

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 11,744
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision of the Department of Social Welfare denying his application for Medicaid for long term care. The issue is whether the cash surrender value of a life insurance policy held by the petitioner constituted a resource available to him within the meaning of the pertinent regulations.

FINDINGS OF FACT

The facts are not in dispute. Sometime in 1992 the petitioner entered a nursing home and applied for Medicaid. His application was denied based on his ownership of a life insurance policy with a face value of \$50,000.00 and a cash surrender value of about \$11,000.00. Otherwise, the petitioner met the income and resource eligibility limits of the program.

The insurance policy in question was the subject of a divorce decree entered in 1984, under the terms of which the petitioner was ordered as follows:

During the joint lives of the parties the Husband shall maintain an insurance policy on his life in the amount of Fifty Thousand (\$50,000.00) Dollars for the benefit of the Wife. The Husband shall retain ownership of said policy and pay all premiums thereon. In the event the Husband dies with life insurance coverage insufficient to

satisfy the aforementioned death benefit, the Wife shall have a claim against his estate for any property which he may own at his death in the amount of any such deficiency.

It appears that the petitioner on at least one occasion borrowed money against the policy, which did not affect the policy's face value.

The petitioner died in June, 1993, during the pendency of this appeal. Thus, the case is limited to a "closed period" from the time of his application until his death.

ORDER

The Department's decision is reversed.

REASONS

Medicaid Manual (MM) § M231 includes the following definition of "liquid resources":

Resources are cash, liquid assets or any real or personal property that an individual owns and could convert to cash to be used for his/her support and maintenance. If an individual has the right, authority or power to liquidate the property or his/her share of it, it is considered a resource. If a property cannot be liquidated, it is not counted as a resource of the individual.

The Department argues that the fact that the divorce decree created a "contingency" of a claim by the petitioner's former wife against his estate if the petitioner did not maintain the policy in full force demonstrates that the cash surrender value of the policy was available to the petitioner within the meaning of the above regulation. This argument,

however, misconstrues the legal rights of the petitioner's former wife and the legal constraints of the petitioner over the policy that were created by the court order.

In Cannuni v. Schweiker, 740 F.2d 260 (3rd Cir. 1984) it was held that the crucial question in determining the availability of resources is not whether an individual has "legal access" to funds, but whether under state law the individual has the right to use such funds for his or her own benefit. In that case it was ruled that a child whose name was on a bank account held jointly with his parents did not have true legal ownership of any of the funds in that account. In Fair Hearing No. 6838 the Vermont Human Services Board reached the identical conclusion; and it is believed that the Department has followed these cases ever since in its determinations of availability of jointly-held resources. See MM 9 232.

The Department attempts to distinguish the situation presented by the instant case by the fact that the petitioner's former wife is not a "joint owner" of the assets in question. This appears to be a distinction without a difference, however. While it is true that the petitioner had the "legal access" necessary to cash out the policy, if he did so he became liable to his former wife--the same way a joint holder of a bank account can legally "access" the account, but would then be liable to the other joint holder if the money in

the account belonged to the other joint holder. Contrary to the Department's position, the provision in the divorce decree that created a specific cause of action against the petitioner's estate if he did not maintain the policy was merely an additional protection to the petitioner's former wife that underscored--not diminished--her legal rights to policy under the terms of the decree.

In this case, although the petitioner was the "owner" of the policy, the divorce decree gave his former wife the sole and full "benefit" of that policy during her lifetime. Moreover, despite the petitioner's "ownership" of the policy, the court specifically ordered that he "shall maintain . . . (the) policy in the amount of . . . \$50,000.00". If the petitioner cashed out the policy, as the Department would have had him do before he could become eligible for Medicaid, he would have been in clear violation of that court order.¹ The board knows of no provision in the Medicaid regulations, or any principle of public benefits eligibility, that requires individuals to violate court orders placed upon them in order to qualify for benefits. The Department's position in this matter either ignores or trivializes the clear and unequivocal legal constraints that prevented the petitioner from converting the policy in question to cash for his own benefit-

¹Similarly, if the petitioner had borrowed against the policy to an extent that diminished the policy's face value he would have been in violation of the court order.

-and to his former wife's detriment.

In view of those legal constraints it cannot be concluded that the petitioner had the legal "right, authority or power to liquidate" the policy in question. Therefore, the Department's decision is reversed.

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