

BEFORE THE COMMISSIONER OF THE TENNESSEE
DEPARTMENT OF FINANCE AND ADMINISTRATION

IN THE MATTER OF:)
) APPEAL to TENNCARE
 [REDACTED],)
)
 Appellant.) Appeal #: [REDACTED]
)

THE DIVISION OF TENNCARE’S MOTION TO DISMISS
BASED ON FAILURE TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED

The Division of TennCare (“TennCare”) hereby motions to dismiss Appeal No. [REDACTED], filed on behalf of [REDACTED] (“Appellant”), pursuant to Rule 12.02(6) of the Tennessee Rules of Civil Procedure, because Appellant has failed to state a claim upon which relief may be granted, as laid out below.

I. FACTS

On June 2, 2021, Mr. [REDACTED] was appointed as Appellant’s Limited Conservator of Property for Petitioner, allowing Mr. [REDACTED] to access and dispense of Appellant’s property with further approval from the court. Shortly after that, on July 21, 2021, Appellant submitted an application for healthcare benefits to TennCare by fax. Based on that application, TennCare determined that Appellant was potentially eligible for institutional Medicaid (“IM”), so on August 19, 2021, TennCare mailed Appellant a request for additional information seeking verifications of Appellant’s financial resources, life insurance, and burial resources, due to TennCare by October 14, 2021.

Most of those verifications were returned to TennCare in a timely manner. However, on October 22, 2021, TennCare mailed Appellant a notice of decision informing her that she had been denied for

failure to provide requested verifications. On November 8, 2021, an appeal was filed contesting the denial of Appellant's application.

Subsequently, TennCare determined that Appellant submitted verification to TennCare that included a life insurance policy Appellant held with ██████████ Insurance Company ("██████ Co.") valued at \$ 2,184.66. The resource limit for IM is \$ 2,000.00.¹ Therefore, on December 28, 2021, TennCare mailed Appellant an updated notice of decision informing her that she had been denied TennCare Medicaid coverage because she was over the resource limit. TennCare later learned that Appellant's conservator had filed a motion to allow him to spend down Appellant's ████████ Co. policy on October 28, 2021.²

On March 29, 2022, Appellant's November 8, 2021, appeal was heard before Administrative Judge Patrick Ren. In that hearing, both parties agreed that: (1) The ████████ Co. whole life insurance policy is a countable resource for determining an applicant's financial eligibility for institutional Medicaid benefits, and (2) the countable value of the ████████ Co. life insurance policy exceeded the applicable \$ 2,000.00 resource limit. However, Appellant's attorney at the time, ██████████, argued that the value of the ████████ whole life insurance policy should be excluded because Appellant's conservator was precluded from timely cashing out the policy to bring Appellant's resources under the limit, due to circumstances beyond his control. Ms. ████████ also argued that the ████████. policy should be excluded based on an AGREEMENT TO SELL.

In his April 20, 2022, Initial Order³, Judge Ren reasoned that the ████████ policy could not be excluded based on an AGREEMENT TO SELL because such an agreement did not exist. However, he determined that the ████████. policy should have been excluded beginning on October 28, 2021, pursuant to TennCare Policy Manual 110.060, section 8, which states, "The equity value of any resource involved in litigation is considered to be unavailable to the individual. Litigation means involved in a lawsuit or

¹ TENN. COMP. R. & REGS. 1200-13-20-.08(5)(f).

² Due to COVID restrictions the chancery court did not actually hold a hearing for that motion until January 2022.

³This Initial Order became a Final Order on May 5, 2022. TENN. COMP. R. & REGS. 1200-13-19-.18(2).

some type of court action.”⁴ His order remanded Appellant’s case to TennCare to be processed for institutional Medicaid coverage with the determination that her [REDACTED] policy was excludable as of October 28, 2021, the date it became inaccessible due to litigation.

On May 10, 2022, TennCare mailed Appellant a notice of decision informing her that she had been approved for TennCare Medicaid coverage, effective October 1, 2021, the first of the month in which she met the resource limit.⁵ This current appeal was filed on May 27, 2022, contesting Appellant’s October 1, 2021, effective date, arguing she should receive an earlier date because her resources should have been excluded prior to October 2021.

II. ARGUMENT

Appellant’s current appeal, requesting an effective date of July 21, 2021, should be dismissed based on failure to state a claim for which relief may be granted because TennCare is unable to approve an application prior to the date all eligibility requirements are met, and it is unable to grant coverage prior to the date of an approved application or qualifying event.⁶ The effective date for IM, “begins on the Application File Date, according to Rule. 05, or the date all eligibility requirements are met, whichever is later.”⁷ If an individual seeking IM meets the resource limit at any time during a month, that individual meets the resource limit for the entire month.⁸

In this case, it is undisputed that: (1) Appellant submitted an application on July 21, 2021; (2) Appellant had a [REDACTED] policy which was countable as a resource; and (3) that resource was

⁴ TennCare Policy Manual 110.060, on ABD Inaccessible resources, section 8.

⁵ TENN. COMP. R. & REGS. 1200-13-20-.08(5)(g); [11A. of Supplement 8b](#) to Attachment 2.6-A of the State Plan states, “for institutionalized categories, the individual/couple whose countable resources are valued at or below the resource limit at any time during the month meets resource eligibility throughout the entire month.”

⁶ 1115 CMS Demonstration Waiver.

⁷ TENN. COMP. R. & REGS. 1200-13-20-.08(5)(g).

⁸ [11A. of Supplement 8b](#) to Attachment 2.6-A of the State Plan.

worth greater than \$ 2,000.00. It was previously determined by Administrative Judge Patrick Ren that the [REDACTED] policy in question was excludable as of October 28, 2021.⁹ TennCare is unable to grant coverage prior to the date of an approved application or qualifying event.¹⁰ Based on Judge Ren's determination, the earliest effective date Appellant can be granted is October 1, 2021, the first of the month in which Appellant met the resource limit. As such, TennCare contends that this appeal should be dismissed for failure to state a claim upon which relief may be granted, and Appellant's effective date of October 1, 2021, should stand.

III. CONCLUSION

In conclusion, Appellant's current appeal should be dismissed for failure to state a claim upon which relief may be granted as Appellant has already been granted the earliest effective date possible given the facts in this case.

Respectfully Submitted this 28th of July,



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⁹ See Initial Order issued April 20, 2022, Appeal No. 211269508.

¹⁰ 1115 CMS Demonstration Waiver.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing motion was mailed via U.S.P.S. Certified Mail to Appellant's attorney at: P.O. Box 2023, Dalton, Georgia 30722; and via FedEx to Appellant at: 2626 Walker Road, Chattanooga, Tennessee 37421. A copy has also been provided to Appellant's attorney via email at: David@mcguffey.net on July 28, 2022.

Mailed on this 29th day of July 2022.



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