

DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF DIRECTOR

ACTION REFERRAL

TO <i>Jacobs</i>	DATE <i>7-15-09</i>
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DIRECTOR'S USE ONLY	ACTION REQUESTED
1. LOG NUMBER <i>100031</i>	<input type="checkbox"/> Prepare reply for the Director's signature DATE DUE _____
2. DATE SIGNED BY DIRECTOR <i>Cleared 7/24/09, letter attached.</i> <i>Ref log 0002 cleared 8-19-09</i>	<input checked="" type="checkbox"/> Prepare reply for appropriate signature DATE DUE <i>7-24-09</i> <input type="checkbox"/> FOIA DATE DUE _____ <input type="checkbox"/> Necessary Action

APPROVALS <small>(Only when prepared for director's signature)</small>	APPROVE	* DISAPPROVE <small>(Note reason for disapproval and return to preparer.)</small>	COMMENT
1.			
2.			
3.			
4.			

** In OS tracker log 0002 is under log 0001*

Kyle Vickery
1523 Wedgefield Drive
Rock Hill, SC 29732
On behalf of Anne G. Vickery

Emma Forkner, Director
Department of Health and Human Services
PO Box 8206
Columbia, SC 29202

RECEIVED

JUL 15 2009

Department of Health & Human Services
OFFICE OF THE DIRECTOR

Dear Director Forkner:

I am writing this letter to express my frustration regarding the Medicaid system and the eligibility requirements that my mother does not meet. Please do not read into that statement that I am trying to get around the system and that I obviously do not understand the rules. I have been working with several members of the DHHS staff (mainly Linda Roberts with the York County office) and I need to say that they have been very helpful and informative. Please take a moment and read the following and from your office offer some guidance.

My mother is a resident of Magnolia Manor Nursing Home in Rock Hill. She has been a resident since the beginning of the year having been placed there after discharge from Carolinas Medical Center. She has had a history of falls and in December failed a psychiatric evaluation. She is non-ambulatory and will meet the requirements of CLTC for Medicaid nursing home placement. I have gone through the process of a Medicaid spend down on her behalf and also selling her home to raise revenue for her nursing home bills. Unfortunately the home has a reverse mortgage so she will see only enough money from that sale for 2 months of private pay in this nursing home. If that were the end of this tale then my mother would indeed be Medicaid eligible and I would not be writing this letter. Unfortunately, my mother entered into a land deal arrangement in December of 2007 where she gave the deed and title to 7 acres of property to my cousin for which she received a promissory note for the amount of \$150,000. This note is payable at any time but due on December 20, 2009. The property has a tax value of just under \$50,000 according to York County.

My cousin, the person who convinced my mother that this land deal was going to solve all of her financial problems, is a creative person who saw in

my mother a frail and gullible elderly person and who she “duped” into signing away this property. At this point, however, and according to your Division Appeals and Hearings, Janet Goode, the promissory note is considered a resource and must be dealt with accordingly. Even though the property is not worth the amount of the note (so in essence this promissory note is not actuarially sound) our choices are to sell the note for the face value, which we will not be able to do or wait until December of 2009 and hope that Mary Jo Moore, my mothers niece, will indeed pay the promissory note. I have every reason to believe that MJM will default on the note and will not pay. At that point my choice is to retain an attorney and sue for the return of the deed. My mother has no money to be able to do this. She is financially eligible for Medicaid except for this “promissory note” which in truth is not worth anything. This is really a dilemma and my mother is in the middle.

I have been told that if the promissory note is sold for an amount less than the face value my mother would be held responsible for basically a negative transfer of assets. She also is not eligible for Medicaid while we wait to see what will happen in December and while we try to “shame” this cousin into returning the deed.

My mother cannot live by herself and now she has no home as stated above. She is a nursing home resident with no source of payment but holding a seemingly worthless promissory note. The nursing home is certainly going to pursue options.

I am asking for guidance. What can we do? I am willing to sell the promissory note (assuming a buyer can be found) and I am certainly willing to sell the property and resume private pay status but I cannot do either of those because my mother has no control of the deed. She is being held hostage by a regulation, which states this promissory note is negotiable, and at the same time by the knowledge that the property is valued at 1/3 of the face value of the note. And, all of this because of an unscrupulous family member. I am asking for guidance but I am also asking if a waiver is possible – a temporary waiver until I can determine through legal channels if we have to sue for the return of the deed or if the loan is defaulted on, if we can just assume control. If the latter is the case then we will certainly sell this land as quickly as possible.

Surely my mother cannot be held responsible for being gullible and being duped by a family member. And according to Section 44-6-725 - Promissory Notes - perhaps this note is not valid because it is not sound based on current real estate values. My mother is 83 years old, a retired registered nurse and a life long resident of York County, South Carolina. What can we do?

Thank you for reading this very long letter but more importantly I am hopeful you have some suggestions for me.

Sincerely,

M. Kyle Vickery



State of South Carolina
Department of Health and Human Services

Mark Sanford
Governor

Emma Forkner
Director

July 24, 2009

Mr. Kyle Vickery
1523 Wedgefield Drive
Rock Hill, South Carolina 29732

Dear Mr. Vickery:

Thank you for writing our agency regarding Medicaid eligibility and the healthcare needs of your mother, Anne Vickery. We understand your concerns and frustration regarding Medicaid's promissory note policy. We apologize for any stress or inconvenience our decision may have caused you and your family.

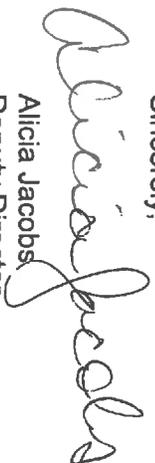
As you are aware, Ms. Vickery's application for Medicaid's Nursing Home program was denied on May 29, 2009 because the value of her promissory note causes her countable resources to exceed the allowable limit. Federal and state guidelines require us to count the value of the promissory note as a resource because it is negotiable and not due until December 2009. If the promissory note is sold for less than Fair Market Value, Ms. Vickery would incur a penalty period and, during this time, she would not be eligible for a vendor payment to a nursing facility.

Your request for an appeal regarding Medicaid's denial was dismissed on July 10, 2009 because you did not respond in writing to the Interlocutory Order asking you to state the cause of action for the appeal. You should receive written notice shortly of this dismissal. If you have any questions, regarding the dismissal, please contact your hearing officer, Janet Goode, at (803) 898-2658.

Ms. Vickery is currently enrolled in the Gap Assistance Pharmacy Program for Seniors (GAPS) that provides state pharmacy assistance to supplement the drug coverage available through a Medicare Prescription Drug Plan (PDP). To benefit from GAPS, an individual must select a participating PDP. Her current PDP, Wellcare Signature, does not participate with GAPS. (A list of PDPs that participate with GAPS is provided.)

Although we understand this is a difficult situation, we are unable to waive our decision. If you have any questions about the Medicaid program, please contact Jenny Lynch at (803) 898-3965.

Sincerely,


Alicia Jacobs
Deputy Director

AJ/cl
Enclosure

Medicaid Eligibility and Beneficiary Services
P.O. Box 8206 • Columbia, South Carolina 29202 -8206
Phone (803) 898-2502 • Fax (803) 255 -8235

Log 0081

