STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
APPEALS OFFICE - LP Bldg.
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Date: July 28, 2014

Docket # 14-767
Hearing Date: June 15, 2014

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 policy reference(s) were the matters before the hearing:

THE MEDICAID POLICY
SECTION: 0364.20.10 Rental Income, Property is not Home

R.I. GENERAL LAWS: ADMINISTRATIVE PROCEDURES
SECTION 42-35-12

The facts of your case, the Agency policy, 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: Your son and appointee for Durable General-Power-of-Attorney, your legal representative Eileen P. Hadfield; and,

Agency representatives: Carmel Guertin, Robert Palin, Vincent Guglielmino, and Nancy DelPrete.

Present at the hearing were: Your son, your legal representative Eileen Hadfield, and Agency representatives Carmel Guertin, and Robert Palin.

ISSUE: Is the appellant eligible for a one time allowable deduction resulting from rental property renovations?

DHS POLICIES: Please see the attached APPENDIX for pertinent excerpts from the Rhode Island Department of Human Services Policy Manual.

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

DISCUSSION OF THE EVIDENCE:

The Agency representative testified:

- As stated, per policy, the only items we can apply to rental property are interest payments on the mortgage, insurance, taxes, and water and sewer charges and assessments.
- As far as improvements in the home, I'm not sure if there is some other policy, but as far as we know, we are only able to deduct maintenance items.
- Improvements to the home increase the value of the home for the owner when it comes time to sell.
- We applied the policy where the only expenses allowed are the ones which we have already allowed.
- We cannot look individually at cases, but we have to implement the policy as written, and we are unaware of any other policy.
- They (the representatives) are not disagreeing with any of the medical expense amounts; they are just disagreeing with the DHS policy.

The appellant's legal representative and her son testified:

- We are specifically appealing the second issue which is related to the two unit house.

- We would like to look at this case individually and factually, specifically with regards to Statute 40-8.9-1.

- Public policy in RI cites that it is in the interest of all Rhode Islanders to endorse and fund statewide efforts to build a fiscally sound, dynamic long-term care system.

- What's happening here is not fiscally sound for the state of RI.

- The appellant owned a two unit house which was once her principal residence, and it is excluded.

- The appellant is under no obligation to generate any income what-so-ever, and was already qualified under Medicaid to receive services.

- Only one of the two units could be rented and was generating about $1000.00 per month and did nothing to lessen her burden.

- She made improvements which resulted in two rentable units, and is now generating $36,000 in income which goes straight to the cost of her care.

- Instead of $1000.00 per month, the property generates about $4150 per month.

- In a typical case, people put a family member in the apartments, and they pay only taxes and insurance, which results in a win/win for families, and a lose/lose for RI.

- She created an extra $3000 per month in income for the state of RI, and was aware this would go directly to them (RI) towards her $9000 medical expense.

- With regards to the Federal policy, its purpose, and the burden of the medical clients collectively-she is putting money back into the state.

- Sound fiscal policy requires that she receive at least a onetime expense for the monies paid out, as the state of RI will continue to reap the benefits.

- The state should be encouraging and supporting this type of activity, but instead they are punishing her by taking the money, and not returning a penny to assist with the renovations which created the income.

- We understand the DHS policy regarding necessary expenses, but feel that this case needs to be looked at factually and individually.

- The son testified that they (son and daughter) are indebted to RI Medicaid for allowing his mother to stay in the facility and for covering her medical expenses.

- The appellant's son and daughter completed all of the unskilled labor themselves including scraping, plastering, sanding, and painting for approximately 18 months.

- The son and daughter did this for two reasons-at the initial determination there was a shortfall, and the appellant needed to have additional funds monthly; and, the 40 year tenant on fixed income was in need of a warmer apartment without a rental increase, which resulted in a loss of money to the appellant (landlord).

- Also, the son and daughter also wanted to say thank you to RI for picking up the tab for their mother, so they endeavored to fix up the home by themselves and for themselves.

- We want to be reimbursed for out of pocket expenses.

- The nursing home no longer asks for additional money, and the tenant does not have to worry about increased rent resulting from her increased use of heat.

- It seems that the purpose of Medicaid is twofold-first, to provide elderly citizens with a decent lifestyle; and, the second-to do this as cheaply as possible.

- She (appellant) has achieved one of the main objectives of Medicaid by completing this work as inexpensively as possible.

- Rhode Island should be providing incentives, and it is the antithesis of RI law that we be punished for trying to make money for the state.

