

5123-2-07**Personal funds of the individual.****(A) Purpose**

This rule establishes standards of accountability for a provider when the individual service plan of an individual served by the provider indicates the provider is responsible for managing the individual's personal funds.

(B) Scope

This rule applies to persons and entities that provide specialized services regardless of source of payment, including but not limited to:

- (1) County boards and entities under contract with county boards;
- (2) Residential facilities licensed pursuant to section 5123.19 of the Revised Code, including intermediate care facilities for individuals with intellectual disabilities; and
- (3) Providers of supported living certified pursuant to section 5123.161 of the Revised Code, including providers of services funded by medicaid home and community-based services waivers administered by the department.

(C) Definitions

For the purposes of this rule, the following definitions apply:

- (1) "Agency provider" has the same meaning as in rule 5123-2-08 of the Administrative Code.
- (2) "County board" means a county board of developmental disabilities.
- (3) "Department" means the Ohio department of developmental disabilities.
- (4) "Earned income" means wages and net earnings from employment or self-employment.
- (5) "Immediate family member" means a spouse, parent or stepparent, child or stepchild, sibling or stepsibling, grandparent, or grandchild.
- (6) "Independent provider" has the same meaning as in rule 5123-2-09 of the Administrative Code.
- (7) "Individual" means a person with a developmental disability.

- (8) "Individual service plan" means the written description of services, supports, and activities to be provided to an individual and includes an "individual program plan" as that term is used in 42 C.F.R. 483.440 as in effect on the effective date of this rule.
- (9) "Intermediate care facility for individuals with intellectual disabilities" has the same meaning as in section 5124.01 of the Revised Code.
- (10) "Major unusual incident" has the same meaning as in rule 5123-17-02 of the Administrative Code.
- (11) "Person responsible for the estate of the individual" means the executor, administrator, commissioner, or person who filed pursuant to section 2113.03 of the Revised Code for release from administration of an estate.
- (12) "Personal funds" means any financial resources, including but not limited to, earned income, unearned income, bank accounts, investment accounts, and monies distributed from a trust fund or inheritance.
- (13) "Provider" means an agency provider, an independent provider, or a residential facility.
- (14) "Qualified intellectual disability professional" has the same meaning as in 42 C.F.R. 483.430 as in effect on the effective date of this rule.
- (15) "Residential facility" has the same meaning as in section 5123.19 of the Revised Code.
- (16) "Service and support administrator" means a person, regardless of title, employed by or under contract with a county board to perform the functions of service and support administration and who holds the appropriate certification in accordance with rule 5123:2-5-02 of the Administrative Code.
- (17) "Specialized services" means any program or service designed and operated to serve primarily individuals with developmental disabilities, including a program or service provided by an entity licensed or certified by the department. If there is a question as to whether a provider or entity under contract with a provider is providing specialized services, the provider or contract entity may request that the director of the department make a determination. The director's determination is not subject to appeal.
- (18) "Team," as applicable, has the same meaning as in rule 5123-4-02 of the Administrative Code or means an "interdisciplinary team" as that term is used in 42 C.F.R. 483.440 as in effect on the effective date of this rule.

(19) "Unearned income" means all income that is not earned income including, but not limited to, social security disability income, supplemental security income, other benefits an individual receives, and monetary gifts.

(D) Establishment of roles and parameters for management of personal funds

(1) Each individual shall be afforded the opportunity to manage the individual's personal funds and taught to do so to the extent of the individual's ability.

(2) An individual's ability to manage personal funds will be addressed through development of the individual service plan and consideration of what is important to the individual and what is important for the individual.

(3) When an individual has been assessed to need assistance managing personal funds:

(a) The individual service plan will include:

(i) The name of the person or entity responsible for assisting the individual with managing personal funds and the specific personal funds to which the person or entity will have access;

(ii) The specific type of supports to be provided (e.g., bill-paying, shopping, budgeting, or increasing the individual's independence in managing personal funds);

(iii) The dollar amount anticipated to be available to the individual upon request for personal spending;

(iv) The maximum dollar amount that the individual may independently manage at any one time;

(v) The maximum dollar amount that the provider may spend on behalf of the individual for any one expenditure without team approval; and

(vi) When applicable, the name of the person or entity responsible for providing payee services.

(b) The qualified intellectual disability professional or service and support administrator, as applicable, shall maintain the following information in the individual service plan or in the individual's official record:

(i) The name of the person responsible for the estate of the individual in the event of the individual's death; and

(ii) When applicable, the name of the person or entity assigned as guardian of the estate.

(4) Each individual, other than an individual who has been assessed to need assistance managing personal funds, shall have access to personal funds to use as the individual chooses to purchase items, goods, and services.

(5) In no circumstance will an individual be required to use personal funds to purchase or pay for items or services that are reimbursed by medicaid or any other funding source of the provider.

