Rhode Island Executive Office of Health and Human Services
Appeals Office, 57 Howard Ave., LP Building, 2nd floor, Cranston, RI 02920
phone: 401.462.2132 fax: 401.462.0458

July 2, 2015

Docket#15-848
Hearing Date: June 8, 2015

[redacted]

ADMINISTRATIVE HEARING DECISION

The Administrative Hearing that you requested has been decided against you. During the course of the proceeding, the following issue(s) and Agency regulation(s) were the matters before the hearing:

EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES (EOHHS)
MEDICAID CODE OF ADMINISTRATIVE RULES (MCAR)
SECTION 0310: Retroactive Coverage
SECTION 0380 Resources Generally

The facts of your case, the pertinent Agency regulations, and the complete administrative decision made in this matter follow. Your rights to judicial review of this decision are found on the last page of this decision.

Copies of this decision have been sent to the following: You (the appellant in C/o your Power of Attorney), and Agency representatives Joy Thibodeau Moore, Bonita D'Abreau, Deborah Castellano, and Tom Conlon.

Present at the hearing were: The appellant's Power of Attorney, and Agency representative Joy Thibodeau Moore.

ISSUE: Is the appellant ineligible for retroactive Medicaid for the month of August 2014?

EOHHS Rules and Regulations:
Please see the attached APPENDIX for pertinent excerpts from the Rhode Island Executive Office of Health and Human Services Medicaid Code of Administrative Rules (MCAR).

APPEAL RIGHTS:
Please see attached NOTICE OF APPELLATE RIGHTS at the end of this decision.

DISCUSSION OF EVIDENCE:

The Agency representative testified:

- The appellant's Medicaid application was submitted on September 15, 2014.
- August 2014 was the only month that retroactive eligibility was needed.
- The appellant had a life insurance policy that was cashed out and the proceeds surrendered to the Nursing Home on October 9, 2014.
- As of August 1, 2014 the life insurance policy was still owned by the appellant and was a countable asset and this prompted the denial for the retroactive coverage.
- The POA submitted documents showing that on August 14, 2014 there was an inquiry regarding the Life Insurance policy and attached was verification showing the amount was over the $4,000.00 asset limit.
- September Medicaid eligibility was approved even though the life insurance check had not yet been received, because the process for liquidating the life insurance had at least began.
- Medicaid policy looks at assets as of the first moment of the month and the process to liquidate the Life Insurance began after August 1, 2014.

The appellant's Power Of Attorney testified:

- The appellant resides in a Nursing Home. She has been in the Nursing Home since February 2014 and was paying privately.
- He submitted the application for Medicaid on September 15, 2014 and Medicaid has been approved beginning September 1, 2014, but Medicaid coverage is needed for the August 2014 Nursing Home bill.
- Based on his conversations with the Nursing Home, he knew he had to liquidate all her assets but he had to figure out what everything was.
- Initially he did not realize that the life insurance had a balance or dividend because all he would get was the monthly premium bill that he had to pay. Only when he

started to go through her papers and found an actual policy did he realize it had cash value and then he started getting in touch with everyone.

- He did not submit the Medicaid application sooner because he did not know the process and thought he had to wait until he got everything in order. When he went to the Nursing Home to speak to their finance person, she advised him to immediately file the Medicaid application.

- He did actually start the process to liquidate the life insurance prior to August 1, 2014 but he did not keep any of the initial information as to who he called and/or spoke to at the Life Insurance Company when he was trying to figure out what he needed to do. He did save one cover sheet when he faxed his Power of Attorney to the Life Insurance Company and it was dated July 29, 2014. He then refaxed his POA again on August 1st, August 5th, and August 8th and then finally got the letter from the Insurance Company on August 14, 2014.

- He does not have any receipt to verify that he sent faxes on those dates because he was doing everything from work.

- The process of cashing out the life insurance was not completed until the beginning of October 2014 and due to penalties, he only received $14,709.00.

- The money from the life insurance policy was immediately paid to the Nursing Home for the July 2014 bill.

FINDINGS OF FACT:

- The appellant resides in Nursing Home.

- On September 15, 2014, the appellant's Power of Attorney submitted a Medicaid application on behalf of the appellant.

- Medicaid eligibility was requested to begin effective August 1, 2014 to cover long term care services/Nursing Home care.

- On March 10, 2015, the Agency sent a notice to the appellant in C/o her Power Of Attorney, to inform that the appellant was eligible for Medicaid under the rules of the Long Term Care program beginning September 1, 2014 but that the request for retroactive Medicaid had been denied for the month of August 2014 because the amount of her resources exceeded the Program's standard resource limit of $4,000.00.

