

RE: ROSA L DELANY, Petitioner

Docket No.: OSAH-DFCS-NH-0933532-121-Woodard

MAIL TO:

ROSA L DELANY
409 PLEASANT HOME RD
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RICHMOND COUNTY DFCS OFFICE
WHITTLE, PEGGY, CASEWORKER
RICHMOND COUNTY DFCS
P.O. BOX 2277
AUGUSTA, GA 30903-2277

DEPARTMENT OF COMMUNITY HEALTH
LEGAL SERVICES UNIT, ATTN: APPEALS REVIEWER
2 PEACHTREE STREET, 40TH FLOOR
ATLANTA GA 30303

(DECISION ONLY)

STATE OFFICE
LONG TERM CARE UNIT
2 PEACHTREE STREET, 39TH FLOOR
PO BOX 38420
ATLANTA GA 30303

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

ROSAL DELANY, Petitioner,	:	
	:	Docket No.: OSAH-DFCS-NH-0933532-121-Woodard
	:	
v.	:	Agency Reference No.: 824144219
	:	
DEPARTMENT OF HUMAN RESOURCES, DIVISION OF	:	
FAMILY AND CHILDREN SERVICES,	:	
Respondent.	:	

NOTICE OF INITIAL DECISION

This is the Initial Decision of the Administrative Law Judge (Judge) in the case. This decision is reviewable by the Referring Agency. If a party disagrees with this decision, the party may file a motion for reconsideration, a motion for rehearing, or a motion to vacate or modify a default order with the OSAH Judge. A party may also seek agency review of this decision.

FILING A MOTION WITH THE JUDGE AT OSAH

The Motion must be filed in writing within ten (10) days of the entry, i.e., the issuance date, of this decision. **The filing of such a motion may or may not toll the time for filing a request for agency review.** See OSAH Rules 616-1-2-.28 and .30 in conjunction with O.C.G.A. § 49-4-153. Motions must include the case docket number, be served simultaneously upon all parties of record, either by personal delivery or first class mail, with proper postage affixed, and be filed with the OSAH clerk at:

Clerk
Office of State Administrative Hearings
Attn.: Ebonie Prather, eprather@osah.ga.gov
230 Peachtree Street, NW, Suite 850
Atlanta, Georgia 30303-1534

REQUEST FOR AGENCY REVIEW

A request for Agency Review must be filed within thirty (30) days after service of this Initial Decision. O.C.G.A. § 49-4-153(b)(1). A copy of the application for agency review must be simultaneously served upon all parties of record and filed with the OSAH clerk. The application for Agency Review should be filed with:

Department of Community Health
Legal Services Unit, Attn: Appeals Reviewer
2 Peachtree Street, 40th Floor
Atlanta, Georgia 30303

This Initial Decision will become the Final Decision of the agency if neither party makes a timely application for agency review. O.C.G.A. § 49-4-153(b)(1) and (c). When a decision becomes Final, an application for judicial review must be filed within thirty (30) days in the Superior Court of Fulton County or the county of residence of the appealing party. If the appealing party is a corporation, the action may be brought in the Superior Court of Fulton County or the superior court of the county where the party maintains its principal place of doing business in this state. O.C.G.A. § 49-4-153(c).

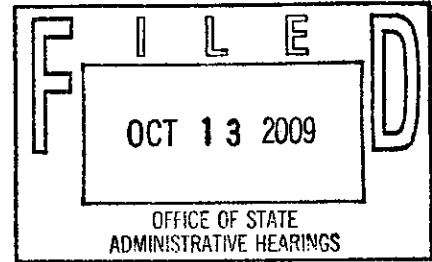
BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

ROSE L. DELANEY)
PETITIONER)
V.)
DEPARTMENT OF HUMAN)
RESOURCES, DIVISION OF FAMILY)
AND CHILDREN SERVICES)
RESPONDENT)

Docket No. OSAH-DFCS-NH-0900532-
121-Woodard
Agency Reference No.: 824144219

INITIAL DECISION

APPEARANCES:



For Petitioner: Patrick Smith, Attorney at Law, Augusta, Georgia.

For Respondent: Dimi Mapp, Medicaid Supervisor, Richmond County Department of Family and Children Services, Augusta.

