

STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS



APPEAL NO. 10F-07517

PETITIONER,

Vs.

CASE NO. 1005060576

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 08 Gilchrist
UNIT: 88325

FILED

Jan 25, 2011

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN AND FAMILIES

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter by telephone on December 2, 2010, at 9:40 a.m.

APPEARANCES

For the Petitioner: [REDACTED], petitioner's son

For the Respondent: Louella Teague, ACCESS supervisor.

STATEMENT OF ISSUE

The petitioner is appealing the Department's action to deny her application for Institutional Care Program (ICP) Medicaid benefits based on excess assets. The petitioner is seeking ICP for the months of July 2010 and August 2010.

PRELIMINARY STATEMENT

On October 5, 2010, the Department mailed the petitioner a Notice of Case Action informing the petitioner that her application for ICP benefits was denied as her

assets exceeded the asset limit for the program. On October 28, 2010, the petitioner requested a timely appeal to challenge the denial of her application.

FINDINGS OF FACT

1. The petitioner was admitted into a skilled nursing facility on June 16, 2010.

The petitioner was born on [REDACTED] and is 92 years old. On August 3, 2010, the petitioner submitted an application for ICP Medicaid benefits.

2. The petitioner's income was Social Security retirement benefits of \$581 and a State of Florida pension of \$413.67. The petitioner's total gross monthly income was \$994.67.

3. At the time of the application, the petitioner was the owner of the following life insurance policies.

	<u>Cash Value</u>	<u>Face Value</u>
Bankers Fidelity Life	\$1400.60	\$2500
Liberty National Life [REDACTED]	\$811.42	\$1000
Liberty National Life [REDACTED]	\$804.92	\$1000
American General [REDACTED]	\$869.96	\$1000
American General [REDACTED]	<u>\$856.61</u>	\$1000
Total Cash Value	\$4743.51	

4. The total cash value of the petitioner's life insurance policies was \$4743.51.

The burial exclusion of \$2500 was subtracted from the total cash value which resulted in a countable asset value attributed to the life insurance policies of \$2243.51. The total of the cash value in excess of the \$2500 burial exclusion was more than the \$2000 asset limit for ICP Medicaid.

5. During September 2010, the petitioner's son used the cash value of all of the life insurance policies to purchase an irrevocable burial contract. Therefore,

effective September 2010, the Department excluded the cash value of the life insurance policies as an asset in determining ICP eligibility as the policies were used to purchase an irrevocable burial contract. The Department approved ICP effective September 2010. However, ICP was denied for July 2010 and August 2010 because the cash value of the life insurance policies after the subtraction of the \$2500 burial exclusion exceeded the ICP asset limit of \$2000 for the petitioner.

CONCLUSIONS OF LAW

6. The Department of Children and Families, Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties, pursuant to Fla. Stat § 409.285. This order is the final administrative decision of the Department of Children and Families under Fla. Stat. § 409.285.

7. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code § 65-2.056.

8. In accordance with Fla. Admin. Code § 65-2.060 (1), the burden of proof was assigned to the petitioner.

9. Fla. Admin. Code 65A-1.712, SSI-Related Medicaid Resource Eligibility Criteria, states in part:

(1) Resource Limits. If an individual's total resources are equal to or below the prescribed resource limits **at any time during the month** (emphasis added) the individual is eligible on the factor of resources for that month. The resource limit is the SSI limit specified in Rule 65A-1.716, F.A.C., with the following exceptions:

(a) For MEDS-AD Demonstration Waiver an individual whose income is equal to or below 88 percent of the federal poverty level must not have resources exceeding the current Medically Needy resource limit specified in Rule 65A-1.716, F.A.C. ...

(2) Exclusions. The Department follows SSI policy prescribed in 20 C.F.R. §416.1210 (2009) and 20 C.F.R. §416.1218 (2009), incorporated

by reference, in determining what is counted as a resource with the following exceptions, as mandated by federal Medicaid policies, or additional exclusions, as adopted by the Department under 42 U.S.C. § 1396a(r)(2) (2006), incorporated by reference. SSI policy requires resources in a blocked account to be countable resources. This applies regardless of whether the individual or their representative is required to petition the court to withdraw funds for the individual's care. A blocked account is one in which state law protects an individual's funds by specifically requiring that the funds be made available for the care and maintenance of the individual...

(c) The cash surrender value of life insurance policies is excluded as resources if the combined face value of the policies is \$2,500 or less.

10. Federal Medicaid Regulations at 20 C.F.R. § 416.1201 in part states:

Resources; general. (a) Resources; defined. For purposes of this subpart L, resources means cash or other liquid assets or any real or personal property that an individual (or spouse, if any) owns and could convert to cash to be used for his or her support and maintenance... (b) Liquid resources. Liquid resources are cash or other property which can be converted to cash within 20 days, excluding certain nonwork days as explained in §416.120(d). Examples of resources that are ordinarily liquid are ...life insurance policies, financial institution accounts (including savings, checking, and time deposits, also known as certificates of deposit)...

11. The Department's ACCESS Florida Program Policy Manual 165-22, Section 1640.0100 in part states:

ASSET DEFINITION (MSSI, SFP)

Assets, liquid or non-liquid, are assets or items of value that are owned (single or jointly) by an individual who has access to the cash value upon disposition.

Liquid assets are cash assets or assets that are payable in cash on demand. Nonliquid assets are assets that cannot be readily converted to cash.

