

STATE OF RHODE ISLAND
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES APPEALS OFFICE

v.

DOCKET No. 25-0285 & 25-1565

DEPARTMENT OF HUMAN SERVICES

DECISION

I. INTRODUCTION

A hearing was held via Microsoft Teams in this matter on April 9, 2025. The Appellant, [REDACTED], declined the option of a video hearing. The Appellant initiated this matter to dispute the countability of her home in Puerto Rico as a resource towards her Long Term Services and Supports (LTSS) Medicaid benefits. The Appellant was denied LTSS Medicaid for being over the resource limit as a result of the Puerto Rico home being counted as a resource. The Appellant seeks to have her home in Puerto Rico excluded as a countable resource because her son lives in the home. For the reasons discussed in more detail below, the Appellant's appeal is denied.

II. JURISDICTION

The Executive Office of Health and Human Services (EOHHS) is authorized and designated by Rhode Island General Law (R.I.G.L.) §42-7.2-6.1 and EOHHS regulation 210-RICR-10-05-2 to be the entity responsible for appeals and hearings related to LTSS Medicaid. The administrative hearing was held in accordance with the Administrative Procedures Act, R.I.G.L. §42-35-1 et. seq., and EOHHS regulation 210-RICR-10-05-2.

III. ISSUE

The issue is whether the Appellant's out-of-state home is a countable resource for LTSS Medicaid in accordance with state and federal policy, as set forth below.

IV. STANDARD OF PROOF

It is well settled that in adjudications modeled on the Federal Administrative Procedures Act, unless otherwise specified, a preponderance of the evidence is generally required to prevail. 2 Richard J. Pierce, *Administrative Law Treaties* §10.7 (2002) & *Lyons v. Rhode Island Pub. Employees Council 94*, 559 A.2d 130, 134 (R.I. 1989) (a preponderance standard is the "normal" standard in civil cases). For each element to be proven, the factfinder must believe that the facts asserted by the proponent are more probably true than false. When there is no direct evidence on a particular issue, a fair preponderance of the evidence may be supported by circumstantial evidence. *Narragansett Electric Co. vs. Carbone*, 898 A.2d 87 (R.I. 2006).

V. PARTIES AND EXHIBITS

Senior Casework Supervisor Vanessa Ward represented DHS and offered excerpts of the regulation 210-RICR-40-00-3.6.5 that was relied upon by DHS.

The Appellant's Authorized Representative, [REDACTED], appeared on behalf of the Appellant. The Record of Hearing was held open until April 10, 2025, for the submission of additional evidence by the Appellant. The Appellant offered the following documents as evidence at hearing:

- Appellant Exhibit #1 – Letter from the Appellant's son dated April 8, 2025, with a copy of his Puerto Rico driver's license.
- Appellant Exhibit #2 – Letter from the Appellant's daughter dated April 8, 2025, with a copy of her Puerto Rico driver's license.

VI. RELEVANT LAW/REGULATIONS

An available resource means that a person has the legal ability to access and use the resource for support and maintenance. A resource is considered unavailable when there is a legal impediment that prevents the person from utilizing it for such purposes. 210-RICR-50-00-6.3(A)(4). As a condition of eligibility for LTSS Medicaid, an applicant must liquidate all available resources unless there is a specific exemption. 210-RICR-50-00-6.5.4(A).

LTSS Medicaid regulations relating to the exclusion of a home as a resource excludes the entire value of a home without the need of an expression of the intent to return, if any of the following relatives of the LTSS applicant is living in the property: 1) a spouse, 2) a child who is younger than twenty-one (21) years old or who is blind or permanently and totally disabled, 3) a sibling who has a legal interest in the home and who was living there for a period of at least 1 year immediately before the applicant's admission to the medical institution, 4) a son or daughter who was living in the home and shows, to the State's satisfaction, that he or she served as the primary caregiver for the LTSS applicant for a period of at least 2 years immediately before admission to the health institution, or 5) a dependent relative has any kind of medical, financial, or other dependency on the LTSS applicant, including a child, stepchild, grandchild, parent, stepparent, grandparent, aunt, uncle, niece, nephew, brother, sister, stepbrother, stepsister, half-brother, half-sister, cousin, or an in-law. 210-RICR-50-00-6.5.3(B)(2)(e).

If the applicant does not own residential property in Rhode Island but lives and intends to remain in Rhode Island, the home exclusion may be applied to an out-of-state residential property if, and only if, it is the principal place of residence of the applicant's spouse or dependent child. 210-RICR-40-00-3.6.5(A)(1)(a)(5).

