

ineligible for Medicaid because they had transferred resources that, if considered as belonging to them, would have been in excess of the department's maximum. The "penalty" imposed by the regulations in effect at that time would have been an 18-month period in which the petitioner's parents would have been ineligible for Medicaid. The department now seeks to terminate benefits to the surviving parent (the petitioner's mother) because of an alleged "breach" of this agreement--even though any transfer-of-resource penalty that would have been imposed would have expired more than five years ago. The board concludes that as basic matter of law and public policy the agreement cannot be considered a valid basis upon which to terminate Medicaid benefits to the petitioner's mother.

The legal problems surrounding the 1982 "settlement agreement" are myriad. First of all, there is no indication in the record that the attorney who executed it was acting in behalf of the parties whom it purportedly binds--the petitioner's parents.¹ Secondly, the agreement is patently offensive to law and public policy. No government agency is empowered by law to grant or deny public benefits based solely on individual bargaining or, worse, outright purchase.² See Amendments V and XIV of the Constitution of the United States and 7th Article of the Vermont Constitution.

The petitioner's mother "transferred" the property in question more than seven years ago. The department cites no

provision in the regulations by which she can now be declared ineligible for Medicaid benefits. Public benefits cannot be awarded or withheld on the basis of a "contract".

Although the department's motives in entering into the agreement were no doubt benevolent, it must be concluded that the "settlement agreement" is absolutely unenforceable through the termination of Medicaid benefits to the petitioner.³ The department's decision is reversed. 3

V.S.A. § 3091(d); Fair Hearing Rule No. 19.

FOOTNOTES

¹There is no indication that either the petitioner or the petitioner's attorney was authorized to act in behalf (i.e., as attorney-in-fact) for the petitioner's parents. Also, by apparently representing both the petitioner and the petitioner's parents at that time, the attorney in question, in the hearing officer's view, had an inherent conflict of interest. This conflict appears to remain regarding the instant appeal.

²If the petitioner had complied with the agreement according to the department's interpretation he might have paid to the department over the years much more than his parents would have lost in Medicaid benefits had the two year "transfer penalty" been imposed in 1982.

³Of course, this decision applies only to the fair hearing process and the present rights of the parties under 3 V.S.A. § 3091. If the department feels that benefits were incorrectly paid from June 1, 1982 through November 30, 1983, it may have a right to "recoupment". See Medicaid Manual § M159. Whether it has such a right, however, is not a subject of this fair hearing.

#