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CLERK OF COURTS
MAHONING COUNTY, OHIO
AUG 29 2016
FILED
ANTHONY VIVO, CLERK

IN THE COURT OF COMMON PLEAS
MAHONING COUNTY, OHIO

JOSEPH KOLLAR	:	Case No. 2015 CV 1590
	:	Case No. 2015 CV 1591
and	:	
	:	
MARY ANN DONNADIO,	:	
EXECUTOR FOR THE	:	
ESTATE OF HELEN RICCI,	:	
	:	
Appellants,	:	JUDGE MAUREEN A. SWEENEY,
	:	Courtroom #2
vs.	:	
	:	
OHIO DEPARTMENT OF JOB AND	:	JUDGMENT ENTRY AFFIRMING
FAMILY SERVICES,	:	THE ADMINISTRATIVE APPEAL
	:	DECISIONS OF APPELLEE
Appellee.	:	

Appellants, Joseph Kollar and Mary Ann Donnadio, Executor for the Estate of Helen Ricci, appeal under R.C. 5101.35 and R.C. 119.12 from their respective administrative appeal decisions¹ issued by Appellee, the Ohio Department of Job and Family Services (“ODJFS”). ODJFS affirmed the county agency’s determinations of the start dates for Mr. Kollar’s and Ms. Ricci’s respective Medicaid restricted-coverage periods: namely, April 2015 for Mr. Kollar and February 2015 for Ms. Ricci. The Court consolidated these cases for briefing purposes, since they share common legal issues. *See* Order, filed 8/18/2015.

It is undisputed that each Appellant applied for Medicaid after improperly transferring away resources. The Mahoning County Department of Job and Family Services (“County”) later learned that some of those resources were reconveyed to each Appellant in a series of payments. Under Ohio Medicaid rules, an “improper transfer” of resources results in the imposition of a penalty period, during which the applicant is eligible for Medicaid coverage except for nursing-

¹ Joseph Kollar, Case No. 2015 CV 1590 (ODJFS Case No. 5114510604); Helen J. Ricci, Case No. 2015 CV 1591 (ODJFS Case. No. 5092936409).



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home “vendor” payments (which essentially cover the resident’s base cost of residing in the nursing home). When resources are reconveyed to the applicant, the duration and start date of the restricted-coverage period must be recalculated. Appellants challenge only the agency’s recalculated, later start dates for their periods of restricted Medicaid coverage.

FACTS

After reviewing the record, the Court makes the following findings of fact and determinations:

- Each Appellant gifted monies to family members within the Medicaid five-year lookback period. Each was admitted to a nursing home and applied for Medicaid. The County conducted resource assessments and determined that each Appellant had made “improper transfers” because they had given away resources to qualify for Medicaid. Those improper transfers resulted in a restricted-coverage period for each Appellant. Former Ohio Adm.Code 5160:1-3-07(J)(2)² governs the calculation of the Appellants’ restricted-coverage periods, both before and after the reconveyances.
- The Court finds that Mr. Kollar had improperly transferred \$65,547.38 between September and November 2014 and that Ms. Ricci had improperly transferred \$81,869 in August 2014.
- Subsequently, some of the transferred resources were reconveyed and were then immediately used to pay for Appellants’ respective nursing-home costs. Appellants asked the County to recalculate their restricted-coverage periods in light of the reconveyances.
- The partial reconveyances of funds left Mr. Kollar with \$28,121.01 in outstanding improperly-transferred resources and left Ms. Ricci with \$41,869 in outstanding improperly-transferred resources.

² Although the rule was rescinded 1/1/16, it was in effect at the time all actions were taken in both cases.

- The parties agree that Mr. Kollar's modified restricted-coverage period is 4.4 months and that Ms. Ricci's modified restricted-coverage period is 6.61 months.

The issue on appeal is whether these modified restricted-coverage periods should begin on the original start dates, as Appellants argue, or the dates on which they had spent their countable resources—including the reconveyed funds—down to (or below) the \$1,500 Medicaid-eligibility limit, as Appellee argues.

