

Matter of Wolf v New York State Dept. of Health

2010 NY Slip Op 31180(U)

April 30, 2010

Supreme Court, Nassau County

Docket Number: 21666/09

Judge: Denise L. Sher

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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DENISE L. SHER
Acting Supreme Court Justice

In the Matter of the Application of

TRIAL/IAS PART 32
NASSAU COUNTY

THOMPSON E. WOLF, Preliminary Executor of the Estate of
FAITH WOLF,

Petitioner,

Index No.: ~~2~~21666/09
Motion Seq. No.: 01
Motion Date: 12/10/09
XXX

For a Judgment pursuant to Article 78 of the CPLR

- against -

NEW YORK STATE DEPARTMENT OF HEALTH,
NEW YORK STATE OFFICE OF TEMPORARY AND
DISABILITY ASSISTANCE, NASSAU COUNTY
DEPARTMENT OF SOCIAL SERVICES and
NEW YORK STATE ATTORNEY GENERAL'S OFFICE,

Respondents,

The following papers have been read on this motion:

	<u>Papers Numbered</u>
<u>Notice of Petition, Verified Petition and Exhibits and Memorandum of Law</u>	<u>1</u>
<u>Verified Answer, Objections in Point of Law and Exhibits</u>	<u>2</u>
<u>Answer of the State Respondents and Exhibits</u>	<u>3</u>
<u>Reply Memorandum of Law in Further Support of Petition</u>	<u>4</u>

Upon the foregoing papers, it is ordered that the application is decided as follows:

Application by the petitioner pursuant to CPLR Article 78 to annul the determination tendered by the Department of Health designee after a fair hearing on the grounds that it was arbitrary and capricious and affected by an error of law is denied and the petition is hereby

dismissed.

BACKGROUND

In this proceeding petitioner, the son and preliminary executor of the Estate of Faith Wolf¹, seeks to annul the decision of respondent Department of Health [Administrative Law Judge Jonathan Kastoff] which, after a fair hearing, affirmed respondent Nassau County Department of Social Services' ("DDS") valuation of decedent Faith Wolf's life estate in premises known as One Dogwood Lane, Glen Head, New York which was sold for the purchase price of \$575,000.00 in August, 2008, four months after she had been approved for Medicaid institutional benefits and entered Grace Plaza Nursing Home. At the closing of title all sale proceeds were turned over to petitioner and his wife. Respondent DSS was not notified of the sale of the homestead until October 2008.

Decedent had transferred ownership interest of the homestead to petitioner, her son, and his wife, Susan Wolf, by deed dated November 18, 1991, reserving a life estate therein. A reverse mortgage, taken out on the property on February 21, 2003 was satisfied at the closing on or about August 25, 2009. Although no proof was provided to substantiate the claim, petitioner alleges that the proceeds of the reverse mortgage were used to pay Faith Wolf's living expenses, including the cost of at-home care, before she entered the nursing home. After deductions for satisfaction of the reverse mortgage, and closing costs related to brokerage commission, title fees, transfer tax fees and attorneys' fees, the net proceeds from the sale were \$198,212.29.

After respondent DSS was notified of the sale of the property, a "Notice of Intent to Discontinue/Change Medical Assistance Coverage" was issued by said respondent on February 18, 2009. Notwithstanding her ineligibility, Medicaid assistance had been furnished to Faith Wolf during the six month period between September 1, 2008 and March 1, 2009, because relevant information *vis a vis* the sale of the homestead in which Medicaid recipient Faith Wolf had retained a life estate was not timely disclosed to respondent DSS. Respondent DSS valued the life estate interest transferred by Faith Wolf at the time of sale at \$120,750.00, i.e., 0.21 of \$575,000.00. This amount was considered an uncompensated transfer resulting in the imposition

¹Faith Wolf died on July 30, 2009 at the age of 99. A Certificate of Death was issued on August 3, 2009.

of a penalty period² of 11.44 months commencing September 1, 2008 and ending August, 2009.

Petitioner maintains that respondent DSS incorrectly calculated Faith Wolf's life estate interest in the property in that it failed to factor in closing costs relative to the sale and payoff of the reverse mortgage in the valuation process. According to petitioner, the correct value of decedent Faith Wolf's life estate is \$41,624.58, with a penalty period of 3.94 months: not \$120,750.00 with a penalty period of 11.44 months. Under this scenario, petitioner maintains Faith Wolf was eligible for Medicaid Institutional Benefits from April 24, 2008 through and including February 28, 2009 and from April 1, 2009 through the date of her death, July 30, 2009.

