IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

LORRAINE RAMUNNO, ON BEHALF OF HEDWIG McCLAIN,	)	
Appellant,	)	
v.	)	C.A. No.: 13A-06-005 FSS
DELAWARE DEPARTMENT OF HEALTH AND SOCIAL SERVICES, DIVISION OF SOCIAL SERVICES,	)	
Appellee.	)	

Submitted: November 7, 2013
Decided: February 28, 2014

ORDER

***Upon Appeal from the Department of Health and Social Services* –**
REVERSED AND REMANDED

1. This is an appeal from a penalty imposed by the Department of Health and Social Services on Appellant's long-term Medicaid benefits. Appellant argues against the penalty because cash transferred to her daughter was deferred rent due on an oral lease and was for fair consideration. Here, the court must consider whether the Department properly found Appellant's lease, which the Department found both existed and was for fair rent, did not allow rent deferral.

2. From April 2001 to June 2011, Appellant lived in a furnished three bedroom home owned by her daughter, Ms. Ramunno. Appellant and Ms. Ramunno orally agreed rent would be $1,000.00 per month, but Appellant actually paid $500.00 per month. There was no written agreement, and the lease's terms, including the unpaid $500.00 per month, are at the case's heart. Appellant alleges the agreement contemplated using her 401k to cover the arrears when the money became available in 2011.

3. In September 2011, as anticipated, Ms. Ramunno cashed Appellant's 401k receiving the full $43,866.00 net distribution. In October 2011, Appellant applied for long term care Medicaid benefits. Benefits were granted, but with a 206-day penalty imposed because the 401k funds were deemed a transfer without fair consideration. A hearing was held April 16, 2013.

4. The landlords, Mr. and Ms. Ramunno, testified the agreed rent was $1,000.00 per month, but due to Appellant's limited cash flow, only $500.00 would be paid each month. Appellant would pay the arrears as additional money came available, but no later than when Appellant turned 70 years old and could access her 401k without penalty. Ms. Ramunno asserts the 401k funds were payment of arrears and therefore not a transfer without fair consideration.

5. The Department asserted there was no debt, so the transfer was without fair consideration. The Department also argued if there had been an oral lease as alleged, it was void under the statute of frauds.

6. Appellant suffers from Alzheimer's and could not testify. Her brother, Mr. Biedrzycki, has durable power of attorney and lived with Appellant from 2006 through 2011. Mr. Biedrzycki testified Appellant asked him to pay her half the rent. Initially he paid Appellant $250.00 per month, then $375.00 per month when the rent increased in 2011. He also testified that he believed his portion of the rent was the total he owed.

7. On May 17, 2013, a hearing officer affirmed the Department. First, the officer found the property's fair market value was $1,700.00 per month. The officer further found there was a month-to-month rental agreement for $1,000.00, which he defined as an agreement where "all contractual terms must be completed within one month." Accordingly, he concluded the oral rental agreement here could not have a deferred rent provision. The officer also found if a deferred rent provision were legally permissible, it factually did not exist here because there was no consideration for modifying the original $1,000.00 agreement and "allowing arrears in rent to accumulate for up to ten years." Lastly, the officer held the statute of frauds does not apply here because it is inapplicable to month-to-month leases.

8. Appellant appealed pursuant to 31 *Del.C.* § 520, alleging three errors. First, as a matter of law, a month-to-month lease does not require all terms be completed within one month. For example, a debt action for arrears is permitted for month-to-month leases within the three year statute of limitations for all breach of contract actions.[1] Therefore, the $500.00 now / $500.00 deferred arrangement was valid. And, at the very least, if the lease was simply for $1,000.00 per month, as the hearing officer found, Ms. Ramunno can sue for the unpaid rent. Second, if there was an unenforceable agreement, quantum meruit entitles Ms. Ramunno to unpaid rental fees and other expenses accrued during the lease. Lastly, the hearing officer's finding that there was no consideration is contrary to the evidence, because he also found the fair market value was $1,700.00 per month.

9. Appellee argues Appellant failed to meet her burden. Delaware's Medicaid regulations presume that any asset transferred for less than market value within the 60-month "look back" period establishes a presumption that the transfer's purpose was to make the applicant eligible. Appellant was provided the required notice and opportunity to rebut the presumption, but failed to meet her burden. Further, pursuant to 16 *Del. Admin. C.* 5100-20350.13, "verbal statements [about Applicant's intentions] are not sufficient evidence." Appellee also asserts

[1] 10 *Del.C.* § 8106(a).

Appellant's argument regarding a private debt cause of action under the landlord tenant code does not factor into the Department's penalty determination. Essentially, Appellee claims the hearing officer's finding there was no consideration is a fact determination supported by sufficient evidence and should not be disturbed.

