

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 19,319
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision of the Department for Children and Families, Economic Services Division, (DCF) finding him ineligible for long term Medicaid benefits due to excess income. The issue is whether DCF properly counted income of the petitioner's spouse as available to him in the month of application.

FINDINGS OF FACT

1. The petitioner went into a nursing home in November of 2003. He applied for long term Medicaid benefits on July 29, 2004.

2. At the time of his application, the petitioner's spouse owned property in a revocable trust (of which she was the trustee as well as the grantor) established in 1994 which included shares in a prime rate investment account worth \$172,000.

3. The investment account can be liquidated on a regular basis four times per year. The last period in which

the account could be liquidated before the petitioner's application was May 24, 2004. The next period of liquidation following his application began on August 2, 2004, and ended on August 23, 2004.

4. On September 28, 2004, DCF notified the petitioner that he was not eligible for long term care because his resources were \$170,366.84 more than the \$2,000 resource limit in Medicaid. He was told that he could spend the money on medical and other expenses and was urged to contact the office for more information. He was also warned against transferring the money to qualify for Medicaid.

5. The petitioner appealed that decision. While he agrees that in general the corpus of his wife's trust is considered available to him in the month of application, he disagrees that this particular resource, the prime rate investment account, was available to him because even though the shares could be redeemed four days after his application, the redemption could not occur until August, the month after he applied.

ORDER

The decision of DCF is affirmed.

REASONS

Under Medicaid rules adopted by DCF, it must assess the resources of an applicant for long-term care and his community spouse at the time of application for benefits. M234.41. The "department considers the resources of the CS [community spouse] available to the IS [institutionalized spouse] until the month after the month in which the individual becomes eligible for long-term coverage." M234.42(c). Both the petitioner and the department agree that as the institutionalized spouse, the petitioner, applied in July of 2004, the resources of his community spouse are only considered available to him during the month of July, not August, of 2004. The issue in this case is whether the community spouse had countable resources in the month of July.

Under Medicaid rules, all resources are counted unless they are specifically excluded by regulation. M230. The type of resource owned by the petitioner's wife--shares in a prime rate investment account--is not specifically excluded in the regulations. M232. The petitioner claims, however, that his wife's resource should be excluded under a section in M230

which says that "resources are counted only if the group members have the right, authority or power to liquidate a resource or their share of the resource." The petitioner argues that his wife had no power to liquidate the resource during the month in which he applied and that therefore the resource cannot be counted.

There is nothing in the regulations cited by the petitioner that says the resource must be capable of liquidation in the month of application. The provision cited by the petitioner is clear and is not time limited in any way. That provision is, in essence, a definition of "ownership" for purposes of determining countable assets. There is absolutely no question (and indeed no argument to the contrary) that the petitioner's wife "owned" this property outright in July with no restraints on her ability to alienate that property as she saw fit. The petitioner's wife had agreed with this particular investment company that she could only turn her shares into cash during certain quarterly payout periods during the year. However, she never relinquished any of her ownership in that property to the investment company and clearly had the "right, authority and power" to liquidate her shares in accordance with the agreed upon schedule of payouts. The fact that the petitioner's wife may "neither draw on nor

dispose of funds *at will* does not negate the fact that funds can be released and drawn upon for support and maintenance as the need arises." Frerks v. Shalala, No. 94-6111 (2nd Cir) 1995.

The contorted construction urged by the petitioner is supported neither by the plain language in the regulation nor the intent of the Medicaid Act which is "designed to afford medical assistance to persons whose income and resources are insufficient to meet the financial demands of necessary care and services." Houghton v. Reinertson, No. 03-1074 (10th Cir.) Aug. 24, 2004. The petitioner and his spouse, on the contrary, own resources sufficient to meet his needs, at least for now. Those resources are not excluded under any regulation and are reasonably accessible to the petitioner throughout the year. Thus, it must be found that the petitioner had countable resources as that term is defined under DCF's regulations in July of 2004.

The petitioner does not dispute that he is ineligible for Medicaid as over the \$94,760 figure if his wife's investment account is a countable resource. As the investment account is a resource countable to the petitioner, DCF was correct under its own regulations, to deny the petitioner eligibility for long-term care due to excess resources. M230, P-2420C. As

such, the Board is bound to affirm the result. 3 V.S.A. §
3091(d).

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