

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 10,002
)
Appeal of)

INTRODUCTION

The petitioner appeals the denial of his application for Medicaid based on the Department of Social Welfare's determination that he has resources available for his support in excess of statutory maximums.

FINDINGS OF FACT

1. The petitioner was admitted to a long-term nursing care facility in September of 1987. His wife remained in their home in the community. The petitioner has lived in the nursing home continuously since that time.

2. On June 6, 1990, the petitioner applied for Medicaid through his wife. She reported to the Department that the petitioner had no assets as he had exhausted a savings account set up to pay for his nursing home care. That savings account had been funded through a division of the couple's assets at the time of the petitioner's admission to the nursing home. The petitioner's wife could not say exactly how much had been placed in that account.

3. Shortly thereafter, it came to the Department's attention that the petitioner's wife might herself have assets

and the Department requested verification. The petitioner's wife provided a certificate showing that she had placed money in a savings account (\$19,645.75) and in six certificate of deposit (CD's) accounts (#8126465 - \$49,570.94; #8137629 - \$19,332.66; #0308870 - \$32,140.90; #0900207 - \$19,169.03; #0900270 - \$22,399.93; and #0700333 - \$960.10) over the course of her lifetime which were both in her name and her son's name. Two of the CD's were purchased from the proceeds of sales of a home and a farm owned by her first husband. These accounts had been in her name and her son's name for over thirty years. The other accounts represented her share (following the couple's division of their assets) of the proceeds of the sale of a house and camp owned by the couple some twenty years, and the sale of the petitioner's business some twenty-four years ago. The petitioner could not remember which accounts were derived from which assets. Some three or four years ago when the former accounts were divided between the couple, the petitioner placed her son's name on all the new accounts. His name now appears with hers on each certificate of deposit. Those certificates now total \$163,219.31.

4. The petitioner who is now eighty-one, has been unable to work for over 20 years and has drawn Social Security benefits during that time. The petitioner's wife continues to work and last year earned about \$9,000.00 per year. She was able to save some money from those earnings.

There is no evidence that she uses money in the CD accounts to meet her current living expenses.

5. The petitioner's wife's son, whose name appears on the certificates has not contributed any of the funds to any account. The petitioner's wife placed her son's name on the certificates so he could manage her funds if she were unable to do so. The wife's son, who lives in Nevada, has never removed any funds from these accounts which are in Vermont and New Hampshire banks. The petitioner's wife stated that her son did not need the money and would never take the money from the account without her permission although she believes he would probably have a legal right to do so.

6. On July 16, 1990, the Department notified the petitioner that his Medicaid application had been denied because of \$98,639.31 in excess resources. He was also advised that he may be eligible if the excess were used for Medical expenses.

ORDER

The Department's decision finding the petitioner ineligible due to excess resources is affirmed.

REASONS

State Medicaid rules require applicants to demonstrate financial need as one prerequisite to eligibility for the program. The financial need test is not met if \$2,000.00 or more in non-excludible resources is available to the

applicant. Medicaid Manual § 230,235; Procedures Manual § P-2420C. The attribution of resources to applicants (or recipients) turns on whether a resource is "actually available" to the individual applying for benefits.

The resource at issue here is over \$163,000.00 in various savings and CD accounts in the petitioner's wife's name and that of her son. The petitioner's eligibility depends on whether any or all of the money in the certificates is "actually available" to him at this time for the purpose of providing him long-term care.

The petitioner's wife contends that she is only a joint owner of the certificates and, as such, should not be found to be the "owner" of the whole amount. The Department adopted regulations which direct how such property should be treated:

Ownership of Liquid Resources

A liquid resource owned or held jointly is considered to be wholly owned by the individual or couple with the following exceptions:

- (1) If the individual or couple submit evidence showing that any portion of the jointly owned or jointly held funds is owned by other joint owners or holders, that portion is not considered a resource owned by the individual or the couple. Evidence must include documentation of who contributes to and who uses the resource. Upon acceptance of the evidence, the holder must agree to change the designation of the account or certificate to reflect the ownership.

(2) If two or more of the joint owners are eligible individuals or applicants, the joint funds will be considered to belong to the joint owners or holders in equal portions.

