

OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

[REDACTED]

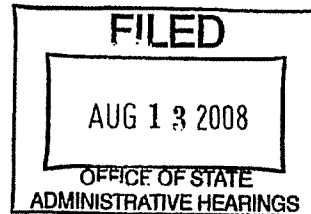
Petitioner

vs.

DEPARTMENT OF HUMAN RESOURCES,
DIVISION OF FAMILY AND CHILDREN
SERVICES,

Respondent.

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* Docket No.:
* OSAH-DFCS-NH-0831028-79-Langston
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* Agency Reference No. : 907140907
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INITIAL DECISION

I. Introduction

Petitioner requested a hearing with regards to Respondent's denial of nursing home payments. Petitioner and Respondent stipulated to the Findings of Fact below, which have been previously submitted to the court. After reviewing the record and relevant authority, Respondent's action in denying the payment at issue is hereby AFFIRMED.

I. Findings of Fact:

1.

The Court entered Petitioner's Exhibits A-E into the record, Petitioner having given copies of all said Exhibits to the Court and the Respondent.

2.

Petitioner applied for Nursing Home Medicaid benefits in March 2008;

3.

Respondent denied Petitioner's March 2008 application for Nursing Home Medicaid benefits for March and April 2008, by reason of the Petitioner having three Life Insurance Policies with face values totaling \$13,831. The \$10,000 policy was applied toward the burial exclusion of \$10,000 which exhausted the burial exclusion. The Cash Surrender Value of the remaining two life insurance policies exceeded the \$2,000 resources limit.

4.

Petitioner terminated all three of her life insurance policies, signing the Disbursement Request Form (Petitioner's Exhibit A) on April 21, 2008. Petitioner contended that the form was mailed to the insurance company on or shortly after April 21, 2008. That form states "In accordance with the terms of the contract this transaction shall take effect on the date this form, properly signed, is presented or mailed to the Administrative Office, any Branch Office, any General Agency, or any representative of this Company" The form is stamped received May 5, 2008;

5.

Petitioner received checks for the cash surrender values on May 5, 2008 totaling \$7,418.13. Respondent contends that other than Petitioner's Exhibit A, it has no verification that Petitioner submitted the Disbursement Request Form to the insurance company prior to May 1, 2008;

6.

Petitioner has found the Delivery Confirmation Label # 0306 1070 0005 0272 9536 used to track the mailing of Petitioner's Exhibit A to the insurance company in Waldorf, Maryland. Petitioner submits Petitioner's Exhibit F (attached), which is the United States Postal Service tracking report of the above label number. The report may be viewed on the United States Postal Service website (www.usps.com) by entering the above label number in the "track and confirm" box. The tracking result shows Petitioner mailed an item on April 28, 2008 and that it was delivered in Waldorf, Maryland on April 30, 2008. Petitioner states the item mailed was the Disbursement Request Form;

7.

Petitioner reapplied for Nursing Home Medicaid benefits in May 2008;

8.

Respondent denied Petitioner's application for Nursing Home Medicaid benefits for May 2008, by reason of the Petitioner having three Life Insurance Policies with face values totaling \$13,831. The \$10,000 policy was applied toward the burial exclusion of \$10,000 which exhausted the burial exclusion. The Cash Surrender Value of the remaining two life insurance policies exceeded the \$2,000 resources limit, and further saying that Petitioner could not designate the \$7,418.13 received from the surrender of the three life insurance policies on in May 2008 as burial funds, because the checks for those funds did not reach Petitioner until May 5, 2008, and therefore, as of the first moment of the first day of the calendar month of May 2008 was still being considered as Cash Surrender Value of life insurance.

9.

But for Petitioner having the life insurance policies, she would have been approved for Nursing Home Medicaid for May 2008 (as well as March and April 2008), because her other resources total less than the individual resource limit of \$2,000. Respondent found Petitioner's countable resources for May 2008 were \$486.91.

10.

Petitioner contends that she terminated the life insurance policies in April 2008, and should be able to designate the Cash Surrender Value of the checks she received May 5 as burial funds retroactively back to April 2008. If she is allowed to do so, she will be eligible for Nursing Home Medicaid for May 2008.

11.

Respondent contends that Petitioner cannot designate Cash Surrender Value of the checks she received May 5, 2008 as burial funds retroactively back to April 2008 because she had not

received those funds by May 1, 2008 and Cash Surrender Value of life insurance policies can not be designated for burial exclusion.

