STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: April 26, 2013)

AGNES LAPOINTE	**:**	
	:	
v.	**:**	**C.A. No. PC 11-1142**
	:	
RHODE ISLAND DEPARTMENT OF HUMAN SERVICES, GARY D. ALEXANDER, DIRECTOR	**:**	

DECISION

MATOS, J. Agnes LaPointe (Ms. LaPointe) appeals from a decision of the Rhode Island Department of Human Services (DHS). That decision found that Ms. LaPointe does not qualify for Medical Assistance benefits (MA benefits) because she has access to assets that total over the resource level permitted by the Rhode Island Department of Human Services Code of Rules (DHS Regulations). Jurisdiction is pursuant to G.L. 1956 § 42-35-15.

The sole issue raised by this administrative appeal is whether Ms. LaPointe's disclaimers of her inherited one-half interest in a home she owned with her husband as joint tenants constitute uncompensated transfers of an asset under DHS Regulations. For the reasons set forth below, the Court affirms the DHS decision.

I

Facts and Travel

Ms. LaPointe and her husband, Charles W. LaPointe (Mr. LaPointe), owned real estate, consisting of a house and an associated parcel of land, at 26 Grant Drive, Coventry, Rhode Island 02816 (Grant Drive property), as joint tenants. When Mr.

LaPointe died on June 22, 2008, his one-half interest in the Grant Drive property passed automatically by operation of law to Ms. LaPointe. Thereafter, on January 14, 2009, Ms. LaPointe executed two disclaimers of her interest in the Grant Drive property. (Admin. Hr'g Dec. 5, Feb. 11, 2011.) First, she disclaimed the one-half interest she had inherited from her husband as the surviving joint tenant. Second, she disclaimed all of her interest as sole beneficiary of her husband's estate. Id.; see also Appellant's Exs. B and C. As a result of these disclaimers, all of her interest in the Grant Drive property passed by intestacy to her two children, Stephen M. LaPointe (Stephen) and Shirley-Ann Hall (Shirley-Ann). (Admin. Hr'g Tr. 2, Oct. 4, 2010.) Also on January 14, 2009, Ms. LaPointe executed a quit-claim deed, transferring her own one-half interest in the Grant Drive property to Stephen and Shirley-Ann while reserving a life estate for herself. Id. at 2.

Approximately one year later, on January 5, 2010, Ms. LaPointe's declining health induced her to move out of the Grant Drive property and into the Coventry Skilled Nursing Center (the "NH"), where she continues to reside today. In turn, her two children sold the Grant Drive property on February 25, 2010, for $137,048.99, and divided the profits between themselves. Ms. LaPointe received approximately $29,917.25 from Stephen as her share of the sale proceeds. Id. at 2.

On April 19, 2010, Ms. LaPointe applied for MA benefits from DHS. After reviewing and evaluating her application, DHS denied it because it determined that she had engaged in "an uncompensated transfer [of assets] in the amount of $128,743.80 between 1/14/09 and 2/25/10," thus giving her access to assets over the required $4000

level. (Long-Term Care Medical Assistance Letter of Denial, June 25, 2010, (hereinafter, "Letter") at 1.) Ms. LaPointe filed a timely appeal of DHS's denial on July 23, 2010.

At the hearing to consider the appeal, held on October 4, 2010, the DHS Appeals Officer (the "Appeals Officer") took testimony from Social Worker Dana Denman (Denman) and Stephen. (Tr. at 1.) Ms. LaPointe was represented by counsel at the hearing. Denman filed a number of exhibits and testified that the DHS Legal Office, per DHS Senior Legal Counsel Kevin D. Tighe, considered Ms. LaPointe's disclaimers to be "transfers" within the meaning of DHS Regulations, thus engendering a period of ineligibility for MA benefits. (Tr. at 6-7.) Denman testified that DHS calculated the value of the $128,743.80 in uncompensated transfers as follows:

> (1) $82,500 (one-half of the appraised value of the Grant Drive property, or $165,000, derived from Ms. LaPointe's disclaimer of her husband's one-half interest in the property) (Tr. at 2-3); see also Freddie Mac Second Mortgage Property Value Analysis Report, November 10, 2009 at 1;
>
> (2) $45,080 (the calculated value of Ms. LaPointe's retained life estate in the Grant Drive property) (Tr. at 4); see also DHS Life Estate Worksheet, June 25, 2010 at 1;
>
> (3) $1,163.80 (the difference between the net sale proceeds of the Grant Drive property that Ms. LaPointe received from her son, $29,917.25, and the share she was entitled to, $31,081.05).

