

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 2008-02259

RETA MAGUIRE

vs.

THOMAS DEHNER, DIRECTOR,
OFFICE OF MEDICAID,
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES

MEMORANDUM OF DECISION AND ORDER
ON PETITIONER'S RENEWED MOTION FOR JUDGMENT ON THE PLEADINGS

Petitioner, Reta Maguire ("Maguire"), challenges a decision by a hearing officer of respondent, Office of Medicaid ("the Office" or "MassHealth"), denying long-term Medicaid coverage benefits. Maguire maintains that the transfer of her residence to her daughter, Karen ("Karen"), is permissible and that the denial of benefits represents an error of law, is unsupported by substantial evidence, and is arbitrary, capricious, and an abuse of discretion. Maguire has renewed her Motion for Judgment on the Pleadings pursuant to Mass. R. Civ. P. 12(c) after Justice Timothy Feeley remanded the matter for further hearings. A review of the record fails to support Maguire's contentions, and her Motion for Judgment on the Pleadings is therefore **DENIED.**

BACKGROUND

The record reveals the following facts. On July 5, 2007, Maguire was admitted to a nursing home after suffering from bouts of dementia and declining health since 2004. Prior to her admission, Karen, and other family members, monitored Maguire and helped her carry out the tasks of living on her own. Karen resided with Maguire at 150 L Street, although she occasionally spent the night at her boyfriend's residence, 76 N Street.

On October 24, 2007, Maguire transferred her primary residence, an asset valued at \$140,300.00, to Karen for consideration of \$1. Maguire filed a MassHealth application on February 12, 2008, claiming the gift was permissible under the so-called "caretaker child exception" of 130 Code Mass. Regs. § 520.019(D)(6)(d). MassHealth imposed a 548-day period of ineligibility due to a disqualifying transfer of assets, stating that Maguire failed to satisfy the requirements of the above provision.

Maguire filed a complaint for judicial review of the hearing officer's decision on November 20, 2008. This court heard the first Motion for Judgment on the Pleadings on September 17, 2009. Justice Feeley remanded the matter for further hearing on two issues: whether Karen, the caretaker child, "was living in the nursing-facility resident's home for at least two years immediately before the date of the nursing-facility resident's [Maguire] admission to the institution" and whether Karen "provided care to the nursing-facility resident that permitted...her to live at home rather than in a nursing facility," per 130 C. M. R. 520.019(D)(6)(b).

On October 19, 2009, after remand hearings at which five additional witnesses presented evidence, the hearing officer issued a second denial on January 21, 2010. This court ordered a

further administrative hearing to submit additional testimony. The hearing officer issued a third denial on May 11, 2010.

DISCUSSION

I. Standard of Review

The petitioner's Motion for Judgment on the Pleadings is governed by G. L. c. 30A, § 14 and Standing Order 1-96. Pursuant to G. L. c. 30A, § 14(7), this court may reverse, remand, or modify an agency decision if the "substantial rights of any party may have been prejudiced" because the agency decision is based on an error of law or on unlawful procedure, is arbitrary and capricious, or unwarranted by facts found by the agency, or is unsupported by substantial evidence. Merisme v. Board of Appeal on Motor Vehicle Liab. Policies and Bonds, 27 Mass. App. Ct. 470, 474 (1989). The petitioner bears the burden of demonstrating the invalidity of the agency decision. Bagley v. Contributory Retirement Appeal Bd., 397 Mass. 255, 258 (1986).

In reviewing an agency decision, the court must "give due weight to the expertise, technical competence, and specialized knowledge of the agency, as well as to the discretionary authority conferred upon it" by statute. G. L. c. 30A, § 14(7); Flint v. Commissioner of Pub. Welfare, 412 Mass. 416, 420 (1992). The reviewing court may not substitute its judgment for that of the agency. Southern Worcester County Reg. Vocational Sch. v. Labor Relations Comm'n, 386 Mass. 414, 420-21 (1982). A court may not reject an administrative agency's choice between two conflicting views, even if the court justifiably could have made a different choice had the matter been presented de novo. Zoning Bd. Of Appeals v. Housing Appeals Comm'n, 385 Mass. 651, 657 (1982).

II. Analysis

Applying the standard of review noted above, this court finds that substantial evidence exists to support MassHealth's findings, and finds that the Office did not err as a matter of law. In order for an individual's transfer of resources to be permissible under the caretaker child exception of 130 C. M. R. 520.019(D)(6)(d), the two requirements mentioned above must be met. Judge Feeley remanded in order for the hearing officer to possess a richer record for the basis of any decision.

