

**Ohio Department of Job and Family Services  
Bureau of State Hearings**

Administrative Appeal Decision

<u>Appeal</u>	<u>Program</u>	<u>Disposition</u>	<u>Compliance</u>
3793284	MED-E	AFF	Not Required
3793227	MED-E	AFF	Not Required

Request Date: 12/13/2023

Mail Date: 12/21/2023

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## **Summary**

The Appellant, through his guardian, his nursing facility (NF) and its attorney, requested an administrative appeal of the state hearing decision issued on November 29, 2023. The state hearing decision overruled the Appellant's long-term care (LTC) Medicaid appeal regarding his March 2023 LTC Medicaid application and his Modified Adjusted Gross Income Medicaid (MAGI) appeal, finding the County Department of Job and Family Services (CDJFS) correctly determined he was over resources. Having reviewed the state hearing record, we affirm the state hearing decision.

## **Analysis**

The Appellant did not appeal the state hearing decision overruling his MAGI appeal—only the decision overruling of his LTC Medicaid appeal. We are affirming the state hearing decision regarding his MAGI appeal.

The Appellant entered the NF in June 2022. The Probate Court appointed a guardian of person for him on April 21, 2022. The NF applied for LTC Medicaid for the Appellant on March 3, 2023. Based on the information the CDJFS gathered, it sent two subpoenas to attempt to verify the amount of the life insurance policy the Appellant owned. It was not until a collateral contact occurred on June 20, 2023 that the CDJFS was able to obtain information from Trinity Life Insurance that the cash surrender value (CSV) of his policy was \$3300. The CDJFS denied his March 2023 LTC Medicaid application on June 21, 2023, finding that he was over resources. The Appellant, through his NF, requested a state hearing.

The CDJFS testified that it knew the Appellant had a life insurance policy and it sent two subpoenas trying to get the CSV of it. It was not until June 2023 that the CDJFS discovered that the correct company was Trinity. It did a collateral contact with the guardian to determine that the CSV was \$3300, so it denied the Appellant's March 2023 LTC Medicaid application. The NF and its attorney argued the notice was defective; the CDJFS failed to offer assistance; the CDJFS delayed processing the application until well after the required 45 days; the life insurance policy was unavailable to the Appellant because he was incompetent and his guardian was only guardian of person, so she had to wait for the court to issue an order. The state hearing decision overruled his appeal, finding he was over resources for LTC Medicaid eligibility.

The Appellant appealed. He made the following arguments:

- I. The June 21, 2023 notice of action issued to [the Appellant] was defective.
- II. The alleged resource, the life insurance policy, was not available to [the Appellant]. Because it was not available to [the Appellant], it was not countable.
- III. The CDJFS' failure to timely process [the Appellant's] March 3, 2023 application violates state and federal regulations.
- IV. Because of the [CDJFS'] delay in processing [the Appellant's] application, he is entitled to automatic approval of interim benefits.
- V. [The Appellant] was too impaired to assist with his application and the assistance offered by the CDJFS was insufficient. Given [his] incapacity, his resources, if he had any, were unavailable to him pursuant to the OAC.

Each argument will be addressed, although not in the order presented. Additionally, some arguments will be combined as they are overlapping.

I. The June 21, 2023 notice of action issued to [the Appellant] was defective.

The Appellant argued the June 21, 2023 notice was defective because the explanation was not clear and understandable because it did not help the Appellant understand why he was denied and give him concrete steps to take to get his application approved and pointed to a section of code that will never be found if someone were to go looking for it.

The June 21, 2023 notice stated: your countable resources exceed the resource limit for this program.

Ohio Admin. Code §5101:6-2-03(A) explains notice requirements:

When the CDJFS denies an application for or a requested change in public assistance or social services, the assistance group shall be provided prompt written notice of the decision.

(1) The notice shall contain:

- (a) A clear and understandable statement of the action the CDJFS has taken and the reasons for it.
- (b) Citations of the applicable regulations.
- (c) An explanation of the individual's right to and the method of obtaining a county conference and a state hearing.
- (d) A telephone number to call about free legal services.

This Medicaid rule mirrors the requirements of 42 C.F.R. §431.210:

A notice required under §431.206 (c)(2), (c)(3), or (c)(4) of this subpart must contain

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- (a) A statement of what action the CDJFS, skilled nursing facility, or nursing facility intends to take and the effective date of such action;
- (b) A clear statement of the specific reasons supporting the intended action;
- (c) The specific regulations that support, or the change in Federal or State law that requires, the action;
- (d) An explanation of—
  - (1) The individual's right to request a local evidentiary hearing if one is available, or a State CDJFS hearing; or
  - (2) In cases of an action based on a change in law, the circumstances under which a hearing will be granted; and
- (e) An explanation of the circumstances under which Medicaid is continued if a hearing is requested.

