

3. Petitioner did not receive the profit sharing plan until 2005. Upon receipt of the profit sharing plan, petitioner rolled over the proceeds to an IRA to avoid taxes and penalties. If the petitioner withdraws monies from her IRA before she becomes fifty-nine-and-a-half-years old, petitioner would be subject to (1) 10 percent tax withholding, (2) income taxes on the amount withdrawn, and (3) an additional 10 percent tax.

4. At an August 31, 2005 review of Food Stamp eligibility, petitioner reported the IRA. The value of the IRA was and is approximately \$20,000. Based upon this information, the Department found that the value of the IRA after allowable deductions exceeded the resource limit by \$14,330 and, as a result, issued a notice to petitioner that her Food Stamps and Medicaid would end September 30, 2005.

5. Petitioner filed a timely appeal of the notice to terminate her benefits and has received continuing benefits under the Food Stamp program. Petitioner continued to receive Medicaid through March 31, 2006 when her case was closed after petitioner did not submit information for a review appointment.

6. At the hearing held on November 3, 2005 before Hearing Officer Dan Jerman, the petitioner did not dispute

the value of the IRA. The applicable resource limit is \$3,000 for Food Stamps and \$2,000 for Medicaid. The value of petitioner's IRA exceeds the resource limit. The Department does not dispute that the petitioner would be penalized if she were to withdraw funds from her IRA prematurely. The parties agreed to submit legal argument.

7. After not receiving briefs, Hearing Officer Jerman held a telephone status conference on May 19, 2006 in which a briefing schedule was set.

ORDER

The Department's decision is affirmed.

REASONS

Under the Food Stamp regulations, the maximum allowable resource limit for a household with a disabled member is \$3,000. Food Stamp Regulation 273.8(b), September 16, 2002 Department Interpretive Memo incorporating amendments to the Food Stamp Act by Public Law 107-171 (2002). IRAs are considered a liquid resource and the Department must consider the total cash value less any penalties for early withdrawal. Food Stamp Regulation 273.8(c)(1). Here, the net value of the IRA exceeds the resource limit.

The Medicaid resource regulations are similar. The maximum allowable resource limit is \$2,000. Medicaid Procedures Manual P-2420(C). IRAs are included as liquid resources. Medicaid Manual M231.2. The Department must consider the total cash value less any early withdrawal penalties or fees. Medicaid Rule M232.6. Once again, the net value of the IRA exceeds the resource limit.

In addition, the value of retirement benefits including IRAs will be excluded if the applicant meets additional criteria. Medicaid Rule M232.85(b). The regulation states:

The department excludes retirement funds owned by the individual requesting Medicaid when both criteria are met.

(i) The individual must resign from a job to receive retirement benefits from the fund or has applied for periodic retirement benefits in lieu of a lump-sum payment.

(ii) If the individual has reached retirement age, the individual is drawing on retirement funds at a rate consistent with the individual's life expectancy, as specified in M440.21.

Medicaid Rule M232.85(b). Petitioner does not meet these criteria.

Petitioner argues that the Department's actions place her in a conundrum—she can keep her IRA intact and not qualify for Food Stamps or Medicaid or she can use her IRA for her present needs, incur early withdrawal penalties, and

reapply for benefits once her resources meet the resource limit. Petitioner argues that the resource limitations in the Food Stamp and Medicaid programs undermine the intent behind the IRA early withdrawal penalties, which is to ensure that an individual keeps her retirement funds intact for her retirement years; petitioner asks us to create an exemption. We do not have the authority to do so; the authority to create such an exemption rests with the appropriate legislative body.

Thus, the Department's decision finding that the petitioner is ineligible for Food Stamps and Medicaid because her resources exceed the maximum allowable resource limits must be affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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