A. Does substantial evidence support the finding that Karen did not live with Maguire during the entire two-year period prior to July 5, 2007, the date of her admission to the nursing facility?

In the decision of May 11, 2010, the hearing officer concluded that Maguire's residence, 150 L Street, was the same as her daughter's during the relevant period. Although the hearing officer noted that the record was not altogether clear, Maguire had "barely" met her burden on this issue due primarily to the testimony of the 76 N Street owner and that of Maguire's other children at the remand hearings.

B. Does substantial evidence support the finding that Karen did not provide care to Maguire that permitted her to live at home, rather than in a nursing facility?

The issues in this matter are complicated by the fact that, as petitioner stated at oral argument, Maguire's need for care stemmed primarily from her mental, rather than physical decline during this period. MassHealth, for instance, does not dispute that Maguire required care prior to her admission to the nursing facility. Nor does MassHealth dispute that Karen and other family members provided care to their mother to help her meet some basic needs of living on her own. Rather, the hearing officer concluded that Maguire failed to meet her burden to show both that (1) Maguire needed an "institutional level of care" for at least two years preceding the

transfer and that (2) Karen, the caretaker child who received the home, provided a sufficient level of care to Maguire to exempt the gift.

The Office contends that "...[C]ongress delegated to the states the authority to determine both whether the Medicaid applicant required a nursing home level of care for a minimum of two years immediately preceding admission to the long-term care facility *and* whether the child who received the gift of real property provided an amount of necessary care to qualify for this exception." Def.'s Opposition; 42 U. S. C. § 1396p(c)(2)(A)(iv); see G. L. c. 118E § 25(2)(B)(iv). In the end, if Maguire's condition would not have qualified her for institutionalization during the two-year period, then any care provided by Karen did not keep Maguire out of the hospital, and the transfer was impermissible.

The level of care required under 130 C. M. R. 520.019(D)(6)(d) is institutional or nursing home level of care. Maguire asserts that the hearing officer committed an error of law by referencing not only provider regulations, but other criteria, to determine whether Maguire's condition met an institutional level of care during the two-year period prior to her admission to the nursing facility. The MassHealth provider regulations employed in assisting the hearing officer reach his decision included definitions of "ADLs" or activities of daily living (such as transfers, bathing, toileting, eating or dressing). 130 C. M. R. 515.001. Regarding the ADL of eating, the hearing officer explains that Karen's provision of care was more akin to traditional meal preparation, rather than, for instance, "assistance with the activities of feeding or drinking." Appeal Decision of May 11, 2010, 37-38. The "other criteria" used included a passing reference to MassHealth Nursing Facility regulations defining ADLs in that context. Nevertheless, this reference did not form the basis of the hearing officer's decision; rather he simply notes that

Karen's characterization of the assistance she provided to Maguire did not match those ADLs.

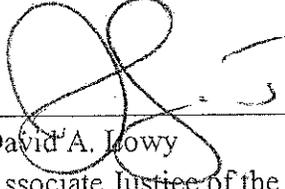
Appeal Decision of May 11, 2010, 38.

Since the hearing officer's use of this other criteria was reasonable, this court finds no error of law present on the record that would prevent the Office from concluding that Maguire's required level of care did not meet the institutional or nursing home level. Because any care provided by Karen would have had no effect, in the hearing officer's eyes, on her qualifications for admission to a nursing facility during the relevant period, this court does not address the issue of Karen's provision of the requisite level of care.

ORDER

For the foregoing reasons, Petitioner Maguire's Motion for Judgment on the Pleadings is

DENIED.



David A. Lowy
Associate Justice of the Superior Court

September 28, 2010

SI 01150.122 Exceptions — Transfer of a Home

A. Policy — Exceptions for transfer of a home

1. Transfer to a Spouse or Child

The period of ineligibility for transferring a resource at less than fair market value will not apply if the individual or individual's spouse transfers title to a home to his/her:

- spouse (including a separated spouse); or
- child under age 21 regardless of student or marital status; or
- child of any age or any marital status who is blind or disabled.

2. Transfer to a Sibling

The period of ineligibility for transferring a resource at less than fair market value will not apply if the individual or individual's spouse transfers title to a home to a sibling of the transferor:

- who has ownership interest (including life estate and equitable ownership) in the home; and
- who was residing in the transferor's home for at least 1 year immediately before the date the transferor becomes institutionalized.

NOTE: See SI 01150.122B. for discussion of “residing in transferor's home” as it applies to this exception. See SI 01150.122D. for discussion of “institutionalization as it applies to this exception. See SI 01110.500 for discussion of the types of ownership.