The notice outlines the Appellant's hearing rights. It gave the reason as being over resources. The NF and the guardian were very aware the Appellant had a life insurance policy. On June 20, 2023, the guardian discovered along with the CDJFS that the CSV of that life insurance policy was \$3300, so she knew that the Appellant was over the \$2000 resource limit (Ohio Admin. Code §5160:1-3-05.1(B)(8)) and which resource put him over

the limit.

We agree there is no subsection (B)(10) to Ohio Admin. Code §5160:1-3-05.1. However, even if the Appellant's NF and his guardian were confused about which resource put him over the limit or which rule was applicable, they could have called the CDJFS at any time for an explanation. Clearly, the Appellant had an authorized representative and a guardian who were capable of exercising his state hearing rights, so there was no violation of the Ohio Administrative Code, the Code of Federal Regulations or the Fourteenth Amendment. We do not find the October 13, 2022 notice to be defective under the rules. The Appellant's argument is not well taken.

III. The CDJFS' failure to timely process [the Appellant's] March 3, 2023 application violates state and federal regulations.

IV. Because of the [CDJFS'] delay in processing [the Appellant's] application, he is entitled to automatic approval of interim benefits.

These two arguments will be combined because they pertain to the CDJFS' delay in processing the Appellant's March 2023 LTC Medicaid application. The attorney argued that the CDJFS failed to timely process his March 2023 LTC Medicaid application, causing him substantial prejudice; depriving him of due process under 42 U.S.C. §1983; unlawfully discriminating against him under the Americans with Disabilities Act. The Bureau of State Hearings has no jurisdiction over any discrimination claims (Ohio Admin. Code §5101:6-3-01), so we cannot address it. As for the Appellant's due process argument, he was represented by his guardian and NF from the beginning of his March 2023 LTC Medicaid application. The NF was able to make a state hearing request on his behalf, so we do not agree that he was denied due process.

Ohio Admin. Code §5160:1-2-01(K)(2) requires the CDJFS to process a Medicaid application within forty-five days. Clearly, the CDJFS exceeded this timeline. However, Ohio Admin. Code §5160:1-2-01(I)(4)(a)(i) states, "The administrative agency shall not approve medical assistance to an individual merely because of an agency error or delay in determining eligibility. All eligibility factors shall be met." There is no mechanism for granting any form of interim benefits under the Ohio Administrative Code. Despite the CDJFS' delay in processing the Appellant's LTC Medicaid application, he cannot be found

eligible if he does not meet all of the eligibility factors. The Appellant's argument is not well taken.

The attorney argued that because the CDJFS failed to timely process the Appellant's March 2023 LTC Medicaid application, the CDJFS is required to provide corrective interim benefits. The Appellant cited 42 C.F.R. §435.903:

The agency must—

- (a) Have methods to keep itself currently informed of the adherence of local agencies to the State plan provisions and the agency's procedures for determining eligibility; and
- (b) Take corrective action to ensure their adherence.

The attorney also cited 42 C.F.R. §431.246:

The agency must promptly make corrective payments, retroactive to the date an incorrect action was taken, and, if appropriate, provide for admission or readmission of an individual to a facility if—

- (a) The hearing decision is favorable to the applicant or beneficiary; or
- (b) The agency decides in the applicant's or beneficiary's favor before the hearing.

The attorney cited a Tennessee state case that awarded corrective retroactive benefits.

The Tennessee state case is not controlling in Ohio, so we are not bound by it. As for the federal laws cited by the attorney, we note that they only require corrective payments if a decision is favorable to the applicant. We already found that the Appellant had his NF and his guardian to assist him and he needed to meet all eligibility factors in order to be approved for LTC Medicaid—even if the CDJFS delayed in processing his application. There is no mechanism for granting any form of interim benefits under the Ohio Administrative Code. The Appellant's argument is not well taken.

II. The alleged resource, the life insurance policy, was not available to [the Appellant]. Because it was not available to [the Appellant], it was not countable.

V. The Appellant] was too impaired to assist with his application and the assistance offered by the CDJFS was insufficient. Given [his] incapacity, his resources, if he had any, were unavailable to him pursuant to the OAC.

