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IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

PERSEY TIGGS C/O INDIANHILLS HEALTH CARE GROUP, IN
Plaintiff

OHIO DEPARTMENT OF JOB AND FAMILY SERVICES, OFFICE
Defendant

Case No: CV-17-874398

Judge: MAUREEN CLANCY

JOURNAL ENTRY

96 DISP.OTHER - FINAL

ORDER AND OPINION.

OSJ.
COURT COST ASSESSED AS EACH THEIR OWN.
PURSUANT TO CIV.R. 58(B), THE CLERK OF COURTS IS DIRECTED TO SERVE THIS JUDGMENT IN A MANNER PRESCRIBED BY CIV.R. 5(B). THE CLERK MUST INDICATE ON THE DOCKET THE NAMES AND ADDRESSES OF ALL PARTIES, THE METHOD OF SERVICE, AND THE COSTS ASSOCIATED WITH THIS SERVICE.

OSJ

Judge Signature Date

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CUYAHOGA COUNTY

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STATE OF OHIO	)	IN THE COURT OF COMMON PLEAS
	) SS:	
CUYAHOGA COUNTY	)	CASE NO. CV-17-874398

PERCY TIGGS,

Appellant,

v.

OHIO DEPARTMENT OF JOB AND FAMILY SERVICES,

Appellee.

ORDER AND OPINION

Maureen E. Clancy, J:

This matter is before the Court as an Administrative Appeal from the Ohio Department of Job and Family Services (ODJFS) which discontinued Appellant's Medicaid benefits and denied a later re-application for the same benefits. The Appeal was timely filed, the transcripts of the prior proceedings were provided for the Court's review, the matter was fully briefed and an oral hearing was held on the record on June 9, 2017. Consistent with the following Order and Opinion, the Court hereby MODIFIES the ODJFS decision.

I. Factual Background

The Appellant was adjudicated incompetent by the Cuyahoga County Probate Court in May 2013, resides in a nursing home facility and was receiving Medicaid benefits through ODJFS to pay for those services. At the time he was declared incompetent, the Probate Court also appointed Appellant a personal guardian; however,

the authority of the guardian did not extend to the Appellant's estate. At or around this time, Indianhills Health Care Group, Inc., dba The Willows Health & Rehab Center (Willows) was designated the Appellant's "authorized representative" for the purposes of interacting with ODJFS for the application and renewal of Medicaid Benefits pursuant to 42 C.F.R. 435.923.

The Appellant's Medicaid benefits were terminated in September 2015 after ODJFS determined that the Appellant had access to "excess resources" that made him ineligible for Medicaid Benefits. However, while notice was mailed to Appellant of the termination of benefits, the record is not clear as to whether ODJFS ever provided notice of termination to Willows or Appellant's guardian. What is clear is that although the benefits were terminated, Appellant continued to receive Medicaid funds until August of 2016. At that time, the record shows that Willows became Appellant's authorized representative and then reapplied for Medicaid benefits; the denial of which ultimately lead to this Appeal. The alleged "excess resource" that made Appellant ineligible for benefits is a life insurance policy with a cash value of $5,289.40 currently held by the Appellant's estate.

On December 15, 2016, ODJFS issued a decision wherein it affirmed the determination that Appellant was ineligible for Medicaid benefits. ODJFS stated in its decision:

> "While we would agree that if the appellant cannot access the value of the resource, it would be unavailable and should not be counted for Medicaid purposes; however, we note that there is no evidence in the state hearing record to support the appellant's claim that he could not access the value of the policy. While the representative testified that the probate court magistrate would not allow the appellant access to the policy, there are no court documents or letter from the magistrate in state hearing record. Without some evidence to support

his claim that the policy is unavailable, we agree with the state hearing decision that the weight of the evidence supports the (ODJFS) denial [of benefits]."

Willows then filed this appeal on behalf of Appellant and raised three issues: 1) that ODJFS did not provide proper notice of the termination of benefits to either Appellant or Willows; 2) that the insurance policy at issue is not accessible to the Appellant and therefore should not be counted as an available resource in determining Appellant's eligibility for Medicaid benefits; and 3) that ODJFS is discriminating against the Appellant on the basis of his disability.

ODJFS argues that Willows does not have standing to file the instant appeal on behalf of Appellant Percy Tiggs, that notice was proper, that the insurance policy in question makes Appellant ineligible for benefits unless he can establish that it is inaccessible to him, and finally that no discrimination occurred.

