

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 17,208
)
Appeal of)

INTRODUCTION

The executor of the petitioner's estate challenges the amount of the Medicaid patient share established by the Department of Prevention, Assistance, Transition, and Health Access (PATH) during the time of his residence at a long term care facility.

FINDINGS OF FACT

1. No hearing was held in this matter because the parties agreed that it could be submitted by stipulation. Although the appeal was commenced almost one year ago, the signed stipulation was not submitted until a month ago. The parties indicated in the cover letter to the stipulation that there was a remaining area of dispute and that it would be addressed through an affidavit to be filed by the deceased petitioner's executor and attorney. It is not clear whether PATH agrees with the facts alleged in the affidavit, but for purposes of this appeal, it is assumed that those facts are true. Because the stipulation and affidavit are excessively

long and contain much information not relevant to the decisional issue here, only the pertinent stipulated facts are distilled and set forth below.

2. C.H. was an elderly man who had given his "power of attorney" to his attorney in September of 1998. When C.H.'s health began to fail, his daughter arranged for him to be admitted to a long-term care facility which he entered on October 23, 2000.

3. A few days before his admission to the long term care facility, C.H.'s daughter and his attorney filed an application for Medicaid benefits. C.H.'s attorney had a number of communications both oral and written with a PATH worker in connection with the Medicaid application because C.H.'s financial situation was complicated. The attorney also put in many hours working to obtain verification of C.H.'s eligibility for Medicaid.

4. A final determination of eligibility for C.H. was made on June 26, 2002 at which time C.H. was notified that he was eligible for Medicaid and that his patient share would consist of the entirety of his monthly income less a monthly deduction for his health insurance premium and a monthly allowance for personal expenses, or about \$1,032.01 per

month.¹ Under this decision, Medicaid would pay the difference between the long-term care monthly bill and the amount of the patient share.

5. C.H.'s attorney appealed this decision on July 12, 2001 challenging the amount of the patient share. While the nursing home had been receiving direct payments of the petitioner's Social Security benefits during all of these months (some \$7,000 to \$8,000), the attorney had been the payee of about \$340 per month from two mortgage notes held by the petitioner. By the time PATH made its eligibility decision, some \$3,000 had been collected by the attorney for the time period since C.H. had entered the long-term care facility. PATH's patient share decision meant that a little over \$2,000 of the money received by the attorney on behalf of C.H. was due during this period of time to the nursing home. The attorney had spent that money and more paying \$292 for lot rent and \$2,225.30 for his own legal services to C.H. He also stated that the petitioner had other recent unpaid medical bills amounting to about \$750 which had yet to be paid but which were incurred before the date of onset of Medicaid

¹ The month of October was pro-rated to reflect the fact that he was only in the facility for about a week. The amount was later raised to \$1,052.01 per month based on an increase in Social Security benefits in January of 2001.

eligibility, October 23, 2000. Finally there was an overdraft payment owed to a bank which was as yet unpaid.

6. C.H. died on July 19, 2001, a week after his appeal was filed. There is insufficient income in his estate to pay his old medical bills, the remainder of his nursing home bill and additional attorney's fees incurred by the estate. His attorney has continued this appeal as the executor of his will. He asserts that a deduction should be made from the amount of the patient share to reflect other outstanding bills which the petitioner had.

7. The attorney has also claimed that the PATH worker never informed him that he would not be able to deduct these outstanding bills from C.H.'s income when a patient share amount was established. He acknowledges that the worker said she had a conversation with C.H.'s daughter about payment to the home pending a decision. However, it was his belief that the daughter was not aware of this rule as she had asked him to continue to pay other outstanding debts with the income while C.H. was in the long term care facility. No allegation was offered, however, that there was ever any inquiry on the part of the attorney or the daughter about payment obligations pending a decision on eligibility. Most importantly there were no allegations that C.H. himself was in any way

ultimately harmed by any alleged omissions of the Department or that different actions would have been taken by the attorney if he had known the real situation.

ORDER

The decision of the Department is modified retroactively to reflect a deduction of outstanding medical expenses only from the applied income used for the petitioner's Medicaid eligibility.

REASONS

Although the recipient of Medicaid assistance in this matter is deceased, PATH does not argue that this matter is moot nor that the estate lacks standing to pursue an appeal before the Human Services Board. 3 V.S.A. § 3091(a).

Although the petitioner has not and will not be denied access to health benefits by any decision of PATH, the integrity of the program and thus the access of other recipients to health care is certainly still very much at stake, making a decision by the Board appropriate in this matter.

A person who lives in a long-term health care facility who is found eligible for Medicaid is charged some amount of his "applied income" as a "patient share" each month to be

paid to the facility.² Medicaid Manual (M) Section 415.

"Applied income" includes Social Security benefits and unearned payments (such as rent or mortgage payments) minus a deduction for the Personal Needs Allowance, which at the time at issue was set at \$47.66 per month. M § 413, Procedures Manual (P) § 2420 D.

