STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 20,583
	)	
Appeal of	)	

INTRODUCTION

The petitioner is the executor of the estate of a long-term care Medicaid recipient. Petitioner appealed a decision by the Department for Children and Families, Office of Vermont Health Access (OVHA), denying an exemption for undue hardship from estate recovery. The issues are whether the petitioner has standing to seek relief through the Human Services Board, and, if the petitioner has standing to seek relief, whether the petitioner meets the eligibility criteria for an exemption for undue hardship.

FINDINGS OF FACT

1. The petitioner is the executor of the estate of a long-term care Medicaid recipient. The petitioner does not represent the heirs of the estate.

2. OVHA filed a claim on behalf of the Department of Children and Families, in the amount of $136,467.70 representing Medicaid expenditures on behalf of the decedent.

3. The estate consists of the proceeds of a life insurance policy in the amount of $6,766.10. The petitioner estimates that the estate will be $5,500 after payment for expenses including his costs as executor.

4. The petitioner sought an exemption for undue hardship on or about September 28, 2006 explaining that he would like to distribute the proceeds of the estate to the decedent's adult children and explaining that he would fight any attempt by OVHA to press its claim. He anticipated that defending against the claim would bankrupt the estate due to his expected fees.

5. The petitioner filed for a fair hearing on October 18, 2006 and a status conference was held on December 1, 2006 during which the petitioner proposed a settlement splitting the estate into thirds between OVHA and the two adult children.[1]

6. On December 7, 2006, OVHA filed a Motion to Dismiss arguing that (1) petitioner does not have standing to bring a fair hearing, and (2) even if petitioner has standing, there is no basis for an exemption based on undue hardship.

[1] Petitioner's intent is to provide an inheritance for the adult children. However, his approach has been to threaten to bankrupt the estate if OVHA does not accede to his negotiations.

7. A telephone status conference was held on January 5, 2007 in which the petitioner said he would not be submitting legal argument in opposition to the Motion to Dismiss and said he had no arguments to the contrary. Petitioner declined to withdraw the fair hearing and asked for a written ruling.

ORDER

OVHA's Motion to Dismiss is granted.

REASONS

OVHA is required by both federal and state law to press a claim for repayment of Medicaid funds from the estates of long-term care Medicaid recipients. 42 U.S.C. § 1396P, 14 V.S.A. § 1204, Medicaid Rule M159.1.

The regulations set out certain defined exemptions to claims against estates "when an heir requests an exemption in writing no later than four months after the publication of notice to creditors of the estate." M159.2. The specific exemptions include:

a. Homes in trust prior to December 1, 1997. M159.2(a).

b. Loss of assets would produce undue hardship because selling the assets leads to the loss of the decedent's spouse, parents, children or siblings sole source of income and/or as a result of selling

the assets, these individuals would then qualify for public assistance. M159.2(b).

c. The value of the estate is less than $2,000. M159.2(c).

In addition, there is an exemption for a homestead. M159.21.

The operative words in the regulation are the designation of the heirs as the ones to seek an exemption for undue hardship. The regulation must be read in conjunction with 3 V.S.A. § 3091(a) which sets out who has standing to bring a fair hearing. Standing is conferred upon those with a direct stake—individuals who find themselves aggrieved because their claims for benefits or services is being denied, terminated, reduced, or aggrieved by agency action.

If a claim is to be made for an exemption for undue hardship, the claim should be made by the heirs. The claim should not be made by the executor whose responsibility is to administer the estate, not to advance the claim of a particular creditor or heir. The petitioner does not have standing to bring the within action.

Although inquiry can stop at this point, it is prudent to consider the underlying claim for an exemption for undue hardship. Even if the petitioner had standing, there is no basis for an exemption for undue hardship as the proceeds of

the life insurance policy do not meet the exemptions set out in M159.2 and M159.21.

In conclusion, the petitioner's request for fair hearing should be dismissed as petitioner does not have standing, and even if petitioner had standing, there is no basis for an exemption for undue hardship. 3 V.S.A. §§ 3091(a) and (d), Fair Hearing Rule No. 17.

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