LAW & ANALYSIS

When improperly transferred resources are returned, or reconveyed, to an applicant, his restricted-coverage period may be affected. *See* former Ohio Adm.Code 5160:1-3-07(M)(4). Here, because only a portion of the improperly-transferred resources were reconveyed to each Appellant, their restricted-coverage periods were shortened but not eliminated. *See id.*

After reviewing the record and the applicable law, the Court affirms the Administrative Appeal Decisions. The reconveyed resources must be counted as available resources to determine whether Appellants were Medicaid eligible during each month of their original restricted-coverage periods, and therefore the start dates for those periods might change. *See* former Ohio Adm.Code 5160:1-3-07(M)(2). The agency's recalculated start dates are supported by reliable, probative, and substantial evidence and are in accordance with law.

If a partial reconveyance of resources puts an applicant above the Medicaid resource limit in the month the money was reconveyed, the start date of the restricted-coverage period is affected. Under former Ohio Adm.Code 5160:1-3-07(M)(2), the County must redetermine eligibility for each month during the original restricted-coverage period and include for those months any of the remaining returned resources as available resources (unless they are exempt). The resources are considered available to the individual from the initial improper transfer date

until the month that the total countable resources have been reduced to the \$1,500 Medicaid resource limit. *See* former Ohio Adm.Code 5160:1-3-07(M)(2).

Former Ohio Adm.Code 5160:1-3-07(K)(2) has two requirements for determining the start date of a restricted-coverage period. First, the period cannot begin until the individual is eligible for Medicaid, meaning he has no more than \$1,500 in countable resources. *See* former Ohio Adm.Code 5160:1-3-07(K)(2)(b). Second, the period cannot begin until the individual “would otherwise be receiving long-term care services in a [long-term care facility]...based on an approved [Medicaid] application” but for the restricted-coverage period. *Id.* “Long-term care services” here necessarily means *Medicaid-funded* long-term-care services. Therefore, a period of restricted coverage starts when Medicaid would have otherwise paid for the applicant’s nursing-home care. And that would be *after* the reconveyance of resources has occurred and the applicant has spent them down to (or below) the resource limit.

Neither Appellant could be eligible for Medicaid coverage of nursing-home vendor payments as long as he or she had more than \$1,500 in countable resources. Thus, neither was eligible to “otherwise be receiving” Medicaid-covered nursing-home care until the reconveyed funds were spent down to that amount. Until that point, the Appellants had to—and did—pay for their own nursing-home care with the reconveyed resources. Brief of Appellants, pp. 1, 2, 5, 8.

CONCLUSION

The Court agrees with ODJFS that the essential purpose of a period of restricted coverage is to penalize the applicant by imputing to him the value of the improperly-transferred resources. Under Appellants’ theory, they would bear no penalty. Their nursing-home costs were already covered by money reconveyed to them during the original restricted periods, when they had originally been deemed eligible for non-nursing-facility Medicaid. Because of the

reconveyances, each Appellant exceeded the Medicaid resource limit, and so—looking back, in light of the reconveyances—the agency could not deem Medicaid eligibility to have begun until those resources had been spent down to the \$1,500 resource limit. That did not happen until April 2015 for Mr. Kollar and February 2015 for Ms. Ricci. *See Dowler v. ODJFS*, Athens County Court of Common Pleas, Case No. 15 CI 0028, p. 15 (“The art of creative estate planning is not lost on the Court. However, to allow a person to avail themselves of Medicaid long term care facility benefits during a period when they are being penalized by being placed in a restricted period for having improperly transferred funds for purposes of determining eligibility for services is not appropriate.”). As explained in *Dowler*, returning resources to an applicant means that the resources must be counted for the appropriate months during the original restricted-coverage period. *See also* former Ohio Adm.Code 5160:1-3-07(M)(2).


Medicaid is a needs-based program aimed at maximizing the use of personal funds for long-term care before relying on public funds. The Administrative Appeal Decisions properly applied federal and state Medicaid laws and rules in concluding that Mr. Kollar’s restricted-coverage period should begin in April 2015 and Ms. Ricci’s should begin in February 2015, based on the amounts reconveyed to Mr. Kollar through April 2015 and the amounts reconveyed to Ms. Ricci through February 2015 (as outlined in the Facts above).

Therefore, the Administrative Appeal Decisions are supported by reliable, probative, and substantial evidence, are in accordance with law, and are AFFIRMED.

Costs taxed to the two Appellants equally.

This is a final, appealable Order.

AUG 26 2016



DTS JUDGE MAUREEN A. SWEENEY

THE CLERK SHALL SERVE NOTICE
OF THIS ORDER UPON ALL PARTIES
WITHIN THREE (3) DAYS PER CIV.R.5