- The appellant's Power Of Attorney filed a timely appeal on behalf of the appellant, received by the Agency on April 9, 2015,
- An Administrative Hearing scheduled for June 1, 2015 was rescheduled and convened on June 8, 2015.
- As of August 1, 2014, the appellant owned a life insurance policy with a face value of $5,000.00 and a cash surrender value of $15,681.61.
- In October 2014, the appellant's life insurance policy was cashed in and the proceeds paid to the Nursing Home.

CONCLUSION:

The issue to be decided is whether the appellant is ineligible for retroactive Medicaid for the month of August 2014.

The record establishes that the appellant's Power of Attorney (POA) submitted a Medicaid application on behalf of the appellant in September 2014. The Agency found the appellant eligible for Medicaid effective September 1, 2014 under the rules of the Long Term Care program but denied the request for retroactive Medicaid for the month of August 2014. The Agency argues that the appellant is ineligible for Medicaid in the retroactive month of August 2014 because resources are evaluated as of the first of the month and as of August 1, 2014, the appellant owned a life insurance policy with a cash value that exceeded the program's $4,000.00 resource limit and there had been no action taken yet to cash it in. The Agency testifies that while the appellant still owned the Life Insurance as of September 1, 2014, she was given Medicaid eligibility beginning September 1, 2014 because the process to cash it out had begun prior to September 1, 2014. In response to the Agency's position, the appellant's POA argues that he did start the process to cash out the appellant's Life Insurance policy prior to August 1, 2014. The appellant's POA further argues that the process took a long time and was not completed until the beginning of October 2014 and that upon receiving the check from the Life Insurance Company, he immediately used the funds to pay the appellant's July 2014 Nursing Home bill. It should be noted, despite agreeing that the proceeds of the life insurance were eventually paid to the Nursing Home in October 2014, the Agency maintained that the September 2014 eligibility was not obtained by means of a resource reduction but that the value of the life insurance was not counted as of September 1, 2014 and/or October 1, 2014 because the process to cash it out had begun prior to September 1, 2014.

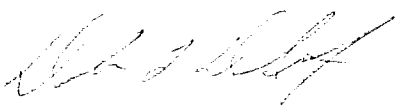
A review of the Medicaid Code of Administrative Rules (MCAR) finds that retroactive Medicaid eligibility can be requested for up to three months prior to the month of

application but that an applicant must meet all eligibility criteria during the retroactive period for which coverage is being requested. Relative to resources, the MCAR specifically stipulates that an applicant's countable resources must be within the Medicaid resource limits, or less than $4,000.00, as of the first day of each month for which retroactive eligibility is being requested. The MCAR further stipulates that only resources available to the applicant in the retroactive month are countable when determining retroactive eligibility. The MCAR defines an available resource as one that can be used to provide food, shelter or clothing or one that can be converted into a form that can be used to meet the person's needs. The MCAR further stipulates that a resource is considered available if it is actually available or if there is the legal ability to make it available for support and maintenance.

There is no dispute that the appellant owned a life insurance policy as of August 1, 2014. The evidence submitted establishes it was a Whole Life Insurance policy with a face value of $5,000.00 and a cash surrender value of $15,681.61. The evidence record also establishes that as of August 1, 2014, the appellant's POA had the legal authority/ability to cash out the appellant's life insurance policy. Therefore, the cash value of the appellant's life insurance policy is considered an available resource and thereby a countable resource as of August 1, 2014. The date on which the life insurance policy was actually cashed out and/or whether the appellant's POA began the process of cashing out the life insurance before or after August 1, 2014 is irrelevant. Furthermore, while the proceeds from the appellant's life insurance were subsequently used as payment towards a past Nursing Home bill, the MCAR stipulates that while Medicaid eligibility can be obtained by means of a resource reduction when resources exceed the limit in the month of application, retroactive Medicaid eligibility cannot be established by means of a resource reduction when resources exceed the limit in a retroactive month.

In conclusion, the appellant's Medicaid application was submitted in September 2014. Medicaid eligibility was requested for the retroactive month of August 2014. The appellant's countable resources as of August 1, 2014 exceeded the Medicaid Program's standard resource limit of $4,000.00.

After a careful review of Agency regulations, as well as the evidence and testimony presented, this Appeals Officer finds that the appellant is ineligible for retroactive Medicaid in the month of August 2014. The appellant's request for relief is thereby denied.



Debra L. DeStefano
Appeals Officer

APPENDIX

MEDICAID CODE OF ADMINISTRATIVE RULES (MCAR)(

(Pertinent excerpts)

0310 Retroactive Coverage

0310.05 Retroactive Coverage Defined

REV: October 2013

Medicaid beneficiaries who meet the SSI-related eligibility criteria may request retroactive eligibility for UP TO THREE (3) MONTHS PRIOR TO THE MONTH OF APPLICATION. To obtain retroactive coverage, applicants must meet all eligibility criteria during the retroactive period. Retroactive coverage is also available to IV-E and non IV-E foster children and adoption subsidy family-related coverage groups.

