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**JUDGMENT ON THE PLEADINGS**

**Trial Court of Massachusetts  
The Superior Court**



DOCKET NUMBER

1877CV00071

Thomas H. Driscoll, Jr., Clerk of Courts

CASE NAME

Pauline Coko  
vs.  
Daniel Tsai Director Of the Office of Medicaid, Executive Office of  
Health and Human Services

COURT NAME & ADDRESS

Essex County Superior Court - Salem  
J. Michael Ruane Judicial Center  
56 Federal Street  
Salem, MA 01970

This action came before the Court, Hon. Timothy Q Feeley, presiding, upon a motion for judgment on the pleadings,

After hearing or consideration thereof,  
the court having allowed plaintiff's motion for judgment on the pleadings

**It is ORDERED AND ADJUDGED:**

That judgment enter in favor of the plaintiff, Pauline Coko. Plaintiff's long-term care benefits must start effective January 10, 2016. The decision of the Office of Medicaid dated December 14, 2017 is hereby VACATED.

DATE JUDGMENT ENTERED  
12/13/2018

CLERK OF COURTS/ ASST. CLERK  
X

11  
COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT  
CIVIL ACTION  
NO. 2018-00071-A

PAULINE COKO,  
Plaintiffs

vs.

DANIEL TSAI, Director of the Office of Medicaid,  
Executive Office of Health and Human Services  
of the Commonwealth of Massachusetts,  
Defendant

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**MEMORANDUM AND ORDER ON PLAINTIFF'S  
MOTION FOR JUDGMENT ON THE PLEADINGS**

**PROCEDURAL BACKGROUND**

Plaintiff Pauline Coko ("Coko") commenced this action on January 11, 2018, by filing a complaint seeking judicial review, under G. L. c. 30A, § 14, of the December 14, 2017 decision of the Office of Medicaid, Board of Hearings (the "Board"), rendering final the decision by MassHealth that Coko was not immediately eligible for MassHealth long-term care benefits. [D. 1]. MassHealth approved Coko's application for long-term benefits, but with a period of ineligibility due to disqualifying transfers of assets.

Coko, after her December 4, 2015 admission to a nursing home, applied for

MassHealth long-term benefits with a requested start date of January 10, 2016. MassHealth approved the application, but moved the start date to August 7, 2016 to cover the amount of disqualifying asset transfers it determined needed to be recouped. The amount of disqualifying transfers found by MassHealth totaled \$68,632, which translated into 193 days of ineligibility. It is the decision to delay Coko's receipt of long-term benefits during the "period of ineligibility" that is the focus of this Chapter 30A appeal.

MassHealth determined that the following were disqualifying transfers:

1. \$25,000 in disbursements from a Northshore Bank account;
2. \$19,700 in disbursements from a second Northshore Bank account;
3. \$22,567 value of a life estate conveyed to her daughter;
4. \$1,365 value of a 2003 Mitsubishi transferred to a granddaughter.

A hearing was conducted pursuant to G. L. c. 118E, Chapter 30A, and the rules and regulations promulgated thereunder. The appeal decision was rendered by the hearing examiner. For reasons stated in a written memorandum decision, Coko's appeal was denied. This timely appeal under Chapter 30A was commenced. The administrative record has been filed, and a hearing on Coko's motion for judgment on the pleadings [D. 10] was held on December 4, 2018. For reasons discussed below, Coko's motion for judgment on the pleadings is **ALLOWED**. Coko's

MassHealth long-term care benefits must start effective January 10, 2016.

## DISCUSSION

### **1. Chapter 30A Standard of Review by this Court**

Judicial review of an appeal from an agency decision is limited to the administrative record. G. L. c. 30A, § 14(5); see also *Cohen v. Board of Registration in Pharm.*, 350 Mass. 246, 253 (1966). The party challenging the decision of the agency bears the burden of demonstrating that the decision is invalid. *Merisme v. Board of Appeals on Motor Vehicle Liab. Policies & Bonds*, 27 Mass. App. Ct. 470, 474 (1989). The reviewing court's approach is "one of judicial deference and restraint, but not abdication." *Arnone v. Commissioner of Dep't of Soc. Servs.*, 43 Mass. App. Ct. 33, 34 (1997) (further citation omitted). When reviewing an agency decision, the court is required to give "due weight to the experience, technical competence, and specialized knowledge of the agency, as well as to the discretionary authority conferred upon it." G. L. c. 30A, § 14(7). The agency's decision must be supported by substantial evidence. *Id.* In assessing whether the underlying evidence is substantial, the court cannot displace an agency's decision between two fairly conflicting views, even though the court may have justifiably made a different decision. *Hotchkiss v. State Racing Comm'n*, 45 Mass. App. Ct. 684, 695-696 (1998). "Substantial evidence is such evidence as a reasonable mind might accept as

adequate to support a conclusion taking into account whatever in the record detracts from its weight.” *Lycurgus v. Director of Div. of Employment Sec.*, 391 Mass. 623, 627-628 (1984) (internal quotations omitted). The court must consider the record as a whole, but as long as the agency's findings are properly supported, the decision will not be disturbed by a reviewing court. *Tri-County Youth Programs, Inc. v. Acting Deputy Dir. of the Div. of Employment & Training*, 54 Mass. App. Ct. 405, 408 (2002).