(E) Avoiding conflicts of interest

Providers, immediate family members of providers, employees of providers, and immediate family members of employees of providers shall not:

(1) Ask for, otherwise try to secure, or accept loans in any amount from an individual the provider or employee serves.

(2) Sell items to an individual the provider or employee serves unless the transaction is authorized in writing in advance by the team.

(3) Buy items from an individual the provider or employee serves unless the transaction is authorized in writing in advance by the team.

(F) Management of an individual's personal funds by a provider

(1) A provider responsible for managing an individual's personal funds shall:

(a) Retain, safeguard, and accurately account for the individual's personal funds.

(b) Deposit the individual's personal funds in the individual's account within five calendar days of receipt.

(c) Ensure the individual has access to personal funds managed by the provider upon request, but no later than three calendar days from the date of request.

(d) Provide an accounting of the individual's personal funds as described in paragraph (G)(4) of this rule to the individual or the individual's guardian, the team, or the department upon request.

(e) Ensure the team is notified when:

- (i) An individual's personal funds exceed or are projected to exceed the maximum amount allowed for the individual to maintain eligibility for medicaid, supplemental security income, or social security disability insurance; or
 - (ii) An individual receives a lump sum payment (e.g., benefits back payment) or inheritance.
- (2) A provider responsible for managing an individual's personal funds shall not:
 - (a) Co-mingle the individual's personal funds with the provider's funds.
 - (b) Use the individual's personal funds to supplement or replace funds of the provider or another individual on a temporary or permanent basis except in situations where a practical arrangement (e.g., individuals take turns purchasing household supplies) is agreed upon and documented in writing.
- (3) An individual's team will determine, through development of the individual service plan, when a provider is required to maintain receipts for expenditures of the individual's personal funds. Receipts, when required, will identify the date, the item or items purchased, and the amount of the expenditure; other documentation or a written explanation will be obtained if a receipt is unavailable.
- (4) When a provider has been appointed to act as the payee for an individual's benefits:
 - (a) The provider shall follow all requirements set forth by the governing authority (e.g., social security administration or veterans' administration).
 - (b) The provider shall not request nor accept reimbursement through the individual's home and community-based services waiver for providing payee services if the provider is paid by the individual or from another funding source for acting as payee.
 - (c) Provisions of this rule apply without regard to the provider's role (i.e., acting in the capacity of payee or acting in the capacity of provider).
- (5) When a provider has possession of an individual's personal funds, the provider shall:
 - (a) Within five calendar days of termination of services, release any balance of cash to the individual or the individual's guardian, as applicable, after

deducting for actual or estimated expenditures owed by the individual;
and

- (b) Within fourteen calendar days of termination of services, prepare a final itemized statement of the individual's personal funds accounts and release any remaining personal funds to the individual or the individual's guardian, as applicable, with the itemized statement.

(G) Accounts established for individuals' personal funds

- (1) When a provider has possession of an individual's personal funds, the provider may establish a banking account on behalf of the individual or the individual may establish the individual's own account. When the provider establishes a banking account on behalf of an individual:

- (a) The provider may establish a separate banking account for each individual's personal funds, combine multiple individuals' personal funds in one banking account, or a combination of both. When multiple individuals' personal funds are combined in one banking account, the provider shall separately account for each individual's personal funds and allocate interest, if earned, to each individual proportional to the amount of personal funds each individual maintains in the account.

- (b) The individual's personal funds may be maintained in a checking account or a savings account or a combination of both.

- (c) The provider will establish the banking account in a manner that minimizes banking fees paid by the individual.

- (2) A cash account may be maintained by the provider as specified in the individual service plan.

- (3) An investment account opened in accordance with the Achieving a Better Life Experience Act program and section 529A of the Internal Revenue Code may be maintained by the provider as specified in the individual service plan.

- (4) For each type of account established for an individual, the provider shall maintain a written or electronic system of accounting which contains:

- (a) The individual's name;

- (b) The source, amount, and date of all personal funds received;

- (c) The signature of the person depositing personal funds to the account, unless electronically deposited;
- (d) The date, amount, and recipient of all personal funds withdrawn;
- (e) The signature of the person withdrawing personal funds from the account, unless electronically withdrawn;
- (f) For checking accounts and savings accounts, a current account balance reconciled to the most recent bank statement which is signed and dated by the person conducting the reconciliation; and
- (g) For any cash accounts maintained by the provider, including gift cards or gift certificates belonging to an individual, a verification of the reconciliation of the documented balance to the actual personal funds available no less than once every thirty calendar days which is signed and dated by the person conducting the reconciliation.