I. INTRODUCTION

This matter concerns Petitioner's appeal from the denial by Richmond County Department of Family and Children Services (DFCS) of her for Medicaid under the "Nursing Home" category of assistance. DFCS determined that a life insurance contract issued to Petitioner was a countable resource with value that exceeded the Medicaid resource limit. Petitioner contends that the life insurance contract is not accessible to Petitioner and thus has no countable value.

A hearing on this issue was held before the undersigned administrative law judge at Richmond County DFCS in Augusta, Georgia. This case appears to present an issue of first impression regarding the treatment of single premium endowment life insurance contracts, and the administrative law judge requested post-hearing briefs from the parties. Petitioner's brief was filed on September 23, 2009. Neither DFCS nor the Department of Community Health has filed a responsive brief.

For the reasons set forth in this Decision, DFCS' determination that the life insurance contract causes Petitioner to exceed the Medicaid resource limit is REVERSED.

II. FINDINGS OF FACT

1. Petitioner is a widowed nursing home resident. On or about March 19th, 2009, an application for Medicaid was filed on Petitioner's behalf at Richmond County DFCS.
2. In response to DFCS' request for verification of Petitioner's assets, she provided DFCS with her Application for Life Insurance with Employees Life Company, filed on November 5, 2008 for a "Single Premium Pure Endowment Life Insurance Contract" (hereafter "Contract"). (Exhibit P-1). Petitioner was issued the Contract, and paid for it with a single premium of \$89,500. After five years, Petitioner's children, who are her named beneficiaries, would receive a \$91,327 payment. (Exhibit P-2).
3. The Contract states that "There is no cash surrender value provided by this contract," and that no benefits will be paid prior to death of the insured. The Contract is incontestable (See Exhibit P-2, page 5), may not be modified by Petitioner (see Exhibit P-2, page 5), and is unassignable (see Exhibit P-2, page 6).
4. DFCS determined that Petitioner was ineligible for Medicaid benefits. According to the Summary Notification DFCS issued:

"THE VALUE OF YOUR RESOURCES IS MORE THAN THE RESOURCE LIMIT FOR THIS PROGRAM....

CLEARANCE FROM DCH [Department of Community Health] STATES THAT YOUR ENDOWMENT POLICY CAN BE CANCELED PRIOR TO MATURITY AND THAT THE VALUE OF THE POLICY IS THE PURCHASED AMOUNT. THIS EXCEEDS THE ALLOWABLE BURIAL FUND ALLOWANCE."

(See Exhibit P-3). DCH did not send a representative to the hearing, and the only explanation of the rationale used to deny Petitioner's Medicaid application was provided by DFCS' witness. It is not clear if DCH reviewed a complete copy of the Contract prior to issuing its policy clearance to DFCS.

5. During the evidentiary hearing, DFCS' representative testified that the Contract was treated as if it was a whole life policy. However, DFCS agreed that the Contract does not have cash surrender value; that Petitioner has no contractual right to cancel the policy as the thirty day deadline for cancelation has passed; that Petitioner cannot receive cash against the policy; and that Petitioner cannot assign or sell the policy. (Testimony of DFCS Medicaid Eligibility Specialist).

III. CONCLUSIONS OF LAW

1. Medicaid is a joint federal-state program of medical assistance for low-income individuals who are aged, blind, or disabled or who are members of families with dependent children. Harris v McRae, 448 US 297 (1980). Medicaid is administered at the federal level by the Center for Medicare & Medicaid Services (CMS) which is part of the Department of Health and Human Services (HHS). HHS makes general policy and promulgates its position on Medicaid issues through the State Medicaid Manual and Program Memoranda. States electing to participate in the Medicaid program are required to develop a respective plan which sets forth eligibility standards for those individuals seeking Medicaid assistance. 42 USC 1396a(a).

2. The State of Georgia established a Medicaid Plan approved by CMS. The Georgia Department of Community Health (DCH) is authorized to implement the Medicaid Plan at the state level, while the Georgia Department of Human Services' Division of Family and Children Services is responsible for administering the Medicaid program at the county level.

3. DFCS issues policies to administer the Medicaid program in the Economic Support Services Manual, Volume II (hereafter "Medicaid Manual"). The Medicaid Manual is drafted to be in compliance with Federal statutes and regulations, and to be consistent with Georgia law.

