

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,602

)

Appeal of)

)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare to recover from her deceased father's "estate" a portion of the medicaid funds expended for her father's long-term care before he died. The issue is whether the petitioner has shown "undue hardship" under the regulations if the Department proceeds with its recovery from her father's estate.

FINDINGS OF FACT

The facts are not in dispute. For several years prior to the time her father entered a nursing home the petitioner provided extensive care and services to him that the Department does not dispute probably prolonged the time her father was able to remain in his own home. However, the petitioner did not live in her father's home at any time before or after he went into the nursing home. When he was sick she would occasionally stay in his house overnight, sometimes for days at a time. But all during this time she lived in and maintained her own separate residence.

The petitioner's father's "estate" consists of a total of about \$1,500, presently under the Department's lien in a bank account. The Department concedes that this will "reimburse" the state only a small fraction of what the Department paid in medicaid for the petitioner's father's care while he was in the nursing home. The Department also does not dispute the petitioner's claim that her father "downgraded" his own funeral plans so that the petitioner would inherit at least some money from his estate. The Department concedes that if the petitioner's father had instead earmarked this money for his funeral and burial expenses most or all of it would have been exempt from medicaid recovery. The Department also does not dispute the petitioner's contention that the value of the goods and services she provided at her expense to her father during his final years far exceeds what is in his estate. The petitioner is her father's sole heir.

ORDER

The Department's decision is affirmed.

REASONS

Medicaid Manual § M 159 includes the following provisions:

The Department shall seek adjustment or recovery from the estate of an individual who died on or after January 1, 1994, and who was 55 years of age or older when he/she received nursing facility services or home and community-based services paid for by the Medicaid program. An estate shall include all real and personal property and other assets which are included in the estate when it is filed in the probate court.

. . .

The Department will not seek an adjustment or recovery when it determines it would work an undue hardship. An undue hardship would be found to exist if, in the case of the individual's home:

- a sibling has been living in the home for at least one year immediately before (and on a continuous basis since) the date of the individual's admission to long-term care: and/or
- a son or daughter has been living in the home for at least two years immediately before (and on a continuous basis since) the date of the individual's admission to long-term care and establishes to the Department's satisfaction that he or she provided care to the individual which permitted the individual to reside at home rather than in a long-term care living arrangement. . . .

There is no question in this matter that the petitioner's case is compelling as a matter of fairness and equity. The Department concedes that if it felt it had the discretion to do so under the regulations it would forego the recovery of medicaid from this estate. Unfortunately, however, the above regulations are clear that the Department can consider "undue hardship" only in those cases in which the surviving son or daughter was and is "living in the home" of the deceased former recipient and where that home, itself, is the subject of the recovery from the deceased's estate.

In this case, the petitioner's father's estate consists only of about \$1,500, all in cash assets. Moreover, the petitioner never resided in her father's home either before or after he went into a long-term care facility.

The Department's regulations are based on federal statutes that require states to initiate recovery actions against the estates of deceased long-term care medicaid recipients. Because of the modestness of the estate in question here, and in light of the petitioner's unquestioned devotion and sacrifice to her father, it could certainly be concluded that the petitioner is more "deserving" of this money than the Department. Under the above regulations, however, there is simply no legal basis to exempt this estate from medicaid recovery. Therefore, the Board is bound by law to affirm the Department's decision. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 19.

#