STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF HUMAN SERVICES
APPEALS OFFICE
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Docket # 15-304
Hearing Date: April 2, 2013

Date: May 14, 2015

[redacted]

ADMINISTRATIVE HEARING DECISION

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

THE DHS POLICY MANUAL: MEDICAL ASSISTANCE
SECTION: 0300.25.20 FINANCIAL ELIGIBILITY REQUIREMENTS
SECTION: 0354.05 RESOURCE LIMITS
SECTION: 0380.30 AVAILABILITY OF A RESOURCE
SECTION:0382.20 LIFE INSURANCE
SECTION:0382.20.10 TERMINOLOGY

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: [redacted], and agency representatives: Jean Piasczyk, Deborah Castellano, Thomas Conlon, and the Policy Unit.

Present at the hearing were: [redacted] representatives from Westerly Health Center, and Jean Piasczyk (agency representative).

ISSUE: Is the appellant not eligible for the Medical Assistance/Long Term Care Program (MA/LTC) for the month of October 2014 due to resources in excess of the standard resource limit of $4000.00?

DHS POLICIES:

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

DISCUSSION OF THE EVIDENCE:

The agency representative testified:

- The agency representative stated that the agency notified the appellant by notice dated December 4, 2014 that her application filed for the month of October 2014 was denied due to excess resources. (Copy of notice submitted).

- The agency notice states that the appellant's resources in the amount of $8361.98 are more than the SSI related standard resource limit of $4000.00. The appellant is $4361.98 in excess of the standard.

- The agency representative testified that at the time of application the appellant's representative submitted a copy of a Whole Life Insurance policy held by the appellant. The face value of the policy was $10,000.00.

- The agency representative stated that she sent a Request for Documents (RDOC) on October 10, 2014 to the appellant's daughter requesting a letter from Met Life with policy information to include face value, current cash value, loan amount, owner and beneficiary of the policy. The letter should show the date the policy was signed over to the funeral home. (Copy of the RDOC submitted).

- The appellant filed an MA/LTC application with the agency on October 2, 2014.The agency received verification that the cash value of the life insurance policy as of December 1, 2014 was $7521.58. This was verified by a policy statement dated November 25, 2014 from Met Life.

- The agency also verified that the appellant had a bank account with a balance of $840.40 as of October 1, 2014.

- The agency representative stated that she made several calls to the funeral home as the appellant's daughter told her that the funeral home was named the beneficiary of the appellant's life insurance policy. On October 10, 2014 she spoke with the funeral home director and she was told that the funeral home did not have a contract or life insurance policy information from the appellant.

- She has the original of a "Life Insurance Change of Beneficiary' form that is dated August 29, 2014 and signed by the appellant. She assumes that the form was not filed at that time and the beneficiary change did not go through to the insurance company.

- The agency representative stated that on November 17, 2014 an Irrevocable Collateral Assignment form was sent to the appellant from Met Life and the form was returned on November 22, 2014. On January 7, 2015 the Policy Surrender form was completed and signed by the appellant's daughter.

- The agency representative stated that on [redacted] the appellant passed away. On February 23, 2015 a letter death claim form was sent to the appellant's daughter from Met Life. On March 18, 2015 the death claim was denied because the funeral home had been designated as the beneficiary.

- The agency representative stated that she spoke with a funeral home representative on March 30, 2015 and she was told that the home had received a Beneficiary Change Form on March 18, 2015 which the funeral home was to complete and return.

- The agency representative stated that an applicant cannot sign over a policy once an application has been submitted.

The appellant's daughter testified:

- She stated that she was not sure what the exact date was when the Met Life policy beneficiary changed to the funeral home. She stated a number of calls were made to the funeral home and Met Life but the calls were not returned.

- She stated that as of this date she is not sure if the cash surrender value of the policy has been disbursed to the funeral home. She stated that when her mother passed away on [redacted] she was serviced at the Avery Funeral Home. It is her understanding that the funeral home has re-submitted the paperwork to obtain the proceeds from the Met Life policy during March 2015.

- She stated that her sister was responsible for the paperwork that was submitted to change the policy beneficiary to the funeral home.