G. L. c. 30A, § 14(7) provides in pertinent part:

The court may affirm the decision of the agency, or remand the matter for further proceedings before the agency; or the court may set aside or modify the decision, or compel any action unlawfully withheld or unreasonably delayed, if it determines that the substantial rights of any party may have been prejudiced because the agency decision is –

- (a) in violation of constitutional provisions; or
- (b) in excess of the statutory or jurisdiction of the agency; or
- (c) based on an error of law; or
- (d) made upon unlawful procedure; or
- (e) unsupported by substantial evidence; or
- (f) unwarranted by facts found by the court on the record as submitted or as amplified under paragraph (6) of this section, in those instances where the court is constitutionally required to make independent findings of

fact; or

- (g) arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with law.

## 2. Applicable Regulations

MassHealth will deny payment for nursing facility services to an otherwise eligible resident of a nursing facility who transfers “countable resources for less than fair-market value during or after the period of time referred to as the look-back period.” 130 CMR 520.018(B). Since February 2006, the look-back period has been sixty months. Certain transfers during the look-back period are permissible or exempted, including the following:

In addition to the permissible transfers described in 130 CMR 520.019(D) [and exempted transfers described in 130 CMR 520.019(J)], the MassHealth agency will not impose a period of ineligibility for transferring resources at less than fair-market value **if the nursing-facility resident or the spouse demonstrates to the MassHealth agency’s satisfaction that**

**(1) the resources were transferred exclusively for a purpose other than to qualify for MassHealth; or (2) the nursing-facility resident or spouse intended to dispose or the resource at either fair-market value or for other valuable consideration. A valuable consideration is a tangible benefit equal to at least the fair-market value of the transferred resource. (Emphasis added)**

\* \* \* \*

[Permissible Transfer]: The nursing-facility resident transferred the home he or she used as the principal residence at the time of transfer and the title to the home to one of the following persons:

(d) the nursing-facility resident's child (other than the child described in 120 CMR 520.019(D)(6)(B)) who was living in the nursing-facility resident's home for at least two years immediately before the date of the nursing-facility resident's admission to the institution, **and who, as determined by the MassHealth agency, provided care to the nursing-facility resident that permitted him or her to live at home rather than a nursing facility.** (Emphasis added).

### 3. Analysis

The hearing examiner made nine findings of fact by a preponderance of the evidence. None of them are controversial, or particularly helpful. Essentially, they merely recount the undisputed procedural history of the case, and not much else. There are no factual findings about matters of controversy, such as the application of the caretaker-child exception to the transfer of Coko's life estate in her home, except the date of the transfer. There are no factual findings about the claimed use of the disbursements from the two bank accounts, except the gross amounts of disbursements. There are no factual findings about the transfer of the Mitsubishi to the granddaughter, except the year of transfer.

The absence of factual findings appears to be intentional. The hearing examiner did not want to accept the proffered evidence from Coko about the

purported disqualifying transfers because the examiner apparently did not believe the proffered evidence was sufficient to carry Coko's burden to show that the transfers were not disqualifying transfers. Apparently, because the hearing examiner thought the proffered evidence was insufficient, or not credible, she thought she could ignore it and deny the appeal. In so doing, she acted arbitrarily, capriciously, and abused her discretion.

Starting with the transfer of the life estate, Coko submitted copies of deeds, medical records, an elderly services records review, and affidavits of Coko and her daughter. Additionally, the examiner did find as a matter of fact that Coko was enrolled since December 2013 in the Enhanced Community Options Program, which is a non-Medicaid program for consumers who are clinically eligible for nursing home admission under MassHealth guidelines. The examiner found the proffered materials insufficient to support the child-caretaker exception, without finding what portions of the proffer she accepted/believed and what portions she did not accept/believe. Apparently, MassHealth requires a signed letter from a medical provider outlining the care provided by the daughter and that the care allowed the appellant to remain at home in order to resolve the caretaker child issue. Such a letter is not required by regulation, even if it is required by practice. It was arbitrary, capricious, and an abuse of discretion for the examiner not to recognize and accept



the proffered affidavits, records, and records review, which should have been accepted as an alternative means of establishing Coko's entitlement to the child-care taker exception. All the facts necessary to meet Coko's burden to establish entitlement to the child-care taker exception were in the record, and they should have been accepted as meeting the claimant's burden.