These two arguments will be combined as they pertain to the availability of the Appellant's life insurance policy. The attorney argued that the Appellant's life insurance policy was not an available resource for the following reasons:

1. The Appellant's guardian made reasonable efforts to cash in his policy, citing *Gardner v. Ohio Dept. of Job and Family Services*.
2. Although the Appellant owned the life insurance policy, it did not mean it was available to him, citing an unrelated state hearing decision.
3. The Appellant did not have the power to liquidate his life insurance policy.
4. The Appellant only had a guardian of person to assist him.

State hearing decisions are only binding on the parties involved in them (Ohio Admin. Code §5101:6-7-01(H)). The attorney cited a hearing decision that involved another individual, so it is not controlling and will not be considered.

Ohio Admin. Code §5101:1-3-05.12(C) explains when a life insurance policy is a countable resource:

A life insurance policy is a countable resource to the policy owner for medical assistance purposes if it generates a CSV. Its value as a resource is the amount of the CSV.

(1) The total CSV of all life insurance policies for an individual is excluded if the total face value of the policies is equal to or less than one thousand five hundred dollars for any one individual. If the total face value of all life insurance policies for any one individual is more than one thousand five hundred dollars, then the total CSV of all the policies for that individual is counted toward the applicable resource limit. Policies



in which a CSV has not yet accrued are still considered available when determining the total face value of the individual's life insurance policies.

There was no dispute that the Appellant owned a life insurance policy with a face value over \$1500 and with a CSV that exceeded \$2000. Per the Ohio Administrative Code, because the Appellant is the owner of the life insurance policy, it is a countable resource to him unless it is not available under the rules.

The attorney argued Ohio Admin. Code §5160:1-2-01(F)(5) should apply:

When determining eligibility for an individual with a physical or mental impairment that substantially limits the individual's ability to access verifications, and who has not granted any person durable power of attorney, or who does not have a court-appointed guardian or a person with other legal authority and obligation to act on behalf of the individual, the administrative agency shall:

(a) Determine if another person is available to assist with obtaining verifications or accessing the individual's means of self-support.

(i) When such a person is available, request the person assist with obtaining the verifications or accessing the individual's means of self-support.

(ii) When verifications are provided, or when means of self-support are accessed by the individual or on the individual's behalf by another person, the administrative agency shall consider the verified criteria or means of self-support in the eligibility determination process.

(b) When no person is available to assist the individual:

(i) Refer the individual's case to the administrative agency's legal counsel and request counsel evaluate whether the matter should be referred to the probate court, adult protective services, or another entity deemed by the administrative agency's legal counsel to be appropriate. For cases referred to counsel for such evaluation, the administrative agency shall also:

(a) Note in the individual's case record that verifications or means of self-support are not available and shall not be considered a disqualifying factor until a means of access to those items is obtained or established, and

(b) Inform the administrative agency's legal counsel of any eligibility approval or denial.

(ii) Determine eligibility in accordance with Chapter 5160:1-2 of the Administrative Code, but without considering eligibility factors for which verification cannot be obtained or means of self-support that cannot be accessed because of the physical or mental impairment. Use the most reliable information available without delaying the determination of eligibility.

(iii) Redetermine eligibility once a means of access to verifications or means of self-support is obtained or established. When such access has not been obtained prior to a regularly-scheduled renewal, determine continuing eligibility using the most reliable information available.

The Appellant had a guardian of person appointed in April 2022. The Appellant argued his resource was not available to him because his guardian was unable to do so without permission from the probate court. As noted above, Ohio Admin. Code §5160:1-2-01(F)(5) specifically states that if an individual does not have a “durable power of attorney, or who does not have a court-appointed guardian or a person with other legal authority and obligation to act on behalf of the individual” is when the administrative agency is required to determine eligibility without considering the individual’s resources. The Agency determined that because the Appellant had a guardian of person, he had someone with legal authority to assist him in accessing his resources.

Ohio Rev. Code §2111.13 governs the duties of a guardian of person:

(A) When a guardian is appointed to have the custody and maintenance of a ward, and to have charge of the education of the ward if the ward is a minor, the guardian's duties are as follows:

(1) To protect and control the person of the ward;

**(2) To provide suitable maintenance for the ward when necessary, which shall be paid out of the estate of such ward upon the order of the guardian of the person;** (emphasis added)

(3) To provide such maintenance and education for such ward as the amount of the ward's estate justifies when the ward is a minor and has no father or mother, or has a father or mother who fails to maintain or educate the ward, which shall be paid out of such ward's estate upon the order of the guardian of the person;

(4) To obey all the orders and judgments of the probate court touching the

guardianship.

(B) Except as provided in section 2111.131 of the Revised Code, no part of the ward's estate shall be used for the support, maintenance, or education of such ward unless ordered and approved by the court.