The nursing facility representative testified:

- She stated that the appellant was admitted to the facility under her Medicare coverage on August 13, 2014. The appellant went to Medicaid pending status on September 13, 2014. The appellant remained at the facility until she passed away on [redacted].

FINDINGS OF FACT:

1. The agency denied the appellant's October 2014 application for MA/LTC benefits by notice dated December 4, 2014 due to excess resources.

2. The appellant filed a timely request for a hearing, which was received by the agency on January 5, 2015.

3. This record of hearing was held open through the close of business on May 4, 2015.
4. The appellant's daughter submitted documentation from Met Life regarding the beneficiary change and the disposition of the proceeds from the appellant's Met Life whole life insurance policy.

CONCLUSION:

The issue to be decided is whether the appellant's resources exceeded the agency $4000.00 resource standard for the MA/LTC program at the time of her MA/LTC October 2014 application.

There is no dispute as to the fact that the appellant had an interest in a whole life insurance policy at the time of her October 2014 application. The appellant's daughter submits that she has attempted to change the Met Life policy beneficiary as she intended to use the funds for the appellant's funeral. The record does provide documentation that sometime in August 2014 the appellant completed a beneficiary change form. However it is not clear what became of that change request.
Subsequent to that request the record contains a letter from the Met Life dated April 14, 2015 that was submitted post-hearing by the appellant. The letter states that on October 8, 2014 the appellant named S. R. Avery Funeral Home as the Irrevocable Beneficiary of the whole life insurance policy. This letter is signed by a Met Life claims unit representative.

Review of the agency record determines that the agency provided sufficient notice to the appellant regarding the need for resource documentation and the denial of her October 2014 application.
However the agency was not aware that the appellant's daughter had named the S. R. Avery Funeral Home as the Irrevocable beneficiary of the policy until this matter came to hearing.
Agency policy 0380.30 states that," In order to be countable in the determination of Medical Assistance 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." In this matter the record contains evidence that the intention of the appellant's daughter was to convert the resource, i.e. change the beneficiary, during August 2014.
The policy beneficiary was eventually changed to the S. R. Avery Funeral Home on October 8, 2014. As the policy beneficiary change was effective October 8, 2014 the reasonable determination would be that the paperwork required to effect the change of beneficiary was received by the insurance company prior to October 1, 2014.
Agency policy 0380.30 also states that, Applicant's /Recipients are required, as a condition of eligibility, to cooperate with the Department in making resources available." The appellant's daughter has testified and submitted evidence regarding her ongoing efforts to cooperate with the Department regarding the change to the policy beneficiary as part of the application process.

Following receipt of the agency denial the appellant requested a hearing and with assistance from the nursing facility, was able to provide the agency with the beneficiary change the proceeds from which were paid in total to the funeral home.

The agency properly processed the application and correctly denied the eligibility due to excess resources. However subsequent to the agency decision sufficient evidence has been provided to determine that the only asset that was a bar to eligibility has been used to pay the funeral home as the appellant deceased [redacted]

After a careful review of the agency's policies, as well as, the evidence and testimony given, the Hearing Officer finds that the appellant has provided the agency with verification that ownership of her only asset was changed and the asset is no longer available. There is no dispute regarding any other resources as of the October 2014 application.

ACTION FOR THE AGENCY

The appellant has provided the agency with documentation that her only asset is no longer available. The agency is to determine the appellant's eligibility using the October 2010 application without consideration of the Met Life policy. The agency may determine retroactive eligibility for September 2014 without considering the Met Life policy as an asset.

APPEAL RIGHTS (see last page)

Michael Gorman
Hearing Officer

APPENDIX

Financial Eligibility Requirements 0300.25.20
REV: 06/1994

Financial eligibility is based on the applicant/recipient's income and resources. Certain income and resources are COUNTABLE and thus included in the calculation of the individual's total income and resources to determine if financial eligibility exists. Other income and resources may be EXCLUDED from the calculation and not count toward the individual's allowable limit.