(Tr. at 5.)

Counsel for Ms. LaPointe conceded that Ms. LaPointe's quit-claim deed and retained life estate in the Grant Drive property of January 14, 2009, constituted uncompensated transfers of an asset under DHS Regulations; therefore, Stephen was already in the process of reconveying to Ms. LaPointe her one-half interest in the

property at the time of the hearing, amounting to approximately $68,524.49. (Tr. at 11-15.)

However, counsel for Ms. LaPointe argued that Ms. LaPointe's disclaimers of her inherited interest were not transfers under DHS Regulations because the disclaimed interest never vested in her by operation of the Rhode Island Disclaimer Statute (RI Disclaimer Statute), G.L. 1956 § 34-5 et seq. (Tr. at 15-16.) As such, Ms. LaPointe could not transfer property in which she had no title. See id. Counsel also cited case law in support of his contentions.[1] Id. at 16. The Appeals Officer held the hearing open for five weeks to allow the parties to file their final briefs before rendering a decision. (Tr. at 29.)

The Appeals Officer issued the Decision on the Administrative Hearing (the "Decision") on February 11, 2011, and found in favor of the agency. After making findings of fact and summarizing the parties' positions, the Appeals Officer determined that Ms. LaPointe's disclaimers amounted to an uncompensated transfer of an asset under applicable DHS Regulations.[2] She rejected Ms. LaPointe's reading of the RI Disclaimer Statute, finding that while Ms. LaPointe had the right to disclaim her inherited interest in the Grant Drive property, doing so forfeited her eligibility for MA benefits. (Dec. at 7-8.)

The Appeals Officer also determined that particular sections of the federal Social Security Act (SSA), 42 U.S.C. § 1396 et seq., supported her determinations. Id. Finally, the Appeals Officer distinguished the facts of the case law cited by Ms. LaPointe from

[1] Ms. LaPointe relied principally on Troy v. Hart, 697 A.2d 113 (Md. App. 1997), for the proposition that executing a disclaimer is not a transfer under the Medicaid laws and thus executing one does not eliminate a MA applicant's eligibility.
[2] In particular, the Appeals Officer cited DHS Regulation 0384 et seq. in support of this determination.

the facts of the instant case.[3] See id. at 8-9. However, she recognized that because Stephen agreed to reconvey the quit-claim deed and life estate to Ms. LaPointe, the value of the assets transferred had been altered, thus requiring recalculation of the total transfer amount and penalty period at a later date. Id. at 9-10.

Upon receiving notice of the agency's final decision, Ms. LaPointe timely filed an appeal with this Court, pursuant to § 42-35-15, on February 28, 2011. On appeal, Ms. LaPointe argues that DHS erred in rejecting her construction of the RI Disclaimer Statute. She claims that the inherited interest in the Grant Drive property never vested in her pursuant to Section 34-5-8(c). Therefore, she contends, she could not have transferred an interest she never owned in the first instance. Ms. LaPointe also asserts that the case law she cited at the Administrative Hearing supports her position. Finally, Ms. LaPointe argues that Federal Medicaid laws cannot infringe on the rights afforded in Section 34-5-2 of the RI Disclaimer Statute. As a result, she concludes, her disclaimers do not constitute prohibited asset transfers under DHS Regulations.

In response, the agency contends that DHS Regulations, applicable Federal Medicaid laws, and their reading of the cited case law all support the Appeals Officer's determination that Ms. LaPointe's disclaimers constituted uncompensated transfers of assets engendering a penalty period of ineligibility for MA benefits. This Court agrees.

[3] The Appeals Officer relied on an alternative reading of Troy v. Hart, 697 A.2d 113 (Md. App. 1997), for the proposition that that state Medicaid laws and public policy considerations require financially-able MA applicants to pay for their own care before seeking MA benefits.

