

**Massachusetts Department of Transitional Assistance**

Appeal Number: 8  
Agency ID: 3  
Category: TAFDC  
TAO: New Bedford TAO – DTA  
Filing Date: 02/07/2017  
Hearing Date: 04/11/2017  
Decision Date: 04/19/2017

**Fair Hearing Decision**

Outcome(s): 

TAFDC	Approved
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**DEPARTMENT REPRESENTATIVE(S): Dominique Lopes**  
**JURISDICTION:**

Notice dated 01/30/2017 was sent to the Appellant stating "The Department denied your application for Transitional Assistance (TAFDC) benefits because your countable assets are over the TAFDC program limit of \$2500." (Exhibit A)

The Appellant filed this appeal on 02/07/2017 and, therefore, it is timely. (106 CMR 343.140(B)) (Exhibit B)

The denial of TAFDC benefits is grounds for appeal. (106 CMR 343.230)

**ACTION BY DEPARTMENT:**

The Department denied the Appellant's application for TAFDC benefits

**ISSUE:**

Did the Department properly determine that the Appellant is over the TAFDC asset limit?

**SUMMARY OF EVIDENCE:**

The Department Representative testified that the Department received a Bank Match for the Appellant indicating that she had a UTMA bank account at Deutsche Bank with a balance of \$22,738.29. The Department Representative testified that the Appellant's mother, who is also her authorized representative, closed the account and moved all the money to a separate account just in the mother's name. The Department Representative testified that the Department considered this a transfer of assets at less than value and said the Appellant would still be ineligible. The Department Representative submitted the following exhibit:

Exhibit D: Banks statement for Deutsche Bank

The Appellant was accompanied by her authorized representative and an attorney from South Coastal Counties Legal Services at the hearing. The Appellant testified that she did not know that she had a bank account and she had never heard of Deutsche Bank prior to the Department informing her of this account. The Appellant testified that she thought someone may have stolen her identity and opened an account. The Appellant testified that when she contacted her mother about this her mother informed her that she had opened this account when the Appellant was a minor. The Appellant's mother testified that she opened the bank account approximately 10 years ago. The Appellant's mother testified that she deposited the funds into the account at the time of her divorce and the Appellant has never had any access to it. The Appellant's mother testified that she no one touched the money in the account from the time that she opened it. The Appellant's mother testified that as soon as she found out that the Department considered the account her daughter's asset she called Deutsche Bank and was able to close the account without any involvement of her daughter and was able to put all the funds in an account with just her name on it without any involvement of her daughter. The Appellant's attorney argued that the Appellant did not have access to the account since she was not aware it was there and her mother was the only individual who conducted any transactions with that account. The Attorney explained that the account was initially opened as an UTMA account and the Appellant's mother was not aware of the laws regarding this and never moved the money until notified by the Department. The Appellant submitted the following exhibits:

Exhibit E: Affidavit from Appellant  
Exhibit F: Bank Statements from Deutsche Bank  
Exhibit G: Quarterly statement from Deutsche Bank  
Exhibit H: Check  
Exhibit I: Eastern Bank Statement  
Exhibit J: Eastern Bank Savings Statement

### **FINDINGS OF FACT:**

The record shows and I so find by a preponderance of the evidence:

- 1.) The Appellant was previously scheduled to attend a fair hearing on 03/14/2017 at 9:00am. (Exhibit C)
- 2.) The Appellant contacted the Division of Hearings and requested time for her attorney to prepare for the case. (Testimony of Appellant and Exhibit C)
- 3.) The Department received notice of a bank match regarding an account at Deutsche Bank with the Appellant's name listed. (Testimony and Exhibit D)
- 4.) The account was an UTMA account with both the Appellant and her mother listed. (Exhibit D)
- 5.) At the time of the bank match the account had a balance of \$22,738.29. (Exhibit D)
- 6.) The Appellant's mother had set the account up approximately 10 years ago with her own money and the account has never been touched by the Appellant. (Testimony and Exhibit F)
- 7.) The Appellant was not aware of the account until the Department informed her of its existence in December 2016. (Testimony and Exhibit E) I find the Appellant credible in her testimony that she was not aware there was an account until she confirmed this with her mother.
- 8.) The Appellant's mother closed the account as soon as she was informed of the problem and opened a new bank account in her own name with another bank. (Testimony and Exhibits G, H and I)
- 9.) The Appellant's mother closed the Deutsche Bank account and opened the Eastern bank account with the same funds. The Appellant's mother did this without the Appellant signing any documentation or consenting to this transfer. (Testimony and Exhibit E) I find the Appellant and her mother credible about the fact that they did not understand the law and both believed that it was the mother's money to do as she chose.

