

DISTRICT COURT OF APPEAL OF FLORIDA  
SECOND DISTRICT

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G.W.,  
c/o Jenna Prosser with Platinum Benefits,

Appellant,

v.

DEPARTMENT OF CHILDREN AND FAMILIES,

Appellee.

No. 2D21-2800

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December 2, 2022

Appeal from the Department of Children and Families.

Jean M. Henne of Jean M. Henne, P.A., Winter Haven, for  
Appellant.

Jane Almy-Loewinger, Assistant General Counsel, Department of  
Children and Families, Daytona Beach, for Appellee.

SILBERMAN, Judge.

G.W., now deceased, in care of Jenna Prosser with Platinum  
Benefits (G.W.), filed an application with Florida's Department of

Children and Families (the Department) for Institutional Care Program (ICP) Medicaid benefits. The Department denied her application after concluding that the value of her assets was too high for the program due to the cash value attributable to four life insurance policies. G.W. filed an appeal and a request for hearing with the Department's Office of Appeal Hearings, challenging the denial of her application. Following an evidentiary hearing, the hearing officer entered a final order affirming the denial of G.W.'s application for ICP benefits. G.W. now appeals that final order. We reverse.

### **FACTUAL AND PROCEDURAL BACKGROUND<sup>1</sup>**

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<sup>1</sup> The facts recited in this opinion were not the subject of any dispute at the evidentiary hearing. The hearing officer made other factual determinations, some of which are challenged by G.W. as unsupported by the record or irrelevant to the discrete issue presented to the hearing officer: whether transfer of ownership of the insurance policies had been accomplished by virtue of an assignment from G.W. to her son, Harold, or whether the transfer was not effective until the insurance company verified the transfer. Resolution of that issue bears on whether the cash value of the policies was properly included as an asset of G.W. The Department does not present any argument disputing G.W.'s challenge to certain of the findings. Because the key facts relevant to the issue before us are not in dispute, we do not discuss G.W.'s challenge to other factual findings as they do not impact our analysis.

G.W.'s request for ICP Medicaid benefits was filed on October 23, 2020. On December 18, 2020, G.W. executed a durable power of attorney (DPOA) naming her son, Harold, as her agent. On December 31, 2020, pursuant to the DPOA, Harold executed an irrevocable assignment on G.W.'s behalf transferring ownership of four life insurance policies, including future proceeds and payments, from G.W. to himself. On that same date, Harold also executed a "Lifetime Contract for Personal Services" on G.W.'s behalf outlining the services and assistance he would provide to G.W. and how he would be compensated.

G.W. passed away on January 8, 2021. On February 9, 2021, the Department issued a notice of case action to G.W. requesting verification from the insurance company that the life insurance policies were transferred from G.W.'s ownership.

The record establishes that after G.W. had assigned the life insurance policies to Harold, the insurance company began its internal process to review and document the transfer of ownership. However, the insurance company stopped that process upon learning of G.W.'s death. As a result, the insurance company did

not provide its verification of the change in ownership to the Department.

Based on the absence of verification by the insurance company, the Department included the cash value of the policies in calculating the total value of G.W.'s assets. This resulted in a determination that G.W.'s assets exceeded the maximum allowable amount that would permit her to receive ICP benefits. The Department then denied G.W.'s application for benefits based on the absence of verification from the insurance company recognizing the change in ownership of the policies. The Department's position was that the policies were "still [G.W.'s] until the [insurance] company says ownership has changed."

After the hearing on G.W.'s challenge to the denial of benefits, the hearing officer upheld the Department's denial of benefits. The hearing officer concluded that when G.W. died, she was still the owner of the policies because the insurance company stopped its "process of re-assigning/transferring ownership" of the policies upon learning of G.W.'s death. For that reason, the hearing officer upheld the Department's determination that G.W.'s resources were

not less than or equal to \$2,000, the amount necessary for her to be eligible for ICP Medicaid benefits.

On appeal, G.W. argues that the hearing officer erred by rejecting G.W.'s argument that the executed assignment was immediately effective to transfer ownership of the policies to Harold regardless of the insurance company's delay and failure to document the ownership change in its records before G.W.'s death.

