

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 10,191
)
Appeal of)

INTRODUCTION

The petitioner, the estate of a deceased woman, appeals the Department's denial that the woman has a valid Medicaid application pending. The issue is whether the person who made the request to withdraw the application had the legal authority to do so.

FINDINGS OF FACT

1. In August of 1989, M.L., an elderly woman, entered a nursing home. At the time she entered the home, her daughter, B.C., had to agree to act as guarantor of her elderly mother's bills as a condition of her admission. Up until May 1, 1990, M.L.'s nursing home expenses were paid out of her private funds and through Medicare. However, after paying her mother's nursing home bill through May 31, 1990, B.C., who had a written power of attorney to act for her mother, determined that her mother's funds were almost depleted and decided to apply for Medicaid on her behalf. A copy of the document is attached hereto as Exhibit 1 and incorporated by reference herein.

2. On May 1, 1990, B.C. went to the District Office and filled out a Medicaid application. She brought the

document dated March 14, 1985, granting her the power of attorney but no one asked to see it.

3. On May 9, 1990, M.L. died. By a will dated March 14, 1985, the petitioner appointed her son, D.L., executor of her estate. A copy of that document is attached as Exhibit 2 and incorporated by reference herein. On the following day, May 10, 1990, B.C., called the Department to report that her mother had passed away and that she would no longer need Medicaid. The worker told B.C. that she would cancel the application. There is no evidence that D.L., the executor, knew of that action.

4. At the time of her death, M.L.'s estate consisted of \$2,900.00 in her checking account plus \$3,197.00 which was refunded by the nursing home on her account for the remainder of May. With that money the executor, D.L., paid his mother's bills and paid a \$200.00 gift to her church as directed by her will. Her will directed that the remainder of the estate, which was \$1,300.00, be divided among her seven children, which was done.

5. Early in August, 1990, after all of the proceeds of the estate had been distributed, the decedent's executor received a call from the nursing home informing him that they had just discovered that his mother had an outstanding bill of \$5,920.00, representing unpaid third party claims. Apparently, due to an error on the nursing home's part, "Medicomp" supplemental insurance had been billed for three and a half months (January 1 - April 10) for M.L.'s nursing

home expenses, a coverage which M.L. never had and never represented that she had. On August 16, 1990, a written bill was received detailing the expense.

6. The executor, D.L., who did not have an attorney, thereafter spoke with the nursing home and was satisfied that the bill was accurate and "legitimate", as they told him they had six months to submit the bill after M.L. died.

On August 20, 1990, D.L. called the Welfare District Office to inquire about his mother's Medicaid application, the filing of which he had recently learned about from his sister, B.C. He was told by the District Director on that date that it had been withdrawn. D.L. stated that he "wondered why it had been withdrawn" and told the Director that he had received new bills. The Director told him to bring in the bills and he would see if the application was still valid. D.L. did bring in the bills but never heard anything back from the Department.

7. In the fall of 1990, after receiving no payment on the bill, the nursing home began collection actions against B.C., the daughter who acted as guarantor for the outstanding amount. She is a person of limited means and has no ability to pay the \$5,920.00. On November 15, she contacted the Department with regard to her brother's request to "reactivate" the application and was told it did not appear that it would be reactivated. On November 30, 1990, B.C. was reported for nonpayment to a credit bureau and she fears that further collection actions will be taken

against her.

8. On December 19, 1990, B.C., called the Department and was told that she could appeal the "decision" not to reactivate the application. On December 20, 1990, she called back to request a fair hearing. On December 21, 1990, the District Director requested that a fair hearing be scheduled at the request of B.C., who had "Power of Attorney for M.L.".

9. Although D.L., the executor of the estate, did not personally file the appeal, he accompanied B.C. to both hearings in this matter and testified in support of the reactivation of the application at both hearings. As these facts and other herein show that he acquiesced in and supported this appeal, it can found that the appeal made by B.C. was ratified by, and in essence was an appeal of, the executor of M.L.'s estate on behalf of her estate.

ORDER

The decision of the Department that there is no pending application is reversed and the matter should be remanded to the Department for a determination of the deceased's eligibility for retroactive Medicaid benefits for the period from February 1, 1990 through May 9, 1990.

