

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 19,021
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision of the Department of Prevention, Assistance, Transition, and Health Access (PATH) finding that he is ineligible for Medicaid Long-Term care benefits because he transferred resources for less than fair market value.

FINDINGS OF FACT

1. The petitioner is an eighty-three-year-old mentally disabled man who has appointed his daughter to act for him.

2. In February of 2004, the petitioner liquidated a \$34,490 investment account. He then sent \$26,175 of that amount to the IRS as an "estimated tax payment" on his 2003 payments.

3. On February 5, 2004, the petitioner applied for Medicaid long term care benefits. PATH questioned the disbursement to the IRS and asked for evidence that the petitioner owed such an amount in tax. PATH was skeptical because the petitioner's tax returns for prior years had been

low and because the liquidation of the investment account did not occur until 2004 making any liability on that amount not payable until the 2005 tax year. The petitioner declined to provide that information.

4. When no justification for the tax payment was forthcoming, PATH determined to count the resources sent to the IRS as a transfer for less than market value and denied the petitioner's application. In addition, a penalty period of close to five months was established during which the petitioner would be ineligible for Medicaid based on the transfer.

5. The petitioner filed a tax return on March 9, 2004 reporting that he had no tax liability for 2003 and requested a refund of his estimated tax payment. On April 26, 2004, the petitioner received a refund of the entire \$26,175 as the IRS agreed he had no tax liability.

6. It is found based on the above facts that the petitioner's transfer of the bulk of his assets to the IRS in February of 2004 was not due to a debt owed to the IRS but was perpetrated as a mere sham to facilitate his eligibility for Medicaid.

ORDER

The decision of PATH is affirmed.

REASONS

Individuals who apply for long-term care Medicaid eligibility who have more than \$2,000 in resources at the time of application cannot be found eligible for the program. M230, P-2420C(1). Regulations adopted by PATH require that transfers of income or resources made by applicants at or near the time of application be assessed to see whether or not those money transfers were made for "fair market value" or were mere attempts to divest the applicant of assets to obtain Medicaid eligibility. M440. If it is determined that the transfers were made for less than "fair market value", a penalty period is assessed during which time the applicant cannot be found eligible for Medicaid. M440. Money disbursed to pay bona fide debts, such as federal taxes, is not considered a transfer for less than fair market value. M440.2.

In the case at issue, the petitioner, on the advice of his attorney, sent a large sum of money representing close to the totality of his assets to the IRS shortly before applying for Medicaid. The petitioner styled the sums paid over to IRS as "Estimated Tax Payments" but the petitioner has not submitted any evidence showing that he had a reasonable basis

to believe that he actually had a tax liability close to the amount remitted to the IRS, even though he was asked to do so.¹ The petitioners' resistance to submitting such evidence makes it fair to conclude that he had no reason to believe that he owed these amounts of money to the IRS and that the transfers did not represent debts due. Therefore, PATH was correct to find that these transfers to the IRS were made without fair market value thus creating a burden on the petitioner to show that these transfers were "made exclusively for a purpose other than qualifying for Medicaid." M440.3(d).

The petitioner has made no attempt to show that these transfers were made solely for some legitimate purpose other than qualifying for Medicaid. Rather, he has taken the position that it is not necessary to provide any justification to PATH as to why he believed he would owe such a large sum to the IRS. The petitioner has even gone so far as to argue that this IRS deposit was not really a transfer because the payment was "scheduled to be returned" to him within his lifetime, in

¹ The petitioner has an obligation to provide verification of questionable items needed to make a decision on eligibility under M126. Failure to provide verification can result in an outright denial of the application.

fact, as soon as he filed his tax return. He argues that such a "scheduled return" takes these payments out of the realm of a transfer for less than fair market value under the regulations. M440.21. These two arguments are, however, in serious conflict with each other. If the petitioner believed in good faith that he owed this sum to the IRS, why did he expect that he was "scheduled" to receive the money back? The facts show that this "Estimated Tax Payment" was never intended to pay actual taxes owed and is nothing more than a legal fiction created to temporarily take money out of the hands of the petitioner in order to allow him to qualify immediately for Medicaid.

Given the facts and regulations cited above, PATH was correct in determining that the petitioner transferred his assets for less than fair market value shortly before his Medicaid application because he presented no evidence that he owed such a debt to the IRS. In addition PATH was correct in finding that the money was not "scheduled to be returned" at the time of the application because the IRS could not know if it would return the money until the petitioner had filed a tax return which was not prepared until some time after the application for eligibility was filed. PATH was thus correct to determine that a penalty should be imposed upon the

petitioner preventing him from reapplying for benefits until the passage of close to five months.² The petitioner can presumably pay for his long-term care for those disqualified months from the "tax return" he received from the IRS.

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² The petitioner does not argue that the penalty period is incorrect assuming that the amounts paid to the IRS are considered a disqualifying transfer.