>>>>

0310.10 Eligibility Requirements

REV: October 2013

Retroactive coverage applies only to unpaid medical bills for services provided within the scope of the Medicaid Program. The medical bills must have been incurred during the three month retroactive period. The applicant must meet Medicaid eligibility requirements for each month in which an unpaid medical bill was incurred. Thus, retroactive eligibility may be determined for one, two, or three months of the retroactive period.

ONLY THE INCOME AND RESOURCES AVAILABLE TO THE APPLICANT IN THE RETROACTIVE PERIOD ARE USED TO DETERMINE ELIGIBILITY.

All services are subject to the same Title XIX utilization review standards as all other medical services of the Medicaid Program.

0310.15 Procedures for Determining Retroactive Eligibility

REV: October 2013

In determining retroactive eligibility, the applicant's net income (after allowable deductions and disregards) and resources are compared to Medically Needy limits UNLESS the unpaid medical bill is for Categorically Needy service only. In this case, eligibility must be based on the applicable Categorically Needy limits.

To determine retroactive eligibility, complete the following:

- Verify that the bill is unpaid and is for a covered service provided within the three (3) months prior to the first of the month of application for SSI, RI WORKS, or Medicaid.

- Establish eligibility based on:

    - Residence
    - Characteristic (if required)
    - Relationship (if required)
    - Citizenship or alienage; and at the time of application, the applicant must fulfill cooperation and enumeration requirements.

- Compare the resources and net income (after allowable deductions and disregards) to the appropriate income limit for the month(s) in which there is a verified, unpaid bill(s) (income limits refer to Categorically Needy income limits, Medically Needy income limits and Low Income Aged and Disabled income limits). Resources must be within the applicable resource limit as of the first day of each month for which eligibility is being determined.

>>>>>>>>>

0380 RESOURCES GENERALLY
0380.05 RESOURCE LIMITS
REV:06/1994

For MA Resource eligibility to exist, the institutionalized individual's countable resources cannot exceed the following basic limits:

o For Categorically Needy eligibility - $2000
o For Medically Needy eligibility - $4000

>>>>>>>>>>>>

0380.30 Availability of a Resource
REV: 06/1994

In order to be countable in the determination of Medicaid eligibility, a resource must be available to the individual. The individual must be able to use the resource to provide food, shelter, clothing, or convert it into a form in which it can be used to meet needs:

- A resource is considered to be available both when actually available, and when the applicant has the legal ability to make such sum available for support and maintenance;

- Resources are not available when a legal impediment exists which precludes the applicant from making the resource available for support, maintenance or medical care.

Applicants/Recipients are required, as a condition of eligibility, to cooperate with the Medicaid g resources available. See Section 0308, COOPERATION REQUIREMENTS.

0380.45 Resource Reduction
REV: 06/1994

If an applicant or recipient is found to be ineligible due to excess countable resources as of the first moment of the month, s/he is notified that eligibility does not exist. Included with the Notice is a description of the possibility of resource reduction (form MA-6).
An applicant whose countable resources exceed the basic resource limitation may establish eligibility on the basis of resources if:

- S/he incurs (or has incurred) outstanding allowable medical bills or other allowable expenses that equal or exceed his/her excess resources; AND

- S/he reduces the excess resources to the appropriate resource limit by actually paying the allowable expenses or fees, and submitting verification thereof within thirty days of the date of the rejection or closing notice. Both the expenditure of the resource and submission of verification of the expenditure and the reduced resource must occur within the thirty day time period.

The bills used to establish eligibility cannot be incurred earlier than the first day of the third month prior to the date of an application that is eventually approved. Allowable bills, which the applicant has paid and used to reduce resources, may not be the same bills that have been used to meet an income spenddown.

The agency representative must see the bills that have been actually paid in order to verify that resources have been properly reduced.

0380.45.05 Date of Eligibility
REV: 06/1994

An individual who reduces resources and is otherwise eligible will be eligible as of the date the incurred allowable expenses equaled or exceeded the amount of his or her excess assets, subject to verification that the excess resource was actually expended on the allowable expense. In no event shall the first day of eligibility be earlier than the first day of the month of application.

Although an applicant may reduce excess resources by paying an allowable expense that was incurred up to the first day of the third month prior to the date of an application, an applicant cannot establish eligibility by resource reduction in the retroactive period.
>>>>

NOTICE OF APPELLATE RIGHTS

This Final Order constitutes a final order of the Department of Human Services pursuant to RI General Laws §42-35-12. Pursuant to RI General Laws §42-35-15, a final order may be appealed to the Superior Court sitting in and for the County of Providence within thirty (30) days of the mailing date of this decision. Such appeal, if taken, must be completed by filing a petition for review in Superior Court. The filing of the complaint does not itself stay enforcement of this order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms.