

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. S-08/17-410
)
Appeal of)
)

INTRODUCTION

Petitioner appealed a June 16, 2017 decision by the Department of Vermont Health Access ("Department") denying her Long-Term Care Medicaid application due to excess resources. During the pendency of this appeal a settlement was reached by the parties, but two issues remain in dispute. Under the terms of the agreement the Department granted Petitioner full eligibility for the Medicaid benefits sought and the Petitioner agreed to list a particular parcel of real estate for sale at specific price. However, the remaining outstanding issues require the Board to decide whether that parcel of real estate should be considered part of the homestead estate, and therefore an excluded resource. In addition, the Board must determine whether retroactive benefits should be awarded based on the date of the initial application, or on the date, four months later, when the parcel was listed for sale. The following facts are adduced from a hearing held October 9, 2017, and multiple telephone

status conferences that occurred between September 2017 and February 13, 2018, as well as documents submitted by the parties.

FINDINGS OF FACT

1. Petitioner filed an application for Medicaid coverage which was mailed to Choices for Care on June 16, 2017.

2. That application presented certain complex issues associated with Petitioner's homestead property. While ordinarily homestead property is an excluded resource, Petitioner's residential property, which she claimed as homestead, consists of two parcels, one of which contains the residence, while the other consists of a narrow strip of land that provides access to Lake Bomoseen (the 'lakefront parcel'). The two parcels do not touch and are thus are not physically contiguous. The Petitioner holds the property through an Enhanced Life Estate Deed with Restrictions and while both parcels are listed on a single deed, the Town of Castleton taxes the parcels separately. The 'lakefront parcel' carries an assessed value of \$53,100.

3. The Department issued of a Notice of Decision on August 18, 2017 denying the application. The Department concluded that the lakefront parcel was not part of the

homestead estate, and consequently that Petitioner was not eligible for coverage due to excess resources.

4. After the decision denying eligibility, this appeal was filed. A hearing was held on October 9, 2017.

Petitioner made two arguments supporting a reversal of the Department's decision.

a. The first argument was that both parcels should be included as part of Petitioner's homestead, on the grounds that the parcels were purchased at the same time and were transferred via the same deed.

Petitioner also argued, in the alternative, that even if the lakefront parcel was not contiguous, and therefore not a part of the homestead estate, that the Department's valuation of the lakefront parcel at the assessed value of \$53,100 was incorrect. Petitioner contended that the parcel was of no value, or at very best worth no more than \$3,000.00. Valuation of the parcel was important because to exclude the parcel as a resource, HBEE

Rules required that it be listed for sale at fair market value.¹

- b. The second argument made by Petitioner was that the 8 weeks that elapsed between the date of the initial application on June 16, 2017 and the Department's decision on eligibility, issued on August 18, 2017, constituted an unreasonable delay. The Petitioner asserts that pursuant to HBEE rules, specifically Rule 61.00(c), the Department had a maximum of 30 days in which to make the initial decision on eligibility. Petitioner further asserts that June 16, 2017 should be deemed the eligibility date irrespective of the fact that the lakefront parcel was not listed for sale until the week of October 13, 2017.

5. Following the hearing, the Department and the Petitioner engaged in negotiations and reached an agreement whereby the Petitioner agreed to list the lakefront parcel for sale at a price of \$53,100, which was the assessed value of the property. The lakefront parcel was listed for sale on

¹ While argument on this valuation issue was made during the proceedings, it was resolved by the parties' agreement and, regardless, is not determinative of the outcome here, and therefore the Board need not make any determinations on the correct valuation.

October 13, 2017. Once the lakefront parcel was listed for sale, it became an excluded resource and thus would not be included in determining Petitioner's eligibility. (Though the proceeds from any sale of the parcel could be deemed a countable resource and could result in a concomitant reduction in future benefits to Petitioner.)

6. The Department then required Petitioner to submit a second Medicaid application to provide information on Petitioner's current circumstances, including the for-sale status of the lakefront parcel. This second application was filed on December 15, 2017, along with an application for retroactive Medicaid. The Department, in a letter dated February 12, 2018 granted Petitioner retroactive Medicaid eligibility and Long-Term Care benefits beginning on October 13, 2017, the date the lakefront parcel was listed for sale.

ORDER

The Department's decision is affirmed.

REASONS

Review of the Department's determination is de novo. The Petitioner has the burden of proof at hearing to demonstrate that the Department's initial decision denying eligibility was in error. See Fair Hearing Rule 1000.3.0.4.