(C) A guardian of the person may authorize or approve the provision to the ward of medical, health, or other professional care, counsel, treatment, or services unless the ward or an interested party files objections with the probate court, or the court, by rule or order, provides otherwise.

(D) Unless a person with the right of disposition for a ward under section 2108.70 or 2108.81 of the Revised Code has made a decision regarding whether or not consent to an autopsy or post-mortem examination on the body of the deceased ward under section 2108.50 of the Revised Code shall be given, a guardian of the person of a ward who has died may consent to the autopsy or post-mortem examination .

(E) If a deceased ward did not have a guardian of the estate, the estate is not required to be administered by a probate court, and a person with the right of disposition for a ward, as described in section 2108.70 or 2108.81 of the Revised Code, has not made a decision regarding the disposition of the ward's body or remains, the guardian of the person of the ward may authorize the burial or cremation of the ward.

(F) A guardian who gives consent or authorization as described in divisions (D) and (E) of this section shall notify the probate court as soon as possible after giving the consent or authorization.

The rule states that a guardian of person has to provide suitable maintenance for the ward, which is the Appellant. The rule goes on to say that the guardian cannot do so absent a court order. The guardian testified that she petitioned the court in December 2022 to allow her to cash in the Appellant's life insurance policy, but issues with the way the life insurance company wanted the order worded prevented her from being able to accomplish it until August 2023.

During the time period in question, the Appellant had a guardian who had the legal ability to access his life insurance policy-even if she had to petition the court to do so. We find that the Appellant did not qualify under Ohio Admin. Code §5160:1-2-01(F)(5) to have

his life insurance not be considered in the eligibility determination.

The attorney's final argument as to why the Appellant's life insurance policy was an unavailable resource centers on *Gardner v. Ohio Dept. of Job and Family Services* (2022-Ohio-3021), a First Appellate District of Ohio court decision. In this case, the First Appellate District court applied a reasonable efforts test to the availability of Appellant's real property that she was attempting to sell. The decision found a reasonable-efforts test applied to the disposition of real property based on 42 U.S.C. §1382b:

**DISPOSITION OF RESOURCES; GROUNDS FOR EXEMPTION FROM DISPOSITION REQUIREMENTS**

**(1)**

The Commissioner of Social Security shall prescribe the period or periods of time within which, and the manner in which, various kinds of property must be disposed of in order not to be included in determining an individual's eligibility for benefits. Any portion of the individual's benefits paid for any such period shall be conditioned upon such disposal; and any benefits so paid shall (at the time of the disposal) be considered overpayments to the extent they would not have been paid had the disposal occurred at the beginning of the period for which such benefits were paid.

**(2)**

**Notwithstanding the provisions of paragraph (1), the Commissioner of Social Security shall not require the disposition of any real property for so long as it cannot be sold because (A) it is jointly owned (and its sale would cause undue hardship, due to loss of housing, for the other owner or owners), (B) its sale is barred by a legal impediment, or (C) as determined under regulations issued by the Commissioner of Social Security, the owner's reasonable efforts to sell it have been unsuccessful** (emphasis added).

Both the court and the United States Code proscribe a reasonable-efforts test in regards to the disposition of real property. The Appellant's life insurance policy is not real property, so the reasonable-efforts test is inapplicable.

The Appellant owned the life insurance policy and had access to liquidate it from the application date of March 3, 2023 through the denial date of June 21, 2023. The CSV of the

Appellant's life insurance was over the resource limit of \$2000 (Ohio Admin. Code §5160:1-3-05.1(B)(8)(a)). The state hearing decision is correct.

**Decision**

We hereby ORDER that the state hearing denial is AFFIRMED.

Susan Lehman  
Administrative Appeal Officer

Domingo Ramos  
Concur

Kelly Brogan  
Chief Legal Counsel  
12/21/2023

### **Notice to Appellant**

This administrative appeal decision is the final decision on this appeal from the Ohio Department of Job and Family Services and/or the Ohio Department of Medicaid. It is binding on the Departments and agency, unless it is reversed or modified on appeal to the court of common pleas.

If you disagree with the decision, you may appeal it to the court of common pleas pursuant to sections 119.12, 5101.35(E), and 5160.31 of the Revised Code. Mail the original notice of appeal to the department at the following address:

Ohio Department of Job and Family Services  
Office of Legal and Acquisition Services  
30 E. Broad Street, 31st Floor  
Columbus, Ohio 43215-3414

You must also file a copy of the notice of appeal with the court of common pleas in the county in which you reside (Franklin County, if you do not reside in Ohio). Your appeal must be filed within thirty (30) days of the date the decision was mailed to you.

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