4. In Georgia, a nursing facility or personal care home resident who applies for Medicaid is considered to be in "Living Arrangement D." Persons in this living arrangement can have no more than \$2,000.00 in non-exempt assets (if single or widowed, as is Petitioner) in order to qualify for Medicaid. 42 USC 1382(a)(3); Medicaid Manual, Appendix A.

5. Certain assets are excluded from consideration as resources to determine Medicaid eligibility. 42 USC 1382b; 20 CFR 416.1210. Examples of excluded assets include a home; household goods and personal effects; an automobile; income-producing property; burial space; life insurance; and prepaid funeral contracts.

6. Federal and State Medicaid laws provide specific guidance regarding the treatment of life insurance policies. If the face value of a policy is \$10,000.00 or more, then the value that will be taken into consideration is the extent of the cash surrender value of the policy. 42 USC 1382b(a); 20 CFR 416.1230. Medicaid Manual Section 2323 mirrors the Federal law. This section states as follows:

A life insurance policy is a resource if it has a cash surrender value (CSV). Its value as a resource is the amount of the CSV. The CSV of some policies may be excluded in ABD Medicaid.

...

The CSV [cash surrender value] is a form of equity value that the policy acquires over time. The owner of a policy can obtain its CSV only by turning the policy in for cancellation before it matures or before the insured dies...

Term insurance policies that do not generate a CSV are not resources. However, they are considered first as part of the burial exclusion allowance.

7. "Face Value (FV)" is "the amount of basic death benefit contracted for at the time the policy is purchased." 20 CFR 416.1230(b)(6); Medicaid Manual, Section 2323.

Life insurance policies with a Face Value of 10,000 or less may be considered for burial exclusion. Life insurance policies with a Face Value greater than \$10,000 must have the cash surrender value counted toward the resource limit. Only the Face Value, not the Cash Surrender Value, may be applied toward the burial exclusion allowance.

...

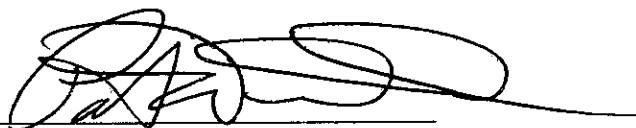
If the A/R or deemor has a term policy which has a FV of \$10,000 or more, that policy will make up the entire burial exclusion allowance. Term policies should always be considered first in the burial exclusion allowance. Any amount in excess of the \$10,000 will be subject to Estate Recovery.

8. The life insurance policy purchased by Petitioner is called a "single premium endowment life insurance contract," a term that is not found in Federal law or the Respondent's Medicaid Manual. The Contract has a face value of \$91,327 as a death benefit payable after five years, but it has no cash surrender value, cannot be sold or assigned, and no loans can be made against the policy. For these reasons, the policy appears to be akin to a "term" life insurance policy, and its death benefit must be counted against the \$10,000 burial fund exclusion. As the policy has no cash surrender value and cannot be sold, assigned or collateralized against a loan, it cannot be counted as a Medicaid resource for purposes of determining Petitioner's eligibility. However, as stated in Medicaid Manual Section 2323, the excess face value of the policy is subject to estate recovery following Petitioner's death.¹

IV. INITIAL DECISION

It is the Initial Decision of the administrative law judge that the entire death benefit of the Contract shall be applied to the burial fund exclusion. The remaining balance of the death benefit shall not be considered a resource available to Petitioner, but is subject to estate recovery. Petitioner's total countable resources are therefore under the Medicaid resource limit of \$2,000, and she is eligible for benefits back to the date of her Medicaid application. DFCS shall also consider whether Petitioner was eligible for Medicaid for the three months' prior to the date of her application.

SO ORDERED, this 13~~th~~ day of October 2009.



M. PATRICK WOODARD, JR.
ADMINISTRATIVE LAW JUDGE
STATE OF GEORGIA

¹ In her post-hearing brief, Petitioner raises the issue of whether the purchase of the single premium endowment life insurance policy is a "transfer" of Petitioner's resources for less than fair market value. In its notice denying Petitioner's Medicaid application, DFCS did not assert that Petitioner's purchase constituted an uncompensated transfer of resources, and therefore this issue is not properly before the ALJ. However, it appears that Petitioner's purchase of the Contract may have effectively converted a non-exempt asset (the funds used to purchase the Contract) into an exempt resource (or, as argued by Petitioner, a countable asset with no actual value to Petitioner).