12.

Respondent has approved Petitioner for Nursing Home Medicaid for June 2008 forward.

Conclusions of Law

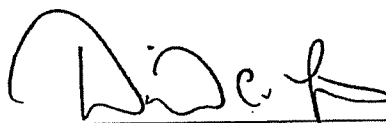
1. "Cash Surrender Value [*hereinafter* CSV] is a form of equity value that the policy acquires over time. The owner of the policy can obtain its CSV only by turning the policy in for cancellation before it matures or before the insured dies;" Medicaid Manual, Section 2423-*Life Insurance Policies*.
2. "CSV of life insurance which caused an excess in the burial exclusion limit may not be designated as burial funds". Petitioner, however, was over the burial exclusion limit of \$10,000 for the months of March, April and May. The Face Value of the \$10,000 life insurance policy was applied toward the burial exclusion of \$10,000 which exhausted the burial exclusion. The CSV of the two remaining life insurance policies totaling \$3,065.63 must be applied toward the resource limit of \$2,000 causing ineligibility due to excess resources. Medicaid Manual, Section 2312-*Burial Funds*.
3. Petitioner signed the Disbursement Request Form (Petitioner's Exhibit A) to terminate her life insurance policies on April 21, 2008. Petitioner mailed an item on April 28, 2008 and the post office delivered it April 30, 2008 (Petitioner's Exhibit F). Disbursement Request Form (Petitioner's Exhibit A) is stamp dated as received May 5, 2008. Pursuant to the Disbursement Request Form, "In accordance with the terms of the contract this transaction shall take effect on the date this form, properly signed, is presented or mailed to the Administrative Office, any Branch Office, any General Agency, or any representative of this Company. As of said date for Cash Surrender or Reduced Paid-Up, any right to receive more than that value on this policy shall terminate". Respondent verified by telephone call to insurance company/Bernadette this statement is not stating the disbursement takes place date mailed but rather any right to receive more than that value shall be terminated. They consider the life insurance CSV converted the date the check is disbursed which was on 5/6/08. When Petitioner reapplied for Medicaid in May 2008, Respondent should have counted the CSV as a resource because the disbursement to convert it from CSV to cash had not yet taken place on May 1, 2008. (Webster definition of Disbursement: Funds paid out)
4. Respondent could not allow Petitioner to designate the \$7,418.13 as burial funds. Respondent must "Use the value of the burial assets in the most advantageous way for the A/R/deemor so that it does not exceed the \$1500/\$10,000 burial exclusion" and "Burial funds may be designated retroactively to 4/1/88, if they are separately identifiable and can be tracked". A form from Petitioner's Life Insurance Company shows the separate CSV of each policy (Petitioner's Exhibit B). Respondent maintains that Petitioner could not count the CSV as burial funds for May 2008, because Petitioner had exhausted burial funds and disbursement from CSV to cash had not yet taken place by May 1, 2008. Medicaid Manual, Section 2312-*Burial Funds*.

5. "If the total value of an AR's resources, as of the first moment of the first day of the month, exceeds the resource limit, the AR is ineligible based on resources for the entire month, regardless of fluctuations during the month." Petitioner mailed the forms to terminate her life insurance policies on April 28, 2008. Conversion of CSV to cash took place on May 6, 2008. Petitioner did not have cash to designate toward the burial exclusion on May 1, 2008 as the check was not disbursed until May 6, 2008. Medicaid Manual, Section 2303-*Determining the Countable Value of Resources for ABD Medicaid*.
6. Petitioner's countable resources on May 1, 2008 were \$3,552.54 (\$3,065.63 CSV, \$474.83 checking, \$5.08 savings, \$7.00 Patient Fund Account.), which exceeds the \$2,000 resource limit for an individual applying for Nursing Home Medicaid. Petitioner is not eligible for Nursing Home Medicaid for May 2008.

IV. Decision

Petitioner's countable resources on May 1, 2008 were \$3,552.54 which exceeds the \$2,000 resource limit for an individual applying for Nursing Home Medicaid. Therefore, Petitioner is not eligible for Nursing Home Medicaid for May 2008. The decision of the Respondent is AFFIRMED.

SO ORDERED, August 12, 2008.



DAVID LANGSTON
Administrative Law Judge