12. The Department's ACCESS Florida Program Policy Manual 165-22, Section 1640.0514 in part states:

Burial Exclusion Policy (MSSI, SFP)

An individual and the individual's spouse may set aside funds of up to \$2,500 each for burial expenses. These funds are excluded as assets as long as the individual shows that they are clearly designated as being set aside for burial. This is true even if the case has been closed as long as the funds continue to be designated for burial. The funds must be separately identifiable (not commingled with other funds) unless the asset cannot be separated or it is unreasonable to require it. The individual (or deemed individual) must provide a written statement defining:

1. the amount of funds set aside,
2. for whose burial the funds are set aside, and
3. the form in which the funds are held.

The individual and the individual's spouse must be given the opportunity to designate funds for burial at the time of application and at review if the maximum amount is not already designated. These funds may be excluded regardless of whether the exclusion is needed to allow eligibility.

13. The Department's ACCESS Florida Program Policy Manual 165-22, Section 1640.0554 in part states:

Life Insurance (MSSI, SFP)

A life insurance policy is considered only to the extent of its cash surrender value. However, if the face value of all life insurance policies on any one individual totals \$2,500 or less, no part of the cash surrender value of any such policy or policies will be taken into account. Life insurance having no cash surrender value (for example, term insurance or burial insurance) is not considered in determining the face value of insurance and is excluded from all computations.

The policy must be owned by the individual or the person whose assets are deemed to the individual to be considered a countable asset to the individual.

When the total face value of all life insurance policies on an eligible individual, or an eligible/ineligible spouse whose assets are deemed to the eligible individual exceed \$2,500, the cash surrender values of all such policies must be counted as assets. When the cash surrender values of such policies exceed the asset limitation, an individual may adjust his insurance holdings to policies of a reduced face value. If an adjustment is made, the life insurance policies (and any cash adjustments) are reconsidered in determining eligibility.

14. Based on the above authorities, the cash value of life insurance policies owned by an individual is considered an asset in determining ICP Medicaid eligibility

when the total face value of all policies exceeds \$2500. Additionally, the authorities explain that the individual may set aside funds of up to \$2500 for burial expenses which are excluded in determining the total available assets.

15. The findings show that the petitioner owned life insurance policies that had a total face value of \$6500 and total cash value of \$4743.51. Subtracting the \$2500 burial exclusion, resulted in available assets to the petitioner of \$2243.51.

16. Federal Medicaid Regulations at 20 C.F.R. § 416.1205 sets forth the maximum asset limitation in the Institutional Care Program at \$2000 for an individual.

17. The Department's ACCESS Florida Program Policy Manual 165-22, Section 1640.0205 in part states:

Asset Limits (MSSI, SFP)

Total countable assets for an individual or a couple must not exceed the following limits:...

2. For ICP, PACE, all HCBS Waivers and Hospice, the asset limit is \$2,000 for an individual (\$3,000 for eligible couple) or \$5,000 if the individual's income is within the MEDS-AD limit (\$6,000 for eligible couple).

18. The Department's ACCESS Florida Program Policy Manual 165-22, Appendix A-9 sets forth the MEDS-AD income standard for an individual at \$795.

19. Based on the above authorities, the asset limit for an individual who has income of more than \$795 per month is \$2000. The findings showed that the petitioner's income was \$994.67. Therefore, the applicable ICP asset limit for the petitioner was \$2000.

20. SSI-Related Medicaid programs, including ICP, determine eligibility by comparing the resources to the Program limit for each month that eligibility is sought for.

The above authority explains that the individual can be eligible for months when total resources are below the limit at any time during that month. The findings show that the petitioner's assets from the cash value of her life insurance policies, after the burial exclusion, exceeded the \$2000 asset limit for the ICP Medicaid Program during July 2010 and August 2010. Based on the amount of the assets, the petitioner was not eligible to receive ICP Medicaid for the months of July 2010 and August 2010.

Therefore, the Department correctly denied ICP Medicaid for the above months.

21. The Department's ACCESS Florida Program Policy Manual 165-22, Section 1640.0509 in part states:

Prepaid Burial Contracts (MSSI, SFP)

A prepaid burial contract (or special mortuary fund) is an agreement in which an individual prepays his burial expenses and the seller agrees to furnish the burial. Prepaid burial contracts should not be confused with burial insurance or burial trusts. The prepaid burial contract funds are not included as an asset if:

1. the contract cannot be liquidated without significant hardship to the individual; or
2. the contract seller refuses to revoke or liquidate the contract; or
3. the contract is irrevocable.

22. Based on the above authority prepaid burial contracts that are irrevocable are excluded as an asset in determining ICP Medicaid eligibility.

23. The findings show that in September 2010, the petitioner purchased an irrevocable prepaid burial contract with the cash value of all of her life insurance policies. Upon the purchase of the irrevocable burial contract, the petitioner became eligible to receive ICP benefits as the cash value of the policies was no longer available to her. Therefore, the Department was correct to approve ICP benefits effective September 2010.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the Department correctly denied ICP benefits for the months of July 2010 and August 2010. The appeal is denied. The Department's action is affirmed.

NOTICE OF RIGHT TO APPEAL

This decision is final and binding on the part of the Department. If the petitioner disagrees with this decision, the petitioner may seek a judicial review. To begin the judicial review, the petitioner must file one copy of a "Notice of Appeal" with the Agency Clerk, Office of Legal Services, Bldg. 2, Rm. 204, 1317 Winewood Blvd., Tallahassee, FL 32399-0700. The petitioner must also file another copy of the "Notice of Appeal" with the appropriate District Court of Appeal. The Notices must be filed within thirty (30) days of the date stamped on the first page of the final order. The petitioner must either pay the court fees required by law or seek an order of indigency to waive those fees. The Department has no funds to assist in this review, and any financial obligations incurred will be the petitioner's responsibility.

DONE and ORDERED this _____ day of _____, 2011,

in Tallahassee, Florida.

Morris Zamboca
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Copies Furnished To: [REDACTED], Petitioner
ACCESS Circuit 8 - Phil Singer