BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES

In the Matter of)	
)	
E & M D)	OAH No. 18-1037-MDE
)	Agency No. 05951665/05951666

DECISION

I. Introduction

E D and M D are an elderly couple in difficult financial circumstances. Their applications for regular Medicaid were denied because they had a whole-life insurance policy with a cash value higher than the resource limit for the program. They appealed, asking for guidance on what they could do to become eligible.

The case was heard on October 31, 2018, with testimony taken from 84-year-old E D and from a Division of Public Assistance representative, Sally Dial. Although Ms. Dial could not directly advise the Ds, she offered to point them to resources to help them understand the program rules.

This decision concludes that the Ds original application was appropriately denied. This decision does not affect any subsequent application made after their resources have been reduced.

II. Facts

No facts are in dispute. On August 27, 2018, Mr. and Mrs. D applied for Medicaid.¹ At the time of the application, M D held a paid-up \$10,000 whole-life policy with a cash value of \$8,691.59.² The Ds hoped this policy, which the family had held since 1964, would cover burial costs when they eventually passed away.³

The Division of Public Assistance denied the application on the basis that the cash value of the policy exceeded the resource limit for regular Medicaid eligibility.⁴ The Division did grant the Ds a different kind of medical benefit, known as "SLIM-B" Medicaid,⁵ under which Medicaid would pay their Part B Medicare premiums.⁶ This was done because the resource limit

Exhibit 2.2. The application was dated in July but not received until August.

Exhibt 3.2; testimony of E D.

Testimony of E D.

Exhibits 5.2 and 5.3. The Division also found them over the income limit in one month, but that issue was not contested on appeal and was not an ongoing obstacle to eligibility.

Specified Low Income Medicare Beneficiary Medicaid.

⁶ Exhibits 6 and 6.1.

for that benefit is higher than the one for regular Medicaid. The Ds appealed because they feel they need regular Medicaid.

III. Discussion

In an appeal hearing such as this one, applicants for new benefits, such as the Ds, have the burden of proving their eligibility by a preponderance of the evidence.⁸

For purposes of eligibility, a resource is

any real or personal property that an applicant, together with his or her spouse . . . owns and can convert to cash to be used for his or her support and maintenance. 9

M D's whole-life policy is property that can be converted to cash and therefore it is a resource. Individuals who live with spouses can only be eligible for regular Medicaid if the couple has "non-excludable" resources that do not exceed \$3,000 in total value. ¹⁰ The cash value of Mr. D's policy exceeds that amount by \$5,691.59.

Certain resources are excluded from the resource calculation. Term insurance is excluded, ¹¹ but the whole-life policy is not term insurance. Burial insurance is excluded, ¹² but the whole-life policy is not burial insurance. Whole-life insurance can be excluded if its face value does not exceed \$1,500, ¹³ but since the face value of Mr. D's policy is \$10,000, this exception does not apply. The regulations are explicit that "if the face value of life insurance exceeds \$1,500, its cash surrender value is a resource." ¹⁴

These regulations leave no room for excluding the whole-life policy from the resource calculation. This case is very similar to *In re C.S.*, ¹⁵ decided on behalf of the Commissioner of Health and Social Services in 2013. There, a whole life policy with a cash value of \$6,533.10 was found to disqualify an individual from regular Medicaid. As in this case, the individual was awarded SLIM-B benefits instead. The Department has been consistent in its application of the regulation making whole life policies countable as resources whenever their face value exceeds the \$1,500 threshold.

⁷ Testimony of Sally Dial.

⁸ 7 AAC 49.135.

⁹ 7 AAC 40.260(a).

¹⁰ 7 AAC 40.270(a).

¹¹ 7 AAC 40.280(a)(7).

¹² *Id*.

¹³ *Id*.

¹⁴ I.d.

OAH Case No. 13-0390-MDE (published at https://aws.state.ak.us/OAH/Decision/Display?rec=2140).

Testimony at the hearing made it clear that the policy could be liquidated and spent on a variety of things, such as paying down debt or fixing a car, and it would no longer be a disqualifying resource. However, that step had not been taken at the time of the hearing.

IV. Conclusion

The Division's denial of E and M D's August 27, 2018 applications for regular Medicaid is affirmed. This decision does not restrict their eligibility as soon as their resources are within the program limits.

DATED this 14th day of December, 2018.

By: Signed
Signature
Andrew M. Lebo
Name
Administrative Law Judge
Title

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]

Adoption

The undersigned adopts this Decision, under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 2nd day of January , 20 19 .

By: Signed
Signature
Andrew M. Lebo
Name
Administrative Law Judge
Title

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]