

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

FAITH LUBBERS, Petitioner, vs. IOWA DEPARTMENT OF HEALTH AND HUMAN SERVICES Respondent.	Case No. CVCV066884 RULING ON PETITION FOR JUDICIAL REVIEW
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Introduction

This is an administrative appeal that arises out of a challenge to a finding made by the agency Respondent that Petitioner was not eligible for Medicaid medical assistance and facility care benefits. A reported Judicial Review hearing was held on July 26, 2024. Joel Hjelmaas appeared as counsel for Petitioner Faith Lubbers (“Lubbers”). Assistant Iowa Attorney General Tyler Grimm appeared as counsel for Respondent Iowa Department of Health and Human Services (“Department”). The Court, having considered the pleadings, briefing, the agency record, and the arguments of counsel, enters the following decision and ruling.

Background Facts And Proceedings

Faith Lubbers was born in 1934.¹ She is married to John Lubbers.² On June 20, 2022, the Department completed an attribution for Lubbers in which it gathered all resources available to her as of March 1, 2022, which is the date when Lubbers entered the Prairie Ridge Care Center.³ Following the Department’s completion of the attribution, Lubbers spent down assets which was followed by Lubbers submitting an

¹ Administrative Record (D0008) at pg. 13.

² Administrative Record (D0008) at pg. 15.

³ Administrative Record (D0008) at pg. 102.

application to the Department on February 24, 2023, for the purpose of having the Department consider whether or not Lubbers had met the spend down requirements for eligibility.⁴

The Department denied Lubbers application.⁵ In doing so, the Department's worker, Kelly LeMaster, provided the following rationale for denying Lubber's application:

Your application for Medicaid is denied because your resources are over the \$2,000 limit for medical facility care. Em 8-D SSI-Related Resource Limits; 20 CFR 416.1205; 441 Iowa Admin. Code 75.1(7).

Your application for facility care is denied because your resources are over the \$2,000 limit for medical facility care. Em 8-D SSI-Related Resource Limits; 20 CFR 416.1205; 441 Iowa Admin. Code 75.1(7).⁶

Lubbers filed an interagency appeal on May 9, 2023.⁷ Boiled down to its essence, the fighting issue in Lubbers appeal was whether the Department erred when it determined that certain real estate that is subject to a non-transferable, non-assignable real estate installment contract should have been counted by the Department as a resource available to Lubbers when it determined her Medicaid eligibility. Lubbers argued that because the contract could not be sold, assigned, or transferred, it should be treated by the Department as having no value.⁸

Lubbers appeal was heard by Administrative Law Judge David Lindgren who issued his Proposed Decision on June 21, 2023.⁹ In his Proposed Decision, ALJ Lindgren reversed the Medicaid eligibility determination made by the Department. In doing so, ALJ Lindgren concluded that:

⁴ Administrative Record (D0008) at pg. 102.

⁵ Administrative Record (D0008) at pg. 3.

⁶ Administrative Record (D0008) at pg. 3.

⁷ Administrative Record (D0008) at pg. 1.

⁸ Administrative Record (D0008) at pg. 44, fn. 5.

⁹ ALJ's decision is found at Administrative Record (D0008) at pgs. 42-46.

Under Iowa regulations, for a resource to count against the Medicaid resource limit, it must be “available.”

A resource must be available in order for it to be counted toward resource limitations. A resource is considered available under the following circumstances:

(1) The applicant or member owns the property in part or in full and has control over it. That is, it can be occupied, rented, leased, sold, or otherwise used or disposed of at the individual's discretion.

(2) The applicant or member has a legal interest in a liquidated sum and has the legal ability to make the sum available for support and maintenance. [Iowa Admin. Code r. 441-75.56(6)(a).]

Beyond these general considerations, the Department’s regulations specifically provide that property sold under an installment contract for a price consistent with its fair market value is exempt as a resource. The portion of any payment received from a real estate installment contract that represents principal is considered a resource upon receipt. The interest portion of the payment is considered a resource the month following the month of receipt.[441 IAC 75.56(4)(b).

There is no indication here that the installment contract price was inconsistent with the property’s fair market value. Under these circumstances, the Department erred in counting any value of the property as a resource. The appellant’s resources did not exceed \$2,000 at the time of the consideration. Therefore, the Department should conclude she is eligible for medical assistance and facility care.¹⁰

The Department sought further review of ALJ Lindgren’s Proposed Decision by the Director.¹¹ Director Garcia designated Denise Dutton to review ALJ Lindgren’s Proposed Decision. Ultimately, Designee Dutton reversed ALJ’s Lindgren’s Proposed Order by concluding that the “Department’s decision is affirmed.”¹² In explaining her decision to reverse ALJ Lindgren’s Proposed Decision, Designee Dutton provided the following rationale:

Though the Department’s regulations state that property sold under an installment contract for a price consistent with its fair market value is exempt as a resource (441 IAC 75.56(4)“b”) (sic) the Department’s regulations also state that a resource must be counted as available if “[t]he applicant or member has

¹⁰ Administrative Record (D0008) at pg. 45.