The regulations at M § 414 also allow a further deduction for eligible medical expenses, including the cost of health insurance and medical expenses not covered by Medicaid. The petitioner received a deduction of \$45.50, later raised to \$50 per month, based on the cost of his Medicare premium. The petitioner also informed the Department that he has \$745.10 in medical bills incurred in 2000 before he was determined Medicaid eligible. As these bills were not covered by Medicaid and had not been previously presented for deductions they should have been deducted from his "applied income" during the first Medicaid accounting period. The bottom line is that the patient's overall patient share should have been \$745.10 less for the period he was in the nursing home and that amount should have been picked up by Medicaid.

² According to the Department's procedures manual, the average monthly cost to a private patient of nursing facility services is \$4,726 per month.

The regulations do not allow for the deduction of any other items from "applied income", including bills owed to landlords, banks and attorneys. The regulation evidences a policy of allowing the indigent (and presumably judgment-proof) individuals on Medicaid the opportunity to keep money for personal needs and medical expenses only. The payment of other creditors is not considered essential to the health and well being of these individuals to the extent that the state is willing to subsidize those payments. It cannot be said that this policy is an unreasonable one in light of Medicaid's policy "to assist Vermont's eligible low-income individuals to gain access to needed medical services". M § 100.

The petitioner's estate has argued that PATH failed to give C.H. notification that he would not be provided an allowance to pay other creditors under the Medicaid regulations. The worker involved says that she did explain program rules to C.H.'s daughter. There is no question that the Department has an obligation to inform applicants and recipients of the rules and regulations that will be applied to them. See Lavigne V. Department of Social Welfare, 139 Vt. 114 (1980) and Stevens v. Department of Social Welfare, 159 Vt. 408 (1992). If it failed to do so (and no finding can be made that it has in this case short of an evidentiary

hearing), it has breached a duty to C.H. However, the breach of a duty alone is not enough to "estop" the Department from applying its rules with regard to a recipient.

The Supreme Court has set forth the four essential elements of estoppel as follows: (1) the party to be estopped must know the facts; (2) the party to be estopped must intend that its conduct shall be acted upon or the acts must be such that the party asserting estoppel has a right to believe it is so intended; (3) the party asserting estoppel must be ignorant of the true facts; and (4) the party asserting estoppel must detrimentally rely on the conduct of the part to be estopped. Burlington Fire Fighter's Association v. City of Burlington, 149 Vt. 293, 299 (1988).

There is no question in these benefits cases that PATH knows its own rules and regulations and expects or should expect that persons it gives (or does not give) information to are acting in reliance upon that information or lack of information. As noted above, PATH has a duty to persons who are applicants for or recipients of benefits with regard to giving them pertinent and accurate information.

However, in order to estop PATH from enforcing its rules, C.H.'s estate must also show that C.H. or his representatives were ignorant of the true facts and that there was detrimental

reliance on those facts. The petitioner's estate has not stated any facts upon which such a finding could be made on these two counts. While C.H. himself was undoubtedly ignorant of the true facts, his lawyer who was also acting under power of attorney for him, certainly had excellent reasons and the requisite training to discover the true facts by making an appropriate inquiry or looking at the Medicaid regulations. C.H. lived in the nursing facility some eight months before he was determined eligible. During that period of time he was probably running a bill of some \$4,000 plus dollars a month which was not being covered by his \$700 per month Social Security check. If C.H.'s attorney was not sure if he was even going to be found Medicaid eligible, it would seem prudent to have had some conversation with PATH about what amounts should be paid to the home in the interim. It must be found that the petitioner's representatives had not only ample reason and ability to find out the true facts but also a fiscal obligation to him to do so. They cannot now hide behind their "ignorance" in this matter as a ground for estopping the enforcement of these patient share provisions.

And finally, and most crucially, the estate has not shown that it suffered any detriment from its lack of knowledge about the Medicaid rules. If the petitioner were still alive,

it is possible that the choice to pay other creditors than the nursing home could have jeopardized the petitioner's ability to stay in the nursing facility. However, now that he is deceased it is difficult to determine any detriment to him. He died owing more bills than he had money to pay. If he had paid the nursing home his share every month, he would still have owed the bank, or the landlord or the attorney. Because he did not pay every month, the nursing home became just another one of the creditors who cannot be paid off from his estate. The estate has not shown how this is a detriment to C.H. at this time. Since there is no evidence supporting the third and fourth elements of estoppel, it is not necessary to determine whether the Department failed to give the petitioner's representatives important information in the first place.

Absent success on a theory of estoppel, the estate cannot prevail on its claim that non-medical bills be deducted to determine the patient's share. The matter is upheld except to the extent that PATH failed to deduct the petitioner's medical bills from his patient share calculation.

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