### **ANALYSIS**

When reviewing an agency decision, a reviewing court cannot "reject an administrative hearing officer's findings of fact, as long as those findings are supported by competent, substantial evidence in the record." *Yerks v. Sch. Bd. of Broward Cnty.*, 219 So. 3d 844, 848 (Fla. 4th DCA 2017) (quoting *Maynard v. Fla. Unemployment Appeals Comm'n*, 609 So. 2d 143, 145 (Fla. 4th DCA 1992)); see also *Cont'l Baking Co. v. Vilchez*, 219 So. 2d 733, 734 (Fla. 2d DCA 1969) (stating that a reviewing court may not reverse the findings of an appeals referee if there is competent, substantial evidence sufficient to support the referee's findings). However, when reviewing an agency's decision, a court may "set aside agency action

if the agency's action depends upon any finding of fact that is not supported by competent, substantial evidence established in the record of the administrative hearing." *M.H. v. Dep't of Child. & Fam. Servs.*, 977 So. 2d 755, 759 (Fla. 2d DCA 2008). We review conclusions of law de novo. *Id.*

"A life insurance policy is a mere chose in action, and, unless some provision of the contract forbids its assignment, it may be assigned as other choses in action." *Moon v. Williams*, 135 So. 555, 557 (Fla. 1931). Once a valid assignment of an insurance policy has been made, the assignor relinquishes his or her rights or interest in the policy. *See Bioscience W., Inc. v. Gulfstream Prop. & Cas. Ins.*, 185 So. 3d 638, 641 (Fla. 2d DCA 2016). The effect of a valid assignment, made in accordance with the policy terms, is that the assignee is placed in the same status as to all rights and liabilities under the policy that the insured occupied before the assignment. *Moon*, 135 So. at 557.

The Department did not base its decision to deny benefits on any contention that the policies prohibited the assignment of ownership from G.W. to Harold, that the DPOA was invalid, or that

the assignment was deficient or not authorized by the DPOA. Instead, as noted by the hearing officer, the Department sought verification of when the policies "were actually transferred to the son" and "this verification needs to come from the" insurer. The hearing officer found that the insurer "stopped the process of re-assigning/transferring ownership" of the policies from G.W. to Harold due to G.W.'s death and that G.W.'s death had occurred after the assignment had been executed.

The sole issue that was presented to the hearing officer for resolution and that is argued in this appeal concerns whether the assignment of the policies was immediately effective on execution or whether it was only effective after the insurance company completed its process of "re-assigning/transferring ownership" within its own records. In its brief, the Department argues that section 627.422, Florida Statutes (2020), "requires that the insurance policy issuer accept the assignment, which did not occur in this case, due to [G.W.'s] death during the assignment process."

Nothing in the plain language of section 627.422 requires that an insurance company must first document the assignment or

transfer of ownership of an insurance policy in order to make such an assignment effective. And nothing the Department cites reflects that an assignment such as the one here is not valid until the insurance company verifies the change of ownership to the Department. While a policy may or may not be assignable, based on the terms of the policy, neither the Department nor the insurance company rejected the assignment based on any policy language. Indeed, the Department simply relied on the fact that the insurance company did not provide its own verification of the ownership change.

Florida Administrative Code Rule 65A-1.303(2) provides that "[a]ny individual who has the legal ability to dispose of an interest in an asset owns the asset." Here, the record reflects that G.W., through her authorized agent, had disposed of her ownership interest in the policies by assignment to Harold. Thus, Harold acquired the legal ability to dispose of his interest in the policies, and G.W. no longer had any ownership interest in the policies. Nothing in the record refutes Harold's position that the assignment was valid and enforceable upon execution. Moreover, the



Department did not establish that the assignment was legally invalid or unenforceable.

Rule 65A-1.303(3) provides that an asset is considered to be available to an applicant such as G.W. "when the individual has unrestricted access to it." Further, assets "determined not to be available are not considered in determining eligibility." *Id.* Based on this record, the assignment of the life insurance policies to Harold was effective to convey ownership of the policies to Harold upon execution. The assignment was given in conjunction with the contract for Harold to provide personal services to G.W.; as a result, the life insurance policies were not available to G.W. and should not have been considered in determining her eligibility for ICP benefits.

### **CONCLUSION**

The assignment of the four life insurance policies from G.W. to Harold on December 31, 2020, was effective upon execution. Therefore, the hearing officer erred in denying G.W.'s appeal and upholding the Department's decision to deny G.W.'s application on the basis that the insurance company had not completed its process to verify and recognize the transfer of ownership at the time

of G.W.'s death. Accordingly, we reverse the final order denying ICP benefits to G.W. and remand with instructions that the benefits be provided to G.W. for the period at issue.

Reversed and remanded.

MORRIS, C.J., and BLACK, J., Concur.

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Opinion subject to revision prior to official publication.