Medicaid Manual § 232

Under these regulations, the petitioner's wife must be found to own the entire amount in the savings deposit certificates even though they are held jointly unless she meets her burden of showing that a portion (or the whole) is actually owned by someone else. The petitioner has failed to meet that burden. In fact, the petitioner's wife's own testimony makes it clear that her son has never contributed to or used the money in the accounts and is only listed on the certificates for reasons of convenience and not because he has any real ownership interest in the money. The Department's conclusion that these funds are actually solely owned by the petitioner's wife and available for her use alone is correct.

The petitioner's wife next asserts that if the money is found to be hers, it should not be found to be available to her husband because it was either derived from the sale of assets which never belonged to him or represents only his wife's half of their formerly jointly held assets which have previously been divided between them. While there is some logic to the petitioner's position, the Medicaid regulations do not use this accounting approach.

In general, the financial eligibility of Medicaid applicants and recipients is dependent upon resources actually owned by them as individuals.¹ See M 220. However, the regulations make a specific exception to that principle with regard to property owned by spouses. The regulations state that:

In determining the financial eligibility of an individual or a couple, the income and resources of spouses, with certain limits, must be counted as available to the applicants if they are living together in their own home or in the household of mother. . .

M.M. 221

The regulations go on to say:

Termination of Spousal Responsibility

"If spouses cease to live with each other, their income and resources must be considered available to each other for the time periods specified below. After the appropriate time periods, only the income and resources actually contributed by one spouse to the other are counted:

When couples cease to live together as a result of:

- (a) the admission to long-term care of one spouse treat the couple as having ceased to live together only if he/she is likely to reside in long-term care for at least 30 consecutive days), then:
 - The income of both spouses ceases to be combined in the month of separation, and
 - an assessment of resources is made at the time of application for Medicaid.

Note: see Section Special Requirements for Applicants/Recipients Living in Long-Term Care in the M270 and M360 section. . .

- (b) the death or finalization of a divorce or an annulment, then both the income and resources cease to be combined in the first month after the death or finalization of the divorce or annulment.
- (c) any reason other than (a) or (b), then the income and resources of the spouses cease to be combined beginning with the seventh month after the month of separation. However, if the mutual consideration of income and resources causes the individuals to be found ineligible as a couple, then only the income and resources actually contributed by one spouse to the other will be considered, being the month after the month in which separation occurred.

Medicaid Manual 211.1

These regulations establish a general obligation of support between spouses who are living together which ceases in most instances shortly after their separation or upon death or divorce. But when the separation is because of the admission of one spouse to "long-term care," special regulations take effect. Those regulations require as follows:

Special Requirements for Applicants/Recipients Living in Long-Term Care

This policy applies to an applicant/recipient individual or couple who is residing in a skilled nursing facility or intermediate care facility (including an intermediate care facility for the mentally retarded), or who is an inpatient in a medical institution but receiving a level of care provided in a nursing facility, or who is a home and community-based services recipient. These living arrangements are referred to in this policy as long-term care.

The regulations go on to provide in pertinent part:

M270.2 Resources

If an individual has no community spouse at time of admission to a long-term care facility, all his/her countable resources at time of application for Medicaid are considered.

If an individual is admitted to long-term care on or after September 30, 1989, and has a community spouse at time of admission to long-term care, two steps are required:

1. An assessment of resources at the time of admission to long-term care is completed. This assessment is completed at the request of either spouse and a copy of the assessment is provided to each spouse. The Department retains a copy. The assessment and notice must include at least:
 - the total value of countable resources in which either spouse has an ownership interest;
 - the basis for determining total value;
 - the spousal share (equal to one-half the total);
 - conclusions as to whether the institutionalized spouse would be eligible for Medicaid based on resources;
 - the highest amount of resources the institutionalized and community spouse may retain and still permit the institutionalized spouse to be eligible;
 - information regarding the transfer of resources policy; and
 - the right of the institutionalized spouse or the community spouse to a Fair Hearing at the time of application for Medicaid.

