded as an asset, regardless of its value, if it is the individual's principal place or residence. Only one residence can be excluded under this provision.

The Department's online Integrated Policy Manual 165-22, Section 1640.0534.01 states in part:

An individual's temporary absence from the home does not affect the exclusion of the home as an asset regardless of the length of absence, if:

1. a spouse or dependent relative continues to reside in the home, or
2. the sale of the home would cause undue hardship due to loss of primary residence to a co-owner of the property, or
3. the individual(or, on his behalf, a designated representative) states an intent to return home.

...Intent to return policy applies only to the continued exclusion of property which met the definition of the individual's home prior to the time the individual left the property...

The Findings of Fact show that the petitioner is listed as the owner of property in [REDACTED], Florida. The [REDACTED] County Property Appraiser's Office shows there is no homestead exemption on the property. There are no liens on the property. The Findings also show that the petitioner lived with her son and his family and continued to pay rent to her son after she purchased the property in [REDACTED] Florida. Further, the Findings show that the petitioner moved in permanently with her son in February 2006 and entered the nursing home from the hospital in March 2006. Based on the above, it is determined that the petitioner is the owner of the land at issue and that it was not her principal place of residence. The Findings show the value of the property exceeds the Institutional Care Program's asset limit and that the petitioner was not eligible to receive Institutional Care Program benefits.

According to the above authorities, if an individual moves out of his or her home without the intent to return, the home becomes a countable resource because it is no

longer the principal place of residence. Therefore, the Department correctly denied the petitioner's Medicaid and Institutional Care Program benefits effective June 2006 through September 2006. The Findings show that the property was listed for sale in October 2006 and the petitioner was determined eligible for ICP and Medicaid benefits effective October 2006.

Florida Administrative Procedures Act (APA) Section 120.59(1) F. S. states:

- (1) The final order in a proceeding which affects substantial interests shall be in writing or stated in the record and include findings of fact and conclusions of law separately stated, and it shall be rendered within 90 days...

42 C.F.R. Sec. 1396(a)(3) states in part:

A State plan for medical assistance must... (3) provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for medical assistance under the plan is denied...

42 C.F.R. Sec. 431.244(f)(1)(ii) states:

The agency must take final administrative action as follows:

- (1) Ordinarily, within 90 days from the earlier of the following:
... (ii) If permitted by the State, the date the enrollee filed for direct access to a State fair hearing..

The Findings of Fact show that the petitioner requested a hearing on October 5, 2006. The Findings also show that the hearing request was not submitted to the Office of Appeals Hearings until April 17, 2007. This was 194 days after the petitioner's request for hearing. The hearing was scheduled on May 21, 2007 but was continued at the request of the petitioner until June 26, 2007.