A. The lakefront parcel was properly determined to be an excess resource.

The Department's determination that the lakefront parcel was not part of the homestead estate and therefore was considered an excess resource warranting a denial of eligibility until that parcel was listed for sale, was correct. HBEE Rule 29.08(a)(1) governing excluded resources defines home as follows:

Home means the property in which an individual resides and has an ownership interest and which serves as the individual's principal place of residence. This property includes the shelter in which the individual resides, the land on which the shelter is located, related outbuildings, and surrounding property not separated from the home by intervening property owned by others. Public rights of way, such as roads that run through the surrounding property and separate it from the home, will not affect the exemption of the property. The home includes contiguous land and any other nonresidential buildings located on the contiguous land that are related to the home.

Petitioner concedes that the residential parcel and the lakefront parcel, while transferred via the same deed, are nonetheless listed as separate lots, assessed individually at vastly divergent values, and taxed separately by the Town of Castleton. The record is also clear that the parcels are not physically contiguous. In addition, it is undisputed that no residential structure exists on the lakefront parcel, nor could one be constructed under the terms of the deed. The

lakefront parcel has a singular purpose, to provide its owner with recreational access to Lake Bomoseen. The Department's arguments that the geographic separation of the two parcels along with the Town of Castleton's imposition of separate and distinct valuation and taxation of the parcels are compelling.

Petitioner further argues that her ownership of a private right of way between the residential parcel and the lakefront parcel warrants a finding that the parcels are contiguous, based on the language of Rule 29.08(a)(1) cited above. The Department disagrees with this interpretation and correctly argues that the rule governs only public rights of way and ensures that a public right of way does not destroy the preexisting contiguousness of property. It is therefore incorrect to conclude that the rule, by its language, will operate to create contiguity of previously separate parcels located on either side of a public right of way such as exists here. The lakefront parcel can not be considered contiguous to the residential parcel and therefore was properly determined to be an excess resource at the time of the initial decision of the Department denying eligibility. That circumstance changed during the week of October 13, 2017 when the lakefront parcel was listed for sale at fair market

value. The Department's decision to exclude the lakefront parcel as an excess resource prior to that date was correct and should be affirmed.

B. The determination that eligibility commenced during the week of October 13, 2017, when the lakefront parcel was listed for sale was correct.

With respect to the proper eligibility date for the commencement of benefits in this matter, Petitioner concedes the complex nature of the legal and factual issues pertaining to her claim of homestead and the unique nature of her property holdings. In addition, Petitioner does not dispute that the Department communicated with her on numerous occasions during the first six of the eight weeks it took to evaluate the initial application. The HBEE rule cited does not mandate determinations be made within 30 days. In fact, HBEE Rule 61.00(d) specifically notes that extenuating circumstances may require additional time. That rule lists three examples of such circumstances, but the list is illustrative, not exhaustive. The atypical and complex circumstances pertaining to Petitioner's property holdings justified more than thirty days of review. Ultimately however, the proper date for determining eligibility is governed by HBEE Rule 30.04 (a) (1) which dictates that "[a]n individual requesting MABD with excess resources is

determined to have passed the resource test *upon proof that the excess resources are no longer held as a resource. . .*"

(emphasis added) Here the date when the lakefront parcel was no longer held as a resource was when it was listed for sale during the week of October 13, 2017.

Petitioner has further asserted that when she agreed to list the lakefront parcel for sale in October of 2017, it was based on an understanding that she would be eligible for benefits for August and September. Petitioner provides no documentation to support this claim. The Department responds that it is authorized by law to assess eligibility for the three months prior to the application date, so that the Department granted eligibility as of the date the lakefront parcel was first listed for sale, on October 13, 2017.²

Petitioner, who was represented by competent counsel experienced in this area of the law, affirmatively elected not to list the lakefront parcel for sale prior to the date of making the initial application, even though resolution of the question of whether the lakefront parcel was legally part of the homestead estate was uncertain. There is no evidence

² The record is unclear whether this date should be October 9, 2017 or October 13, 2017. Given that the hearing in this matter occurred on October 9, 2017, it appears most likely that the October 13, 2017 date is the correct one.

that Petitioner's delay in listing the lakefront parcel for sale was anything but a strategic decision, made by Petitioner to support the argument that this parcel should be viewed as part of the homestead estate. Nothing prevented Petitioner from listing the property and making these same arguments. Had Petitioner done so and listed the parcel at the assessed value as determined by the Town of Castleton, an eligibility determination based on the June 16, 2018 date would have been correct. Nor is there any evidence that petitioner was ever misled or misinformed by the Department with respect to the legal significance of listing the lakefront parcel for sale.

The Department's decision to determine eligibility as of October 13, 2017, the date the lakefront parcel was listed for sale at fair market value is what was required under the eligibility rules.

As such, the Department's determination is consistent with the rules and must be affirmed. See 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

#