¹¹ Administrative Record (D0008) at pg. 49.

¹² Administrative Record (D0008) at pg. 71.

a legal interest in a liquidated sum and has the legal ability to make the sum available for support and maintenance.” (441 IAC 75.56(6)“a”).

In a contract for deed arrangement, the seller (landowner) retains legal ownership of the land (at full value) until the end of the contract term. This appears to be the circumstance here, as detailed in Section 14, “DEED AND ABSTRACT, BILL OF SALE.” (Exhibit 3, Page 4) The life of this contract is four years and the payments are to be delivered annually over four years, meaning that the buyers will not have complete ownership of the property until the end of that period.

Until such time as the Warranty Deed conveying the property to the buyers and the abstract showing the merchantable title transferred to the buyers is delivered to the buyers, the property still remains a countable resource for the Appellant since the Appellant, under terms of the contract, has the right to forfeit and cancel this contract as provided by law if the buyers do not meet the terms of the agreement. (Exhibit 3, Pages 4 and 5) During this four-year contract period, some party must claim ownership of the property. It is not the buyer, as the deed and abstract have not been executed and if they do not fulfill the obligations of the contract, the sellers can forfeit the contract and take back the property.

Logically and legally, at the time the Department’s determination was made, the property was in possession of the Appellant. Upon commencement of this contract the Appellant forfeited any right to liquidate this property *unless* the actions of the buyers are contrary to the terms of the contract. The Appellant retains the right to liquidate the property if the contract is forfeited. Under 20 CFR 416.1201(a)(1), it must be considered a resource in determining the Appellant’s Medicaid eligibility.¹³

Designee Dutton’s decision represented final agency action. Petitioner timely filed this judicial review action in which the Court must apply the following standard of review.

Standard Of Review

Chapter 17A of the Iowa Code governs judicial review of administrative agency action. The district court acts in an appellate capacity to correct errors of law on the part of the agency. *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 219 (Iowa 2006). The Court “may grant relief if the agency action has prejudiced the substantial rights of the petitioner, and the agency action meets one of the enumerated criteria contained in

¹³ Administrative Record (D0008) at pg. 71.

section 17A.19(10)(a) through (n).” *Burton v. Hilltop Care Cntr.*, 813 N.W.2d 250, 256 (Iowa 2012) (quoting *Evercom Sys., Inc. v. Iowa Utilities Bd.*, 805 N.W.2d 758, 762 (Iowa 2011)). Where an agency has been “clearly vested” with a fact-finding function, the appropriate “standard of review [on appeal] depends on the aspect of the agency’s decision that forms the basis of the petition for judicial review”—that is, whether it involves an issue of 1) findings of fact, 2) interpretation of law, or 3) application of law to fact. *Burton*, 813 N.W.2d at 256. In this case, the parties agree that the sole issue for judicial review is the agency’s interpretation of law.

The Courts traditionally have discretion to substitute their interpretations of law for that of the agency when legal challenges are made on review. *Meyer*, 710 N.W.2d at 219. However, the Courts are required to give deference to an agency interpretation of law when the agency has been “clearly vested” with authority to interpret a provision of law. *Burton*, 813 N.W.2d at 256.

If the legislature has not given the agency clear authority to interpret a provision of law, the Courts may reverse the interpretation if erroneous. *Id.* Here the Department is not claiming it is owed any deference regarding its interpretation of the law at issue in this case. While the Court recognizes that Petitioner has cited to various standards of review under § 17A.19(10) that Petitioner believes afford it relief, boiled down to their essence, all of Plaintiffs claims arise out of its argument that the Department erred as a matter of law. The Court’s review and analysis will therefore focus on this issue.

Analysis

The Medicaid program, established in 1965 and codified at 42 U.S.C. §§ 1396–1396w-5 (the Medicaid Act), “was designed to serve individuals and families lacking adequate funds for basic health services, and it was designed to be a payer of last

resort.” *In re Estate of Melby*, 841 N.W.2d 867, 875 (Iowa 2014)(citations omitted). As succinctly summarized by the Iowa Supreme Court:

To be eligible for Medicaid, a person must have income and resources less than thresholds set by the Secretary. (citations omitted).

[T]he program contemplates that families will spend available resources first, and when those resources are completely depleted, Medicaid may provide payment. (citation omitted).

Cox v. Iowa Dept. of Human Services, 920 N.W.2d 545, 550-51 (Iowa 2018).

The parties’ dispute in this case centers on whether the Department correctly determined that Lubbers interest in a real estate installment contract that was non-assignable and non-transferable should be considered a resource in determining Medicaid eligibility. Resolution of this issue involves consideration of both state and federal law. As the Eighth Circuit has noted:

The Medicaid Act is a federal aid program designed to help the states provide medical assistance to financially-needy individuals, with the assistance of federal funding. Participation is voluntary, but if a state decides to participate, it must comply with all federal statutory and regulatory requirements.