After a hearing held on May 7, 2009, Administrative Law Judge Jonathan Kastoff ruled that respondent DSS's determination that Faith Wolf was not eligible under Medicaid for nursing facility services under the Long Term Home Care Program because she transferred assets valued at \$120,750.00 for less than fair market value was correct. Although he found that the length of the penalty period (11.44 months) was correct when originally determined, he directed that the penalty period be recalculated and modified inasmuch as a portion of the proceeds of the life estate, i.e., \$41,627.16 were returned to respondent DSS on March 5, 2009.

In his decision, the Administrative Law Judge specifically points to Administrative Directive 96 ADM-8 which defines a life estate as a limited interest in property generally in the form of a life lease on property that the person is using, or has used for a homestead. If a Medicaid recipient possessing a life estate sells the life estate interest, the proceeds of this liquidation is a countable resource in determining that person's Medicaid assistance eligibility. Pursuant to the Directive:

“Social services districts must use a reasonable method of calculating the value of a life estate, based on the current fair market value of the property and the age of the person. A life estate and remainder interest table published by the federal Health Care Financing Administration in its State Medicaid Manual is

²During a penalty period a person may not receive Medicaid coverage for the cost of nursing facility services either in a nursing facility or as home-based waived services.

attached for districts. (Attachment V). This table sets forth percentages of fair market value corresponding to the values of the life estate and the remainder interest, based on the age of the person possessing the life estate. Districts may, but are not required, to use this table in calculating the value of life estates and remainder interests.”

He notes that

“[t]he value of the life estate is the fair market value of the property, not the net available proceeds of the sale of the property. There is no provision in the Regulations to reduce the value of the life estate for outstanding mortgages, reverse or otherwise, and closing costs. The Agency properly computed the value of the life estate once it was sold, and properly computed the appropriate penalty period. Therefore, the agency’s determination that the Appellant was ineligible for nursing home services under the Medical Assistance Program must be affirmed.”

He specifically rejected petitioner’s contention that the existing prior lien i.e., reverse mortgage, is superior to Medicaid’s claim on the property.

Principal Administrative Law Judge of New York State Office of Temporary and Disability Assistance, after review of the fair hearing record and petitioner’s request for reconsideration of the fair hearing decision (July 20, 2009) based on an error of law, found no basis upon which to disturb the challenged decision explaining as follows:

“the life interest in a property is an identifiable limited interest separate and apart from the property itself. The life interest provides the owner with the right to enjoy the property for so long as the life tenant is alive, and its value is determined without regard to any underlying encumbrances to such property. While the agency will typically look to the value of a non-exempt homestead as an available resource in determining Medicaid

eligibility, the agency will not require an applicant with a life interest in property to sell the property nor will the agency place a lien on such property as a condition of receiving Medicaid benefits.”

He further noted that

“when an applicant transfers a home and retains a life interest therein, the agency will determine the amount of any transfer by looking at the gross value of the home, determining the life interest based on the life tenant’s age and the gross value of the home, and then subtracting the amount of the calculated life interest from the gross value to determine the amount of transfer. In an event such as this, where a previously transferred property with a retained life estate is subsequently sold, it would be inconsistent for the agency to now value the life estate in a manner different than it did when the homestead was held by the remainder-man with the life interest fully intact. As was noted earlier, the life estate is a limited interest in real property with a value unto itself, and the agency properly and consistently determines such value based on the gross value of the property.”

ANALYSIS

Medicaid is a jointly funded federal and state medical assistance program established by title XIX of the Social Security Act (42 USC § 1396 *et seq.*) and is implemented in New York State by Article 5, Title 11 of the Social Services Law. The purpose of the program is to pay for necessary medical care for eligible individuals whose income and resources are insufficient to meet the cost of medical care. *See Costello on Behalf of Stark v. Geiser*, 85 N.Y.2d 103, 623 N.Y.S.2d 753 (1995). Social Services will perform an audit (look-back) of the applicant’s assets to identify all uncompensated transfers made by that person. Most such transfers will result in a penalty or ineligibility period for Medicaid assistance. Although certain transfers are exempt

from penalty, the transfer at issue herein is not such a transfer. *Jennings v. Commissioner, N.Y.S. Dept. of Social Services*, 71 A.D.3d 98, 893 N.Y.S.2d 103 (2d Dept. 2010).