10. A hearing officer's decision is subject to judicial review pursuant to 31 *Del.C.* § 520. The standard of review is whether the decision is free of legal error and supported by substantial evidence.[2] The appeal is on the record and "any factual findings ... that are supported by substantial evidence on the record as a whole" will be sustained.[3] This court may not remand a case brought to it under 31 *Del.C.* § 520 for further findings as the statute does not grant that power.[4]

11. The core of this hearing was the 206-day penalty imposed on Appellant. The court recognizes the penalty's important purpose of protecting the state's resources from fraud. Accordingly, the penalty and the burden on Appellant to demonstrate consideration for any transfers vindicate the statute. Implicit in the hearing officer's findings, however, is the notion that were Appellant not living in the house, the Ramunnos could sell or rent it for full market value. Accordingly, the hearing officer tacitly found that this is not a situation where a relative was living in

[2] *Lawson v. Dep't of Health & Soc. Servs.*, 2004 WL 440405, *2 (Del. Super. 2004).
[3] 31 *Del.C.* § 520.
[4] *Lawson*, 2004 WL 440405 at *2.

a spare room "paying rent." That leads to the conclusion that the lease's terms and the reason for the rent deferral must be determined in order to evaluate the penalty's justification.

12. As a matter of law, the hearing officer erred in construing the lease. The hearing officer found, as a matter of fact, Appellant and the Ramunnos had an oral month-to-month lease for $1,000.00 per month. But, the officer also found, as a matter of law, the agreement could not be modified as alleged – $500.00 now / $500.00 deferred – without additional consideration. By definition, however, a month-to-month lease terminates at the end of each month.[5] "A month-to-month lease is not continuous; there must be a new contract of leasing for each month."[6] Accordingly, there is no need for "consideration for deferring ... rent" when one month ends and the next begins.[7]

13. Despite the hearing officer's finding that the statute of frauds is inapplicable to the month-to-month lease, Appellee again argues for it. The court has difficulty accepting the statute of frauds argument for several reasons. First, no party to the lease disputes the debt. Also, the alleged agreement specified the arrears would be paid as additional cash came available, which could have been within one year.

[5] Parties can, of course, renew a lease each month on the same terms without discussion.
[6] *DiCostanzo v. Tripodi*, 78 A.2d 890, 891 (Conn. 1951).
[7] *See G. Murray Derrington PCF Mgmt. v. Adams*, 2000 WL 33653430 (Del. Com. Pl. 2000) (court awarded arrears on month-to-month lease reflecting changed terms, including rent owed).

One way or another, as a matter of law, the hearing officer correctly found the statute of frauds inapplicable.

14. Again, the crucial question here is whether a penalty was properly imposed. The fundamental problem is the fact-finder focused more on what amounts to a legal agreement and less on what actually happened as a matter of fact. If the facts had been thoroughly decided, the legal consequences would be more apparent.

15. In order to decide whether the hearing officer properly found there is no outstanding rent, and therefore no consideration for transferring Appellant's 401k to Ms. Ramunno, the fact-finder must know the rental agreement's terms. On remand, the fact-finder must decide whether Appellant had an actual lease agreement, oral or otherwise, and if so, what its relevant terms were. That includes the possibility that the parties agreed Appellant would pay $1,000.00 per month with $500.00 in cash and $500.00 deferred. If they truly had that agreement, then the fact-finder must decide whether it was a legitimate lease or a sham, perhaps intended for Medicaid eligibility purposes. As to that, the fact-finder will need to decide whether the agreement, whatever it was, was for fair consideration. In other words, the fact-finder must consider whether the benefit the lease conferred to Appellant was reasonably related to the rent she agreed to pay the Ramunnos. The fact-finder may whether the Ramunnos' forbearance was necessary.

16. In closing, the court again recognizes the Department's valid concern that Medicaid recipients or their relatives not divert assets. The Department could make its eligibility/penalty provisions more comprehensive. It could, perhaps, require that intra-family financial arrangements be in writing and notarized. Similarly, for eligibility purposes, it might disallow long-deferred debts, or otherwise strengthen the "look back" regulations.

17. For now, however, the hearing officer found here that the Medicaid applicant had a valid lease at a realistic rate. But for the Ramunnos' alleged forbearance, the applicant would presumably have lived in reduced straits. Of course, in the new hearing on remand both sides may revisit these issues.

For the above reasons, the Department of Health and Social Services' decision is **REVERSED**. The matter is **REMANDED** for a new hearing consistent with this opinion.

IT IS SO ORDERED.

/s/ Fred S. Silverman
Judge

cc: Prothonotary (Civil)
Lawrence A. Ramunno, Esquire
Peter S. Feliceangeli, Deputy Attorney General.