II. Applicable Law

R.C. 5101.35 governs appeals from ODJFS determinations. 5101.35(E) provides that "An appellant who disagrees with an administrative appeal decision of the director of job and family services or the director's designee issued under division (C) of this section may appeal from the decision to the court of common pleas pursuant to section 119.12 of the Revised Code. The appeal shall be governed by section 119.12 of the Revised Code."

R. C. 119.12 defines the appropriate standard of review: "[t]he court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record and such additional evidence as the court has admitted, that the order is supported by reliable, probative, and substantial evidence and is in accordance with

law. In the absence of such a finding, it may reverse, vacate, or modify the order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law." See also *University of Cincinnati v. Conrad*, 63 Ohio St. 2d 108, 109-110 (1980).

III. Analysis

Standing

The record provided includes a document dated August 4, 2016, designating Willows as Appellant's authorized representative. The Court must determine whether Willows, as Appellant's authorized representative, has standing to bring this appeal.

42 C.F.R. 435.923 provides:

"(a)(1) The agency must permit applicants and beneficiaries to designate an individual or organization to act responsibly on their behalf in assisting with the individual's application and renewal of eligibility and other ongoing communications with the agency. Such a designation must be in accordance with paragraph (f) of this section, including the applicant's signature, and must be permitted at the time of application and at other times.

(2) Authority for an individual or entity to act on behalf of an applicant or beneficiary accorded under state law, including but not limited to, a court order establishing legal guardianship or a power of attorney, must be treated as a written designation by the applicant or beneficiary of authorized representation.

(b) Applicants and beneficiaries may authorize their representatives to—

(1) Sign an application on the applicant's behalf;

(2) Complete and submit a renewal form;

(3) Receive copies of the applicant or beneficiary's notices and other communications from the agency;

(4) Act on behalf of the applicant or beneficiary in all other matters with the agency."

ODJFS argues that while 42 C.F.R. 435.923(4) permits an authorized representative to "act on behalf of the applicant or beneficiary in all other matters with the agency," that an appeal filed in the Court of Common Pleas is not a "matter with the agency."

However, this Court finds that ODJFS' position goes against any notion of due process or fairness. It is illogical to permit an authorized representative to pursue all matters with ODJFS only to be stopped short when it comes to the final determination as to the Appellant's benefits. The Court notes that ODJFS has pointed to a recent decision from another Judge on this Bench in support of its assertion, but the facts of that case are clearly distinguishable inasmuch as there was no evidence of the appointment of the alleged authorized representative. Here it is undisputed that Willows is the Appellant's authorized representative.

Additionally, the District Court for the Northern District of Illinois recently addressed the issue of standing in *Doctors Nursing & Rehab. Ctr., LLC v. Norwood*, 2017 U.S. Dist. LEXIS 87015, N.D. Illinois No. 1:16-cv-9837, 9842, 9922, 10255, 10614, 1:17-cv-0104, 0640 (June 7, 2017). The Federal Court stated:

> "The regulatory text does not explicitly address whether a patient can authorize a Medicaid representative to file a lawsuit on his or her behalf. Defendant argues that the phrase 'matters with the agency' in 42 C.F.R. § 435.923(b)(4) should be construed to exclude bringing a suit against the agency. Plaintiffs counter that permitting authorized representatives to bring claims against the agency is necessary to ensure that beneficiaries can secure the Medicaid benefits to which they are entitled. The regulations might not explicitly sanction lawsuits, plaintiffs argue, but they also do not limit a beneficiary's power to assign authority to his or her representative.
>
> Defendant's restrictive interpretation of the authorized representative relationship does not comport with the language and purpose of the regulation. 42 C.F.R. § 435.923(b) provides three specific examples of duties that an authorized representative may perform in the course of representation, followed by one catch-all provision. The catch-all clause is written in broad terms. It states that a beneficiary can choose to authorize her representative to handle 'all other matters with the agency.' 42 C.F.R. § 435.923(b)(4). It is the beneficiary who sets the limits of representation, see 78 Fed. Reg. 42175, and the expansive language of this provision apparently permits beneficiaries to set these parameters quite broadly.

> There is no indication that the words 'with the agency' were included in the regulatory text to limit authorized activities to those internal to the applicable agency. Litigation . arguably involves 'matters with the agency' as well. A beneficiary's legal claim that an agency has deprived her of Medicaid benefits, for instance, is a matter in dispute with that agency. While the first three tasks listed in 42 C.F.R. § 435.923(b) are likely more common activities performed by authorized representatives, there is room in the regulation's text for the representative relationship, in unusual cases such as these, to require additional steps, like litigation, to secure a beneficiary's rights. So long as the beneficiary gives express authorization to his or her representative, as required by 42 C.F.R. § 435.923(a), the Medicaid regulations allow the authorized representative to initiate suit on the beneficiary's behalf. The healthcare provider plaintiffs may therefore remain in these suits."