As to the disbursements from the two checking accounts, the examiner again was arbitrary, capricious, and abused her discretion in not accepting the supporting bank documents (including checks) and the affidavit of Coko to conclude that the transfers were exclusively for a purpose other than to qualify for MassHealth. Coko is eighty-eight years old. She had been homebound for well more than two years before her nursing home admission. Her daughter lived above her in the same house. Her daughter carried the costs of the house, but Coko still had every-day living expenses, as she asserted in her affidavit. Coko swore under oath that the bank records reflect checks she drew to her daughter and two grandchildren, who would cash the checks, and return the money to her so that she could pay her cash living expenses. These bank records also reflect numerous checks drawn to various third-party providers of goods and/or services. There is nothing in the record to support a finding that Coko was not truthful in her affidavit. Faulting her, as the examiner apparently did, for not obtaining and maintaining every grocery store receipt is not

a realistic burden to put up upon an elderly woman after the fact. She was spending her money in order to stay out of a nursing home, with the hope of never needing admission. She could not predict her future medical/nursing needs or life expectancy, and she should not be penalized because she did not maintain records of her cash expenditures. The examiner made no factual findings that Coko was being untruthful, or that the disbursements were transfers intended to qualify for MassHealth long-term care. The examiner was arbitrary, capricious, and abused her discretion in not accepting Coko's bank records, checks, and affidavit as establishing that her bank account disbursements were transfers exclusively for a purpose other than to qualify for MassHealth.

As for the transfer in 2015 of Coko's 2003 Mitsubishi to her granddaughter, the examiner's disqualification of the transfer was arbitrary, capricious, and an abuse of discretion. In her analysis upholding the transfer as a disqualified transfer, the examiner stated: "Her (Coko's) affidavit states that she did not wish to pay for insurance and maintenance for a car she was no longer using, and that the care would allow her granddaughter to travel from NH to help her with tasks such as shopping and taking her to medical appointments." The examiner made no finding that the proffered explanation of the transfer was not credible. Coko was homebound and did not drive, and the examiner made no factual finding to the contrary. Transferring the

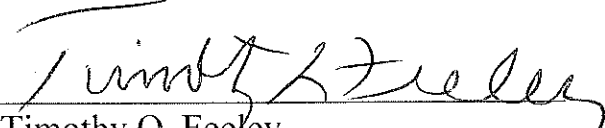
vehicle saved Coko's assets by eliminating insurance and maintenance costs. It was arbitrary, capricious, and an abuse of discretion not to find the transfer of the Mitsubishi to have been solely for a purpose other than to qualify for MassHealth.

A general comment is in order. This court understands the difficult challenge MassHealth has in ensuring that claimants do not make less than fair-market transfers of assets during the look-back period in order to advance their eligibility for MassHealth long-term care benefits. The court has no doubt that many claimants engage in such prohibited transfers. But MassHealth cannot presume that all look-back transfers were intended to speed-up eligibility for MassHealth. The court is confident that MassHealth, with its experience in this area, can make informed judgments as to when claimants' look-back transfers are disguised below-market value transfers for the purpose of qualifying for MassHealth, and when they are not. If transfers during the look-back period are declared to be non-qualifying transfers, there must be evidence in the record, and an explanation from the examiner, as to why proffered explanations are not credible and are attempts to disguise non-qualifying transfers. There is nothing in the record that suggests any manipulation by Coko or her family in order to advance her MassHealth eligibility. Coko was elderly, medically infirm, but still, with family assistance, living at home. She had to have living expenses, so the bank account disbursements were to be expected, and do not

appear to be out-of-line with reasonable expenses for an elderly woman. The support she received from her family, helping delay her eventual admission to a nursing home should be commended, not penalized. This is not a case where explanations were not offered in sworn statements and in the form of third-party records, or where any lack of credibility or suggestion of deceit is evidenced in the record. Good faith efforts were made by Coko and her family to support the challenged transfers. There is no reason apparent in the record why Coko's proffered explanations and submissions should not have accepted as credible and sufficient to support a January 10, 2016 start date for her receipt of MassHealth long-term care benefits.

**ORDER**

Coko's motion for judgment on the pleadings [D. 10] is **ALLOWED**. Subject to appeal, Coko's MassHealth long-term care benefits must start effective January 10, 2016.

  
Timothy Q. Feeley  
Associate Justice of the Superior Court

December 13, 2018