Lankford v. Sherman, 451 F.3d 496, 504 (8th Cir. 2006)(internal citations omitted).

Petitioner first contends that the Department erred as a matter of law because it disregarded federal law which provides express conditions which Lubbers has complied with that render her interest in the real estate installment contract at issue in this case as a non-resource for Medicaid eligibility purposes. In other words, Lubbers contends that with her attorney’s assistance, she converted the farmland she had an interest in into income for purposes of Medicaid eligibility.

Lubbers contends that doing so was not improper and she followed a procedure in doing so that is specifically authorized by federal law. *See*, 42 U.S.C. § 1396p generally and 42 U.S.C. §1396p(c)(1)(l) specifically. A review of the record and the real estate contract at issue reveals that the repayment terms are actuarially sound, the

payments are equal, there is no balloon payment called for, and cancellation of the debt upon Lubbers death is prohibited. There is also no dispute that transfer was for less than fair market value. In sum, the real estate transaction was structured in a way that complied with the requirements of 42 U.S.C. §1396p(c)(1)(l).

After reviewing the record and the applicable federal law, the Court concludes that the Department erred as a matter of law when it determined that the real estate contract at issue was a countable resource in determining Lubber's Medicaid eligibility. While real estate installment contracts are ordinarily transferrable and hence convertible to cash, here Lubbers was without power to liquidate the asset because, by its terms, the contract was non-negotiable, non-transferable, and not otherwise transferable.

The Court therefore concludes that Lubbers' interest in the installment real estate contract was not a resource for Medicaid eligibility purposes under federal law. *See*, 20 C.F.R § 416.1201(a)(1) ("If a property right cannot be liquidated, the property will not be considered a resource of the individual.)¹⁴

The conclusion this Court reaches regarding the application of federal law is supported by case law from at least three federal circuit courts. *See, Lopes v. Department of Social Services*, 696 F.3d 180 (2nd Cir. 2012(a non-assignable annuity contract is not an available resource that must be spent down before Medicaid eligibility); *James v. Richman*, 547 F.3d 214 (3rd Cir. 2008)(a non-revocable, non-transferable annuity does not fit the statutory definition of an available resource supporting denial of Medicaid eligibility); *Gragert v. Lake*, 541 Fed.Appx. 853 (10th Cir.

¹⁴ Alternatively, as advocated by Petitioner, the Court finds that even if a countable resource, the fair market value of the real estate contract is zero. The Court exercises its discretion to grant Petitioner's Application For Leave to Present Additional Evidence (D0016). After doing so, the Court has considered the evidence presented to arrive at the conclusion that the fair market value of the contract is zero.

2013)(a promissory note that provided that it could not be sold, assigned, conveyed, or transferred was not a resource for Medicaid eligibility purposes).

The Court also reaches the same conclusion after reviewing the controlling state law. Specifically, 441 IAC 75.56(6)(a) provides that:

75.56(6) Availability.

a. A resource must be available in order for it to be counted toward resource limitations. A resource is considered available under the following circumstances:

(1) The applicant or member owns the property in part or in full and has control over it. That is, it can be occupied, rented, leased, sold, or otherwise used or disposed of at the individual's discretion.

In this case, the record is clear that Lubbers lacks "control" over the property in the sense that she cannot transfer or otherwise dispose of the property in her discretion because of the non-assignability and non-transferability provisions of the contract. In finding otherwise, Director's Designee focused on the fact that Lubbers maintains a right to liquidate the property because there is a possibility that the contract might be forfeited in the future.

While the Court sees e Director's Designee's point, the Court does not believe that this remote possibility should be the focus of the Court or the Department's analysis. The more proper focus is properly established by 441 IAC 75.56(6)(a)(1) as being on whether Lubbers possesses the present right to control the property and does she retain the ability to dispose of it in her discretion. Clearly the answer to both questions is "no."

In sum, after reviewing the record, it is clear to the Court that Lubbers interest in the installment real estate contract at issue has no value to a third party as it cannot be cancelled on her death, and Lubbers has no ability to transfer, liquidate or otherwise assign the contract or its income stream. Consequently, Lubbers interest in

the real estate contract is not a resource under either federal or state law that should be counted towards Lubber's eligibility determination. The Department erred as a matter of law in finding otherwise.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Petitioner's Petition for Judicial Review is GRANTED. The Department's finding that Petitioner is not eligible for medical assistance and facility care is REVERSED and this matter is REMANDED to the Department to complete its eligibility determination without consideration of the real estate installment contract as a resource. Court costs are taxed against Petitioner. Petitioner's request for attorney fees is DENIED.

SO ORDERED.



State of Iowa Courts

Case Number
CVCV066884

Case Title
FAITH LUBBERS VS IOWA DEPARTMENT OF HUMAN
SERVICES
Type: ORDER FOR JUDGMENT

So Ordered

Coleman McAllister, District Judge
Fifth Judicial District of Iowa