NOTE: if the assessment is not made at the time of admission, and an application for Medicaid is filed at some subsequent date, the Department must complete the above assessment by reconstructing the situation at the time of admission based on available information, unless the community spouse has died. If the community spouse dies before an application is filed, only the countable resources in which the long-term care resident has an ownership interest are considered.

NOTE: if an individual is discharged from long-term care and readmitted on or after September 30, 1989, an assessment of resources is again completed at the time of readmission to long-term care.

NOTE: if an individual was admitted to long-term care before September 30, 1989, is not discharged and readmitted on or after September 30, 1989, and applies for Medicaid, no assessment of resources at the time of admission is required. Only the second step of allocating the resources is required.

2. An allocation of resources at the time of application for Medicaid is completed as follows:

- Determine the total countable resources of the couple at the time of application for Medicaid, regardless of which spouse has an ownership interest in the resource.
- Deduct the greatest of the following:
 - Spousal Resource Allocation, or
 - Amount set by a Fair Hearing, or
 - Amount transferred from institutionalized spouse to community spouse under a court order.

Changes that result in an allocation which exceeds the Spousal Resource Allocation in effect on April 1, 1990, will be made via a procedures change. Changes that result in an allocation which is less than the Spousal Resource Allocation in effect on April 1, 1990, will be made via the Administrative Procedures Act.

NOTE: although the community spouse may be allocated up to the Spousal Resource Allocation, the couple should be informed that the spouse in long-term care may retain up to the Resource Maximum for one (1) in countable resources and still be eligible for Medicaid.

- Compare the resources now available to the institutionalized spouse to the Resources Maximum for one to determine whether or not he/she passes the resource test for Medicaid.

- If he/she does not pass the resource test for Medicaid, see the section on Medical Expense Spend-Down in the M400 section. The resources of the community spouse are considered available to the spouse in long-term care until the month after the month in which the individual becomes eligible for Medicaid.
- If the community spouse fails to make available to the spouse in long-term care the resources determined to be his/her (i.e., the spouse in long-term care) share, you may grant Medicaid to an otherwise eligible individual if he/she has assigned any rights to support from the community spouse to the Department (or lacks the ability to execute the assignment due to physical or mental impairment) or denial would work an undue hardship.
- If resources must be transferred to the community spouse (or to someone else for the sole benefit of the community spouse), provide the community spouse with the amount determined to be his/her share. The spouse in long-term care must complete this transfer within 60 days of notification of the allocation. An extension may be granted if there are good reasons for the delay.

M § 270.2¹

As the petitioner was admitted to long-term care before September 30, 1989, and has resided there continuously, the admission resource assessment set out in the regulation at paragraph 1. above does not apply. Instead, the regulation requires skipping ahead to the second step, which requires an "allocation of resources" for all Medicaid applicants regardless of the date of admission to the nursing home.

The "allocation" requirement begins with a determination of the "total" countable resources of the couple at the time of application for Medicaid, regardless

of which spouse has an ownership interest in the resources.

It has already been determined that the petitioner's wife has a countable resource in the form of \$163,219.31 in a savings account and six certificates of deposit. That \$163,219.31 represents the "total countable resource" to be used in determining the petitioner's eligibility. From that amount is deducted the Spousal Resource Allocation amount of \$62,580.31² (from Procedures Manual § P-2420C.) from which the figure of \$100,639.31 is obtained. That figure is the petitioner's countable resource amount. The petitioner, as with any individual applying for Medicaid, cannot have resources available to him of more than \$2,000.00. See M 230; P-2420B.

As the petitioner obviously has more than \$2,000.00 available, it must be determined that he is not financially eligible for Medicaid. The Department's decision denying him for financial ineligibility is, thus, correct and must be upheld because it is consistent with the Department's regulations. 3 V.S.A. § 3091(d)

The petitioner may become eligible for Medicaid once his excess resource of \$98,639.31 is "spent-down" for eligible medical or maintenance expenses. He is referred to his district Social Welfare office for further information on that regulation.

FOOTNOTES

¹These regulations derive their authority largely from the Medicaid enabling statute at 42 U.S.C. § 1396,-5 regarding "treatment of income and resources for certain institutionalized spouses".

²In this case there is no separate amount established by a fair hearing or a court ordered amount.

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