This Court adopts the reasoning of the Illinois District Court. The record shows that the Appellant's guardian signed a Designation of Authorized Representative form on August 4, 2016, designating Willows as the authorized representative for the Appellant in all matters related to Medicaid. Therefore, the Court finds that the Appellant authorized Willows to represent him in all Medicaid-related matters, including the instant Appeal. Accordingly, the Court finds that Willows has standing to pursue this Appeal.

The Insurance Policy

Pursuant to federal law, Ohio requires Medicaid applicants to disclose all resources when applying for benefits. Those resources are then analyzed by ODJFS to determine if they exceed a certain "resource limit" that an applicant can legally use for his or her own support. The resource limit is currently set at $2,000. See generally 42 U.S.C. 1396a(a)(10)(A)(ii) and Ohio Adm.Code 5160:1-3-05.1.

In this case, it is undisputed that the Appellant's estate is in possession of a life insurance policy, the cash value of which exceeds $2,000, the current resource limit.

The dispute arises as to the Appellant's ability to access that policy and thereafter surrender it for cash. Indeed, the ODJFS hearing panel was faced with this same issue as cited above in its December 15, 2016, decision. The Appellant argues that only a guardian with authority and power over his estate can access the policy and that such a guardian has never been appointed. ODJFS argues, as the hearing panel decided, that the Appellant has not affirmatively shown that the policy is not accessible and it is therefore accessible and can be used as a resource that would exceed the resource limit for benefits.

Ohio Adm.Code 5160:1-2-01(F)(5) provides:

"When determining eligibility for an individual with a physical or mental impairment that substantially limits the individual's ability to access verifications, and who has not granted any person durable power of attorney, or who does not have a court-appointed guardian or a person with other legal authority and obligation to act on behalf of the individual, the administrative agency must:

(a) Determine if another person is available to assist with obtaining verifications or accessing the individual's means of self-support.

(i) If such a person is available, request the person assist with obtaining the verifications or accessing the individual's means of self-support.

(ii) If verifications are provided, or if means of self-support are accessed by the individual or on the individual's behalf by another person, the administrative agency must consider the verified criteria or means or self-support in the eligibility determination process.

(b) If no person is available to assist the individual:

(i) Refer the individual's case to the administrative agency's legal counsel and request counsel evaluate whether the matter should be referred to the probate court, adult protective services, or another entity deemed by the administrative agency's legal counsel to be appropriate. For cases referred to counsel for such evaluation, the administrative agency must also:

(a) Note in the individual's case record that verifications or means of self-support are not available and must not be considered a disqualifying factor until a means of access to those items is obtained or established, and

(b) Inform the administrative agency's legal counsel of any eligibility approval or denial.

(ii) Determine eligibility in accordance with Chapter 5160:1-2 of the Administrative Code, but without considering eligibility factors for which verification cannot be obtained or means of self-support that cannot be accessed because of the physical or mental impairment. Use the most reliable information available without delaying the determination of eligibility.

(iii) Redetermine eligibility once a means of access to verifications or means of self-support is obtained or established. If such access has not been obtained prior to a regularly-scheduled renewal, determine continuing eligibility using the most reliable information available."

The Appellant was adjudicated incompetent in May 2013 and it is undisputed that he cannot gain access to the insurance policy at issue by himself. Pursuant to Ohio Adm.Code 5160:1-2-01(F)(5) then, it is incumbent upon ODJFS to "determine if another person is available to assist with obtaining verifications or accessing the individual's means of self-support." In this case, while Willows may be the authorized representative for the Appellant, it is not clear if they are able to "assist" ODJFS in obtaining the required verifications. Indeed, it is also unclear to the Court if the Appellant's personal guardian has such ability. If these two parties are unable to assist ODJFS in obtaining verifications and accessing the Appellants means of self-support, i.e. the insurance policy, then pursuant to the Ohio Administrative Code, the responsibility falls to ODJFS to refer the matter to its legal counsel for possible referral to the Probate Court. It is clear to the Court that this would have been the proper course of action for ODJFS to take in this matter.

IV. Conclusion

Based upon the foregoing, the Court hereby MODIFIES the December 15, 2016 decision of the ODJFS hearing panel such that ODJFS is ORDERED, with Willow's assistance, to determine if either Willows or the Appellant's guardian can assist in accessing the insurance policy at issue. If indeed neither party can assist ODJFS, ODJFS is then ORDERED to refer this matter to ODJFS legal counsel for further review.

7/11/2017

MAUREEN E. CLANCY, JUDGE