A child means someone who is not married, is not the head of a household, and is either under age eighteen (18) or is under age twenty-two (22) and is a student. A dependent child means a child under the age of eighteen (18) or under the age of nineteen (19), if enrolled full-time in school. 210-RICR-40-00-3.2.4(A)(1) & 210-RICR-30-00-1.5(A)(2).

VII. FINDINGS OF FACT

1. The LTSS application was dated September 22, 2024. It was reported on the application that the Appellant and her husband owned a home in Puerto Rico.
2. Because this home is an out-of-state property, the full value of the home would be a countable resource. Fifty percent of the resource counted towards the Appellants' benefits, and fifty percent counted towards the husband's benefits.
3. The Appellant provided no evidence showing that the property was sold. Nothing was provided to exclude the property as a countable asset for LTSS Medicaid.
4. The Appellant's daughter lives in a different house on the same lot of land in Puerto Rico. This second house was not being counted by DHS.
5. The Appellant was denied LTSS Medicaid for being over resources.

VIII. DISCUSSION

The Appellant's son lives in the home in Puerto Rico that is being counted as a resource. A letter from the Appellant's son states that he lives at the home and does not pay rent to his parents. He is responsible for paying all the household bills.

The Appellant argued that the home in Puerto Rico was owned by the Appellant's husband. However, this still makes half of the home in Puerto Rico countable for the Appellant. The Appellant confirmed at hearing that her husband is a resident of Rhode Island and he is not residing in the home in Puerto Rico.

The Appellant further argued that the home cannot be sold because 1) of its condition, 2) that the Appellant's son is living there, 3) that the Appellant's daughter is living in another home located on the land, and 4) that selling the property would put two of the Appellant's family members out of a home.

The Appellant argued that the home should not count as a resource because the Appellant's son is a dependent child, as he lives in the home rent-free. The Appellant's son does not meet the criteria of a child or dependent child under state regulations. A child means someone who is not married, is not the head of a household, and is either under age 18 or is under age 22 and is a student. A dependent child means a child under the age of 18 or under the age of 19, if enrolled full-time in school. The Appellant's son, according to his Puerto Rican driver's license, was 51 years old when the LTSS application was denied. The fact that he lives in the home without paying rent to the Appellant, does not make him a dependent of the Appellant for Medicaid purposes. As to the poor condition of the home, this does not mean that the home cannot be sold. It can be sold, though for a lesser value based on its condition.

Under 210-RICR-40-00-3.6.5(A)(1)(a)(5), out-of-state property will be excluded as a resource if, and only if, it is the principal place of residence of the person's spouse or dependent child. These conditions do not exist in this case.

In conclusion, based on 210-RICR-40-00-3.6.5(A)(1)(a)(5), the home in Puerto Rico is a countable resource for LTSS Medicaid. After reviewing the regulations relating to LTSS resources, specifically 210-RICR-50-00-6, the Appellant has failed to prove that they met any specific exemptions that would make the property a non-countable resource for LTSS Medicaid. As such, the home in Puerto Rico is a countable resource for LTSS Medicaid eligibility.

CONCLUSION OF LAW

After a careful review of the testimony and evidence present at the administrative hearing, it is clear that:

1. The Appellant has failed to prove that the home in Puerto Rico should not be counted as a resource for LTSS Medicaid eligibility.
2. The Puerto Rico house is a countable resource for LTSS Medicaid. It must be liquidated unless a specific exemption exists in order for the Appellant to qualify for LTSS Medicaid.
3. The Appellant has failed to prove that any of the exemptions under 210-RICR-50-00-6.5.3(B)(2)(e) were met.

IX. DECISION

Based on the foregoing findings of facts, conclusion of law, evidence, and testimony, a final order is hereby entered that the Appellant's property in Puerto Rico is a countable resource.

APPEAL DENIED

/s/ Robert Pelosi
EOHHS Appeals Officer

NOTICE OF APPELLANT RIGHTS

This Final Order constitutes a final order of the Departments of Human Services pursuant to the RI General Laws §42-15-12. Pursuant to RI General Laws §43.35.15, 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.

CERTIFICATION

I hereby certify that I mailed a true copy of the foregoing to [REDACTED]
[REDACTED], and to [REDACTED]
[REDACTED], via regular mail, postage prepaid. Copies were sent via email to [REDACTED]
[REDACTED], [REDACTED], and DHS
representatives Rose Leandre, Rebecca Cahoon, Michael Pangman, Vanessa Ward, Jacqueline
Neirinckx, Kirsten Cornford, and the DHS Policy Office on this 19th day of
May, 2025.

Diane Luntado