- A contrary decision would violate the Medicaid law.

- 40-8.9-1 asks for efforts to build a fiscally sound long term care system.

- The representative and son do not expect anyone at this determination level (DHS) can go beyond the parameters but the policy manual must be in support of policy which is enacted by the General Assembly.

- It is a fiscally reckless policy which would encourage the people to support themselves at all cost, and the heck with the state.

FINDINGS OF FACT:

- A notice dated April 1, 2014 notified the appellant of her continued Medical Assistance; the figures used to compute her share of the medical expenses for the month of January 1, 2013; computations for the months of February 2013 through December 31, 2013.

- The appellant's representative Attorney Eileen Hadfield completed a Request for a Hearing complaint, date stamped May 1, 2014.

- The Statement of Complaint requested a redetermination of the appellant's share of expenses based on her costs and reimbursements associated with a rental property renovation.

- Attorney Eileen Hadfield completed an Entry of appearance form as the appellant's legal representative.

- The appellant's son submitted a Durable General-Power-of-Attorney designating him as an "agent" for the appellant, and signed on January 9, 2006 by the appellant.

CONCLUSION:

The issue to be decided is whether the appellant is eligible for a one time allowable deduction resulting from rental property renovations.

Per MA policy, regarding rental property, allowable expenses are deducted from gross rental income to determine the countable rental income of the applicant. The allowable expenses are specific-interest payments on mortgages, insurance, taxes, and water and sewer charges and assessments.

There is no dispute between the Agency and the appellant regarding the rental property policy, nor the Agency's adherence to the policy. The Agency represents that they followed policy directly when assessing the appellant's income, that, based on policy they are unable to make special consideration for the appellant, and that they are unaware of any existing policy which would allow them to deviate from their decision.

They further cite that improvements to the home increase the value of the home for the owner when it comes time to sell.

The appellant does not dispute that she is under the auspices of the DHS policy, and that that policy does not account for this deduction. However, she does request individual consideration of her circumstances for a onetime allowable deduction. The appellant's representatives testified that a two unit rental property had been producing about $1000 dollars per month in revenue which was used as payment towards her medical expenses. Her son and daughter renovated her rental property which increased her contribution to around $4100.00 per month. This renovation resulted in a direct increase to the State of Rhode Island of $36,000 annually. The appellant had no obligation to increase her contribution. The representatives presented that the only deductions being requested were for materials, and some unskilled labor, as the bulk of the renovations were completed by the appellant's son and daughter over an 18 month period, at no cost to the appellant.

The representatives presented as well that a contrary decision for the appellant would violate RI General Law 40-8.9-1 which endorses finance reform recommendations with regards to the Medical assistance programs, specifically, the Long-Term care services. They further postulate that that the "fiscally sound" policy cites that Rhode Islanders endorse and fund efforts to build a system which provides incentives to the clients-as in their specific case.

The appellant's request for a onetime deduction appears consistent with the integrity of the RI General Law cited. However, although findings suggest that it is in the interest of Rhode Islanders to build this system, no specific changes in Rhode Island law were adopted which would reflect changes to the DHS policy directly related to this matter. Medical Assistance policy with regards to rental property income and allowable expenses has yet to be modified. The appellant noted an understanding of the DHS restrictions to accept their argument, but requested the hearing decision would consider this case individually. Further review of the Rhode Island General Laws requires that the rationality of an agency's decision must be based upon the findings of facts in accordance with the agency rules. The RI Supreme court summarizes that "the rationality of an agency's decision must encompass its fact findings, its interpretation of the pertinent law, and its application of the law to the facts as found." (Sakonnet Rogers, Inc. v. Coastal Resources Management Council et al., 536 A.2d 893,896 (RI 1988). Furthermore, the Administrative Agencies' Powers are derived from statute, and an agency cannot do what is not provided for in law. Thus, a decision can only be valid when the agency acts within the parameters of the statutes that define its powers.

In summary, although the appellant appears to have made a substantial increase in her contribution to her long term care expenses, and she makes a fiscally sound argument-policy does not allow the costs of her renovation. Additionally, this agency is charged with interpretation of the current and pertinent law, and as such, finds that the Agency's actions were correct. The appellant is not due reimbursement.

After a careful review of the Agency's policies, as well as the evidence and testimony provided, this Appeals Officer finds that the appellant is not eligible for a one time allowable deduction resulting from rental property renovations.

Karen E. Walsh
Appeals Officer