### **CONCLUSIONS OF LAW:**

I will first address whether the Appellant has demonstrated good cause to reschedule the 03/14/2017 hearing. The regulations 106 C.M.R. 343.320(A) (2) and 106 C.M.R. 367.200 provide that the Division of Hearings may reschedule the hearing at the request of either part who must demonstrate good cause for the rescheduling. 106 C.M.R. 343.320(D)(1) defines the bases for good cause, including a death in the family, injury or illness, sudden and serious emergencies, obligations that a reasonable person in the conduct of serious affairs would take precedence over the hearing, and the need for time to produce additional evidence. Additionally, 106 C.M.R. 343.320(D) (2) provides several additional factors to consider, including the amount of advanced notice of the hearing the appellant received, the appellant's ability to anticipate or reschedule the circumstances which led to the inability to attend, delay in notifying the Division of Hearings, and previous rescheduling requests or failure to appear which indicate a pattern of abuse or neglect of the hearings process.

Here, the Appellant requested additional time for her attorney to prepare for the hearing. This constitutes good cause under Section 343.320(D) (1) and accordingly I will address the merits of the appeal.

The regulation 106 CMR 204.100 defines assets as objects of value, other than income as defined in 106 CMR 204.240, such as personal property, real estate, vehicles, the cash surrender value of life insurance, cash, bank deposits, and negotiable securities. Countable assets are all assets that are considered for eligibility determination. Noncountable assets are all assets that are exempt from consideration. All assets are considered countable unless inaccessible in accordance with 106 CMR 204.125 or noncountable in accordance with 106 CMR 204.140. In order for the assistance unit to be eligible for assistance, the combined assets of the filing unit may not exceed \$2,500. (106 CMR 204.110)

I have found above that the Department received information that the Appellant's name was listed on a bank account with a balance of \$22,738.29 as of December 2016. The regulation 106 CMR 204.120 (B) (1) states that funds in a bank account shall be considered to be available only where and to the extent that a member of the filing unit has both ownership of and access to such funds. The determination of ownership of and access to funds in a bank account shall be made in conformity

to Massachusetts State law, including common law.

(2) Joint Accounts. If a member of the filing unit is a co-holder of a joint bank account, the entire amount on deposit shall be considered available as an asset unless the member of the filing unit demonstrates otherwise. A member of the filing unit who states that he or she is not the owner, or is only partial owner, of the funds shall be required to demonstrate the ownership of the funds. A member of the filing unit who states that he or she has no access, or only partial access to the funds, shall be required to demonstrate such lack of access.

(3) Verification of Access to and Ownership of Bank Deposits. If lack of either access to or ownership of the funds in the account is verified, the funds shall not be considered available as an asset. Verification that a member of the filing unit lacks access to and ownership of the funds may be demonstrated by the member of the filing unit having his or her name removed from the account. If the member of the filing unit cannot remove or chooses not to remove his or her name from the account then lack of either access or ownership must be verified.

(a) Prior to determining lack of ownership, there shall be a determination of whether the member of the filing unit has access to the account (see 106 CMR 204.125: Inaccessible Assets). If lack of access is demonstrated, the funds are not available. If the verification submitted does not demonstrate lack of access, the worker shall proceed to determine ownership.

A member of the filing unit may claim lack of access to a joint account when:

1. the co-holder is the absent parent of the dependent child and verification has been submitted to establish good cause for noncooperation with the Child Support Enforcement Unit in accordance with 106 CMR 203.750(B)(1)(c) or (d); or
2. verification has been submitted that indicates the co-holder has a history of physical or emotional abuse, or has threatened to abuse a member of the filing unit. Such verification shall be court, law enforcement, medical, psychological, child protective service, or social service records. When verification from one of the above sources can not be obtained by the applicant or recipient, sworn statements from the applicant or recipient and at least one other individual with knowledge of the circumstances is acceptable. Such statements may be made orally and subsequently be put in writing by the TAFDC worker.

(b) Verification that the member of the filing unit lacks ownership of, or has only partial ownership of, the funds in the account shall be demonstrated by at least two of the following:

1. Documents showing the origin of the funds, who opened the account, or whose money was used to open the account;
2. Documentation through federal or state tax records as to which of the joint account holders declares the tax on the interest credited to the account as income;
3. Records of who makes deposits and withdrawals and, if appropriate, of how withdrawn funds are spent;
4. When the member of the filing unit states that he or she does not own the account but is listed as a co-holder solely as a convenience to the other co-holder to conduct bank transactions on his or her behalf, evidence of the age, relationship, physical or mental condition, or place of residence of the co-holder shall be provided; or
5. Evidence as to why the member of the filing unit is listed on the account.

A document or piece of evidence submitted to verify a particular fact shall not count as more than one verification under the above subsections. However, a document, piece of evidence or a statement may address more than one fact needed for verification. If a member of the filing unit would be required to pay to obtain documents or other and no other method of verification is available, the Department, if it determines the document is necessary, shall obtain the documents.

I find, based on the factors above, that the Deutsche Bank UTMA account was not a countable asset for the Appellant's TAFDC eligibility and therefore this appeal is approved.

**ACTION FOR DEPARTMENT:**

Rescind the denial notice dated 01/30/2017 and review the Appellant's TAFDC eligibility retroactive to the application date.

**NOTE:**

This decision was entered electronically and may not format correctly due to system limitations.

Daniel Biagiotti  
Hearing Officer

CC:

Jan Kendrick, South Coastal Counties Legal Services