RESOURCE LIMITS 0354.05 1 O
REV: 01/2002

Each determination of eligibility (new, reopening or redetermination) requires a review of resources, which includes sending at least one bank statement (AP-91). Resources are also reviewed at the time of a reported change, or when information is received which indicates a change has occurred, or that unreported resources may exist (Income Eligibility Verification System match, etc.). Resources must be verified by a review of documents related to the resource, with copies of the documentation kept for the case file.

The Resource limits for individuals and couples are:

MEDICALLY NEEDY RESOURCE LIMITS - ALL GROUPS

RESOURCE	INDIVIDUAL	COUPLE
Basic Limit	$4,000	$6,000
Life Insurance	$4,000 Face Value for each individual. If Face Value(s) exceeds this threshold, evaluate as per Section 0356.20.	
Burial Set-Aside**	Up to $1,500 each individual (See limits in Section 0356.45).	

AVAILABILITY OF A RESOURCE 0380.30 1 OF
REV: 06/1994

In order to be countable in the determination of Medical Assistance 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 Department in making resources available. See Section 0308, COOPERATION REQUIREMENTS.

LIFE INSURANCE 0382.20
REV: 06/1994

Life insurance that is owned by the applicant (or deemor) is a resource which is evaluated according to the face value threshold limits set forth in Section 0382.20.15. Policies on the applicant's life owned by others are not countable unless deeming policies apply. However, regardless of ownership, all policies on the individual's life are recorded in the case file for use in the event a subsequent request for assistance with burial expenses is made.

Life Insurance Terminology 0382.20.10
REV: 06/1994

FACE VALUE is the amount for which a policy is written, or the benefit amount. For example, a $10,000 insurance policy has a face value of $10,000.

CASH SURRENDER VALUE -- As the premiums of certain life (not term insurance) policies are paid over time, a cash value accumulates in the policy. The cash surrender value is the amount of cash which may be advanced to the policy owner when the policy is surrendered according to the conditions stipulated in the policy.

A TERM INSURANCE POLICY is a contract of temporary protection. The insured pays relatively small premiums for a limited number of years, and the company agrees to pay the face amount of the policy only if the insured should die within the time specified in the policy. If the insured outlives the period, he receives nothing.

Life Insurance Terminology
0382.20.10

It is a temporary protection. USUALLY A TERM INSURANCE POLICY HAS NO CASH SURRENDER VALUE and is not counted as a resource.

AN ORDINARY LIFE (known as whole or straight) policy is a contract for which the insured pays the premium during his life time or to age one hundred (unless purchased by a single premium or by letting dividends accumulate). The company pays the face value of the policy to the beneficiary upon the death of the insured. THIS

POLICY HAS A CASH SURRENDER VALUE, usually after the second year. The policy combines protection and savings with the emphasis on protection for the whole life.

A LIMITED PAYMENT LIFE POLICY is a contract for which the insured makes payments for a definite number of years (20 or 30) after which no more payments are required. The policy remains in force for life and affords the same protection as an ordinary life policy. THE POLICY HAS A CASH SURRENDER VALUE.

Life Insurance Terminology 0382.20.10

AN ENDOWMENT INSURANCE promises payment upon death of the insured within a specified period or upon his survival to the end of a specified period. AN ENDOWMENT HAS A CASH SURRENDER VALUE.

INSURED PERSON - The insured person shown on the policy identifies the person whose life is insured. The $1,500 ($4,000 for Medically Needy) face value exclusion applies to all policies on each insured person which are owned by the applicant (individual or couple). The exclusion applies to policies the applicant holds on his life, the life of a family member, or the life of any other person. Where the face value exclusion is exceeded on one insured person, this does not affect its application to policies on another insured person.

JOINT POLICIES generally cover a man and wife, often with whole life for the husband and term for the wife. OWNER OF THE POLICY - The owner of the policy is the only person who can receive the proceeds under the cash surrender provisions of the policy. If the applicant is the insured person, but not the owner, the value of the policy does not count as his/her resource unless deeming policy applies. Conversely, if another individual is the insured person, but the applicant is the owner, the value of the policy counts as his/her resource (subject to the $1,500/$4,000 face value exclusion).

If the consent of another person is needed to cash in a policy, and consent cannot be obtained after a reasonable effort, the insurance policy is excluded.

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.