It is well established that judicial review of an administrative determination is limited to whether such determination was arbitrary or capricious or without a rational basis in the administrative record. *See Cohen v. State*, 2 A.D.3d 522, 770 N.Y.S.2d 361 (2d Dept. 2003). In reviewing a Medicaid eligibility determination made after a fair hearing, the court must review the record as a whole to determine whether the agency's decision is supported by substantial evidence and not affected by an error of law. Substantial proof is such relevant proof as a reasonable mind might accept as adequate to support a conclusion or ultimate fact. The petitioner bears the burden of demonstrating eligibility. *See Barbato v. New York State Dept. of Health*, 65 A.D.3d 821, 884 N.Y.S.2d 525 (4th Dept. 2009) (citations and internal quotation marks omitted), *leave to appeal denied* 13 N.Y.3d 712 (2009).

Once it is determined that the agency's conclusion has a sound basis in reason, the judicial function ends. *See Smith v. New York Div. of Housing and Community Renewal*, 27 A.D.3d 1063, 811 N.Y.S.2d 545 (4th Dept. 2006). The determination of an agency, acting pursuant to its authority and within the sphere of its expertise, is entitled to deference. *See Tockwotten Associates, LLC v. New York State Div. of Housing and Community Renewal*, 7 A.D.3d 453, 777 N.Y.S.2d 465 (1st Dept. 2004). Even if different conclusions could be reached as a result of conflicting evidence, a court may not substitute its judgment for that of the agency when the agency's determination is supported by the record. *See Tolliver v. Kelly*, 41 A.D.3d 156, 837 N.Y.S.2d 128 (1st Dept. 2007), *lv denied* 9 N.Y.3d 809 (2007). The Department of Health's determination need only be supported by a rational basis in order to be upheld. *See County of Monroe on Behalf of Monroe Community Hospital v. Kaladjian*, 83 N.Y.2d 185, 608 N.Y.S.2d 942 (1994). Moreover, it is beyond cavil that an agency's interpretation of the statutes and regulations it is responsible for administering must be given greatest weight be upheld if it is reasonable. *See ATM One, LLC v New York State Div. of Housing and Community Renewal*, 37 A.D.3d 714, 831 N.Y.S.2d 436 (2d Dept. 2007).

Pursuant to Social Services Law § 366(5)(e)(3), for transfers made on or after February 8, 2006, in determining the medical assistance eligibility of an institutionalized individual, any transfer of an asset by the individual for less than fair market value, made within or after the look back period, renders the individual ineligible for nursing facility services for a

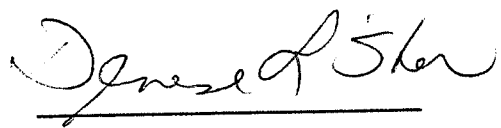
period equal to the total, cumulative uncompensated value of all assets transferred during or after the look back period, divided by the average monthly cost of the nursing facility services provided to a private patient for a given period of time at the time of application as determined pursuant to department regulations.

Having carefully reviewed the arguments advanced by petitioner *vis a vis* respondent DSS's purported error in calculating the value of Faith Wolf's life estate in One Dogwood Lane, and according deference to respondents' determination which comports with applicable guidelines, the Court finds no basis to disturb the challenged decision and affirmances thereof on the basis of irrationality.

Notwithstanding arguments to the contrary advanced by petitioner, inasmuch as § IV(J)(b) of Administrative Directive 96-ADM8 provides that the value of a life estate is based on the current fair market value of the property and the age of the person, and is silent on the issue of deduction of mortgages or other items, it cannot be said that respondents' methodology of calculating the value of the life estate was arbitrary and capricious, i.e., lacks a rational basis.

This constitutes the Decision and Order of this Court.

ENTER:



DENISE L. SHER, A.J.S.C.

XXX

Dated: Mineola, New York
April 30, 2010

ENTERED
MAY 06 2010
NASSAU COUNTY
COUNTY CLERK'S OFFICE