(H) Management of an individual's personal funds by an agency provider or residential facility

An agency provider or residential facility responsible for managing an individual's personal funds shall:

- (1) Develop and implement a written policy regarding management of individuals' personal funds that:
 - (a) Describes the system of accounting principles by which the agency provider or residential facility retains, safeguards, and accurately accounts for individuals' personal funds;
 - (b) Requires the agency provider or residential facility to deposit an individual's personal funds in the individual's account within five calendar days of receipt;
 - (c) Prohibits an individual's personal funds from being co-mingled with the agency provider's or residential facility's funds;
 - (d) Prohibits use of an individual's personal funds to supplement or replace funds of the agency provider or residential facility or another individual on a temporary or permanent basis except in situations where a practical arrangement (e.g., individuals take turns purchasing household supplies) is agreed upon and documented in writing;

- (e) Requires an accounting of an individual's personal funds as described in paragraph (G)(4) of this rule be made available to the individual or the individual's guardian, the team, or the department upon request;
 - (f) Describes how the agency provider or residential facility will ensure an individual has access to personal funds managed by the agency provider or residential facility upon request, but no later than three calendar days from the date of request; and
 - (g) Outlines the agency provider's or residential facility's system for monitoring and reporting alleged acts of misappropriation and exploitation in accordance with rule 5123-17-02 of the Administrative Code.
- (2) Ensure a person employed by or under contract with the agency provider or residential facility, other than the person who provides direct assistance to the individual with managing personal funds or the person who maintains the written or electronic system of accounting for personal funds, conducts the reconciliations of personal funds required by paragraphs (G)(4)(f) and (G)(4)(g) of this rule.
- (3) Ensure each person employed by or under contract with the agency provider or residential facility who provides direct assistance to an individual with managing personal funds, maintains the written or electronic system of accounting for personal funds, or conducts the reconciliations of personal funds required by paragraphs (G)(4)(f) and (G)(4)(g) of this rule is trained in the requirements of this rule and follows the agency provider's or residential facility's written policy regarding management of individuals' personal funds described in paragraph (H)(1) of this rule.

(I) Restoration of an individual's personal funds

- (1) A provider shall restore personal funds to an individual when:
- (a) The provider's failure to implement the individual service plan as written results in the loss of the individual's personal funds; or
 - (b) The individual experiences a loss of personal funds managed by the provider and the provider failed to maintain adequate documentation; or
 - (c) The provider's failure to follow its written policy regarding management of individuals' personal funds, described in paragraph (H)(1) of this rule, results in the loss of the individual's personal funds; or

(d) The provider or an employee of the provider is the subject of a substantiated misappropriation or exploitation major unusual incident which results in the loss of the individual's personal funds, in which case:

(i) The individual's major unusual incident prevention plan will compel the provider to restore the personal funds in a timely manner;

(ii) The provider will restore the personal funds as specified in the major unusual incident prevention plan; and

(iii) The major unusual incident case will remain open until the county board documents that the provider has restored the personal funds.

(2) An individual's team will ensure that restoration of personal funds is structured in a manner that does not jeopardize the individual's eligibility for medicaid, supplemental security income, or social security disability insurance.

(J) Disposition of personal funds in the event of an individual's death

(1) A department-operated intermediate care facility for individuals with intellectual disabilities that has possession of an individual's personal funds at the time of the individual's death will dispose of the personal funds in accordance with section 5123.28 of the Revised Code.

(2) An intermediate care facility for individuals with intellectual disabilities other than one operated by the department that has possession of an individual's personal funds at the time of the individual's death will dispose of the personal funds in accordance with Chapter 5123-7 of the Administrative Code.

(3) A provider other than an intermediate care facility for individuals with intellectual disabilities that has possession of an individual's personal funds at the time of the individual's death will:

(a) Make inquiries to determine if the individual has an estate.

(b) When an estate has been opened, arrange to transfer the individual's personal funds to the person responsible for the estate of the individual within ninety calendar days.

(c) Allow the individual's personal funds to be used for the individual's funeral and/or burial expenses if payment is not otherwise available.

(d) If after one hundred eighty calendar days following the individual's death, no estate has been opened, either:

- (i) Transfer the balance of the individual's personal funds to "Administrator, Medicaid Estate Recovery, Collections Enforcement Section, Ohio Attorney General's Office, 30 East Broad Street, 14th Floor, Columbus, Ohio 43215" when the individual was a recipient of medicaid benefits; or
- (ii) Dispose of unclaimed funds in accordance with Chapter 169. of the Revised Code when the individual was not a recipient of medicaid benefits.

Replaces: 5123:2-2-07
Effective: 12/1/2022
Five Year Review (FYR) Dates: 12/01/2027

CERTIFIED ELECTRONICALLY

Certification

11/14/2022

Date

Promulgated Under: 119.03
Statutory Authority: 5123.04, 5123.19, 5124.03, 5126.08
Rule Amplifies: 5123.04, 5123.19, 5123.28, 5123.62, 5124.03, 5126.08
Prior Effective Dates: 05/18/1995, 04/27/2000, 01/01/2006, 10/01/2016