REASONS

At the outset, note must be made of the informal way this matter was handled by the Department. When D.L. as the executor of the estate called contesting the status of the application, the Department should have responded to him

with a written decision. The Department's own regulations and due process require as much. See M ə 141 Considerable delay and confusion has been the result of the Department's failure to follow these basic rules of fairness.

The Department's regulations allow a wide variety of persons to act as the representative of a Medicaid applicant, including applications made for retroactive coverage after the death of a person:

M104 Authorized Representative

The parent, guardian or other caretaker responsible for a minor child acts as the child's representative in the eligibility process.

When a person cannot act for himself, because of his physical or mental condition, one of the following people may act as his authorized representative in the eligibility process:

A court appointed legal guardian or legal representative; or

A relative, friend or other person who knows about or handles his affairs; or

A person he names in a letter to the department to take his place when he cannot come for a necessary interview because of an unexpected emergency.

When a person dies before he can apply for retroactive Medicaid coverage, the administrator or executor of his estate, a surviving relative or other responsible person may act as his authorized representative.

The Department argues that the above regulation authorized the decedent's daughter to apply for Medicaid and to withdraw her application or take any other action with regard to this matter. The fact that the daughter had a written power of attorney is, in the Department's view, not necessary or relevant to determining the daughter's

authority to act for the mother.

It is true under the Department's regulations that it will accept as an authorized representative persons who do not hold a power of attorney. Furthermore, in the case of an application for retroactive benefits for a deceased person, the Department's regulations even allow persons other than the executor of the estate to act as a representative. However, who the Department will accept as a representative and who is actually authorized by the applicant to act for her or him are two critically different matters. It is incumbent on the Department, especially when actions are taken which are potentially adverse to the applicant's interests, to determine whether the representative has been given actual or legal authority by the applicant (or her estate) to act in her behalf.

In this matter, the Department apparently made no attempt to ascertain at any time prior to the appeal whether B.C. had the authority to act for her mother. At the time of the application, B.C. was prepared to present the document showing her power of attorney but was not asked for it. When she called eight days later to report her mother's death and to withdraw the application, no inquiry was made as to whether she had the authority to take this adverse action. It was only several months later when B.C. filed an appeal in this matter, that it appears that some inquiry was made as to whether she had the authority to take this action. That inquiry by the District Director resulted in

his determination that B.C. could appeal as she held "power of attorney" for M.L.

Whether or not there is a pending application for retroactive benefits in this matter depends on B.C.'s legal ability to withdraw her mother's application after her death. There is no dispute that B.C., who held a written power of attorney to act for her mother, had the legal authority to take actions for her, including filing a Medicaid application, before her death. However, by operation of law, the death of the grantor automatically terminates the power of attorney, unless some interest is specifically reserved after death. Wells v. Foss 81 Vt. 15 (1908) Michigan Ins. Co. v. Leavenworth's Estate, 30 Vt. 11, (1856). The power of attorney given to B.C. reserves nothing after the death of the grantor. It must be found, then, as a common principle of law that after her mother's death, B.C. had no legal authority to act on behalf of her interests.

On the petitioner's death, the legal authority to act for the interests of her estate was specifically bestowed by her will on D.L., the petitioner's son. D.L. took no action to withdraw the Medicaid application and there is no evidence that he even knew about its withdrawal or in any way ratified that act. His only action with regard to the application was to attempt to revive it after her nursing home bill arrived. As D.L. was the only person who had the authority to act for his mother's estate, and he took no

action withdrawing her application, it must be found that the application has not been withdrawn and should be acted upon.¹

Finally, it must be noted that B.C., in spite of the District Director's determination that she did so under power of attorney, had no authority to file this appeal. She had no power of attorney after her mother's death, as discussed above. The only person who could file the appeal was D.L., the executor of the estate. However, from D.L.'s personal involvement and obvious agreement with his sister throughout the course of the appeal, it can be found that as executor of the estate, he authorized B.C. to file the appeal and fully acquiesced in and ratified the action.

FOOTNOTES

¹Although requested to do so, the Department declined to fully determine the petitioner's eligibility under the application prior to this decision. Although there are serious questions about the financial eligibility and coverage periods here, the Department did represent that the issue before the Board was not a moot one.

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