

STATE OF MICHIGAN
IN THE PROBATE COURT FOR THE COUNTY OF BAY

In the matter of:

HOWARD L. CHARTIER,
Protected Individual

File No. 13-49040-PO
Hon. Karen A. Tighe

OPINION AND ORDER

This is a petition for a Protective Order filed by the protected person's spouse. The family applied for Medicaid when Howard Charter went into a nursing home. Medicaid found Mr. Chartier to be eligible for Medicaid with a patient pay amount of \$737 per month, later reduced to \$562 per month effective January, 2013.

The Petitioner/wife/community spouse seeks a Protective Order under MCL700.5407 (2) c to award her the full amount of the protected spouse's income. The effect is that Medicaid may then cover the entire cost of Mr. Chartier's nursing home care. The Attorney General filed an appearance and objected to the Petition. Rather than present oral arguments, both attorneys submitted briefs and responses per agreement and the court's request.

At Issue:

Does the probate court have jurisdiction to enter a Protective Order *after* DHS/Medicaid has made its calculation of the Community Spouse Monthly Income Allowance? The court believes the answer to this question is yes.


Probate court is a court of statutory jurisdiction. M.C.L. 700.5402 (b) gives the probate court:

(b) *Exclusive jurisdiction* to determine how the protected individual's estate that is subject to the laws of this state is managed, expended, or distributed to *or for the use of the protected individual or any of the protected individual's dependents or other claimants*. Emphasis added.

There is no prohibition in the statute against seeking a protective order after a family has applied for Medicaid for the protected individual. Medicaid has made a claim to part of Mr. Chartier's income, and the probate court has statutory authority to decide the matter.

In this case, the Petitioner wife lived for many months - October 2012 to May 2013 - under the restriction required by the federal guidelines for determining Medicaid eligibility for her husband. She did not appeal the calculations of the Department, as they used the formula required by the Bridges Eligibility Manual 546 (BEM). The petitioner was duly advised of her right to appeal but did not do so. The advice of rights contained in the Notice of Case Action specifically tells the applicant, while you have *no right* to a hearing to contest a change in law or

ATTEST: A True Copy



Register of Probate

policy, you do have a right to a hearing to contest the Department's calculation...." (*Italics added.*)

In this case there was no objection to the calculation and thus, no right to an administrative appeal. The objection was to the Department's *policy* that reduces a Community Spouse's income to an arbitrary amount without considering actual living expenses of the community spouse.

The list of "exceptional circumstances" denied consideration by the department's policy (see BAM 300) is long. It does not allow exceptions for the community spouse's expenses such as clothing, medical bills, food, heat, utilities, taxes, transportation and other necessities of life. The appeal would have been futile. The Assistant Attorney General admits that this policy is well established.

The spouse of Howard Chartier presented a modest budget which included the necessary expenses of maintaining the parties marital home, and her modest standard of living. These folks are not wealthy. The court has seen many families of abundant means engage in elaborate estate planning to avail themselves of Medicaid benefits for a family member, to preserve inheritance rights of adult children. The Chartiers did not have the foresight (or the guile) to make such a plan in advance of needing specialized care.

This court does not believe the legislature intended for families to be without recourse when a Medicaid determination leaves a community spouse impoverished. In this case, no appeal was available, either by administrative means or, therefore, through circuit court. The only avenue for review was the Petition for Protective Order.

Counsel for petitioner cited sections of the federal statute which contemplates a determination or "redetermination" for an institutionalized spouse to be eligible for medical assistance at 42 USC s 1398-r-5 (d) 1, and then specifically states at 42 USC s 1396-r-5 (d) (5):

If a court has entered an order against an institutionalized spouse for monthly income for the support of the community spouse, the community spouse monthly income allowance for the spouse shall not be less than the amount of the monthly income so ordered.

Another probate court in Michigan has read this section and interpreted "has entered" an order to mean "has entered an order before the Medicaid application is filed". This court disagrees. Such an interpretation restricts the authority of probate judges to make decisions in favor of keeping a community spouse in the home, (a stated objective of the federal law) and in maintaining a lifestyle that does not require major financial burdens to remain there.

Mrs. Chartier is not seeking an extravagant lifestyle at the expense of the taxpayers. She is simply requesting to maintain a modest standard of living that will allow her to live in the marital home and maintain it, and her own necessities of life. The Michigan statutes give probate court the exclusive authority to grant such relief.

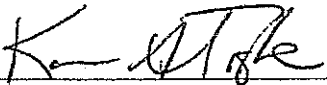
Accordingly,

IT IS HEREBY ORDERED that the Protective Order is granted. Howard Chartier's entire income shall be awarded to his wife and thus no patient pay shall be required.

IT IS FURTHER ORDERED that this order is retroactive to the date of filing the Petition for Protective Order, May 3, 2013.

IT IS FURTHER ORDERED that the Conservator's request to execute Quit Claim deeds of real property to Mary Chartier, and extinguishing rights that Howard would have to Mary Chartier's estate should she predecease him, and waiving his elective shares, is granted. The request to transfer assets from the conservatorship of Howard (in effect since 2008) to Mary Chartier is also allowed. The conservator, Susan Lijewski, is authorized to execute any deeds or other documents necessary to accomplish the transfer of assets permitted by this Order.

Dated: August 7, 2013



KAREN A. TIGHE P-26913
Judge of Probate and Family Court