3. Transfer to a Son or Daughter

In addition to the exception for the children listed in SI 01150.122A.1., the period of ineligibility will not apply if the individual or the individual's spouse transfers title to a home to a son or daughter who:

- was residing in the transferor's home for at least 2 years immediately before the date the individual becomes institutionalized; and
- who provided care to the individual which permitted the individual to reside at home instead of in an institution.

NOTE: See SI 01150.122B. for discussion of “residing in transferor's home” as it applies to this exception. See SI 01150.122C. for discussion of “providing care” as it applies to this exception. See SI 01150.122.D for discussion of “institutionalization” as it applies to this exception.

B. Policy — Residing in the transferor's home

For the purpose of determining whether the individual qualifies for the transfer of a home exception, the home must have been transferred to a person who resided in the transferor's home. A person resides in the transferor's home if it is that person's primary place of residence. We follow the same criteria that are used to determine an eligible individual's place of residence when determining the FLA and ISM (SI 00835.020).

C. Policy — Providing care for the transferor

The transfer of a home exception requires that the son or daughter (who received the transferred home) provided care that enabled the transferor to reside at home instead of in an institution or facility. Such care is substantial but not necessarily full-time care. A son or daughter is providing care for purposes of this exception if he/she does most of the following for the transferor on regular basis:

- prepares meals;
- shops for food and clothing;
- helps maintain the home;
- assists with financial affairs (banking, paying bills, taxes);
- runs errands;
- provides transportation;
- provides personal services;
- arranges for medical appointments;
- assists with medication.

NOTE: The issue of providing care needs to be developed only when the resource is transferred to a son or daughter who is not blind or disabled, and who resides with the transferor for at least 2 years prior to the transferor becoming institutionalized.

D. Policy — Institutionalization

For purposes of the transfer of a home exceptions, the following individuals are considered to be institutionalized:

- an individual who is an inpatient in a nursing facility;

- an individual who is an inpatient in a medical treatment facility and for whom medical payments are made based on a level of care provided in a nursing facility;
- an individual who is eligible for home or community based services under a waiver granted under section 1915(c) or (d). (See SI 01310.207.)

NOTE: An individual who meets one of these 3 criteria is considered institutionalized for purposes of this exception regardless of the FLA determination (e.g., FLA-A vs. FLA-D).

E. Procedure — Documenting transfer of home exception

Follow this procedure to develop whether one of the home transfer exceptions applies.

1. Evidence

- Verify that the home was transferred, to whom, the amount of compensation if any, and the date of transfer using the individual's statement either signed or recorded on a DROC, and appropriate documents (e.g., sales agreement, deed, mortgage documents).
- Verify the relationship of the transferor to the individual receiving the home (spouse, child, sibling). Information on the supplemental security record (SSR), master beneficiary record (MBR), or Numident may be used.
- As needed, verify that the child to whom the home was transferred meets the SSI requirements for blindness or disability. (See SI 01150.121D.)
- As needed, verify an allegation that a sibling had an ownership interest in the home using appropriate documents.
- As needed, verify an allegation that a sibling was residing in the home for at least one year prior to the individual becoming institutionalized using available documents or with a signed statement by a knowledgeable third party.
- As needed, verify an allegation that the individual's son or daughter resided in the individual's home for at least 2 years and provided care that enabled the individual to live outside an institution using available documents or a signed statement by a knowledgeable third party.
- As needed, verify that the individual is/was institutionalized and the dates.

2. Making the Determination

- Determine whether the individual meets one of these exceptions.
- If one of these exceptions applies, do not apply a period of ineligibility. Process the case normally.
- Document the file with the adjudicator's determination. For example "Home transferred on 2/5/00 to individual's disabled child. Meets exception for transfer of a home per SI 01150.122. Period of ineligibility does not apply."

- If the exception does not apply, consider the exception for transferring a resource exclusively for a purpose other than to obtain SSI (SI 01150.125D.).

3. Systems Input

- Record the evidence used to verify these issues on the EVID screen on the Shared Processes Menu (MSOM EVID 001.001).
- Record the determination on MSSICS using the Remarks field on the RGIV screen or on the DROC screen (MSOM MSSICS 022.010). On non-MSSICS cases, use a Report of Contact.

4. Medicaid Notification

Notify the State Medicaid agency about the transferred resource unless the SSI claim is denied (SI 01150.012).

F. References

Place of residence, SI 00835.020

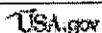
Notifying State Medicaid agency, SI 01150.012

Home and community based services, SI 01310.207

MSSICS DROC screen, MSOM MSSICS 022.010

Evidence screen, MSOM EVID 001.001

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