II

Standard of Review

The ability of the Superior Court to review the decisions of administrative agencies is governed by the Rhode Island Administrative Procedures Act, § 42-35-1 et seq. See Rossi v. Employees' Retirement Sys. of R.I., 895 A.2d 106, 109 (R.I. 2006). The applicable standard of review, set forth in Section 42-35-15(g), provides in pertinent part:

> The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inference, conclusions or decisions are:
> (1) In violation of constitution or statutory provisions;
> (2) In excess of the statutory authority of the agency;
> (3) Made upon unlawful procedure;
> (4) Affected by other error of law;
> (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Sec. 42-35-15(g).

Accordingly, in reviewing an agency decision, this Court is limited to an examination of the certified record in deciding whether the agency's decision is supported by substantial evidence. Johnston Ambulatory Surgical Assocs. v. Nolan, 755 A.2d 799, 804-05 (R.I. 2000) (quoting Barrington Sch. Comm. v. R.I. State Labor Relations Bd., 650 A.2d 479, 485 (R.I. 1994)). Substantial evidence is "such relevant evidence that a reasonable mind might accept as adequate to support a conclusion and means an amount more than a scintilla but less than a preponderance." Town of

Burrillville v. R.I. State Labor Relations Bd., 921 A.2d 113, 118 (R.I. 2007) (citations omitted). As such, when this Court finds that substantial evidence exists in the record, it "'is required to uphold the agency's conclusions.'" Auto Body Ass'n of R.I. v. State of R.I. Dep't of Bus. Regulation, 996 A.2d 91, 95 (R.I. 2010) (quoting Evn't Scientific Corp. v. Durfee, 621 A.2d 200, 208 (R.I. 1993)). This restriction applies even when the reviewing court may have been inclined to arrive at different conclusions and inferences from the evidence presented. Nolan, 755 A.2d at 805; R.I. Pub. Telecomm. Auth. v. R.I. State Labor Relations Bd., 650 A.2d 479, 485 (R.I. 1994); Barrington Sch. Comm., 608 A.2d at 1138.

Despite the high level of deference afforded to agency findings of fact, the Superior Court will review all agency determinations of law de novo. Iselin v. Retirement Bd. of Employee's Retirement Sys. of R.I., 943 A.2d 1045, 1049 (R.I. 2008). However, this Court accords great "weight and deference" to an administrative agency's interpretations of a statute it is empowered to enforce "so long as that construction is not clearly erroneous or unauthorized." Labor Ready Ne., Inc. v. McConaghy, 849 A.2d 340, 344 (R.I. 2004). This is true "even when other reasonable constructions of the statute are possible." Id. at 345. Accordingly, this Court will also defer to an agency's "reasonable" interpretation of the regulations it promulgates pursuant to a statute it is authorized to enforce. See State v. Cluley, 808 A.2d 1098, 1104-06 (R.I. 2002); Pawtucket Power Associates Limited Partnership v. City of Pawtucket, 622 A.2d 452, 456-57 (R.I. 1993).

III

The Medicaid Program and Implementing Regulations

Congress created the Medicaid program as a joint federal-state venture to provide financial and other assistance to disadvantaged individuals "whose income and resources are insufficient to meet the costs of necessary [medical and related] care and services." Atkins v. Rivera, 477 U.S. 154, 156 (1986); see also Wisconsin Dep't of Health & Family Servs. v. Blumer, 534 U.S. 473, 479 (2002); DHS Regulation 300.05.

Medicaid is a federally-assisted, state-administered program that provides "a nationwide program of medical assistance for low income families and individuals." Wilder v. Virginia Hospital Association, 496 U.S. 498, 501, 110 S. Ct. 2510, 110 L.Ed. 2d 4555 (1990); West Virginia University Hospital, Inc. v. Casey, 885 F.2d 11, 15 (3d Cir. 1989). Medicaid is provided to families with dependent children and to aged, blind, or disabled persons whose income and resources are insufficient to meet the costs of necessary medical services. 42 U.S.C. § 1396(1). Any State which participates in Medicaid must extend medical benefits to all persons who are "categorically needy," or receiving supplemental security income (S.S.I.) benefits under subchapter XVI (Supplemental Security Income For the Aged, Blind, and Disabled). See 42 U.S.C. § 139a(a)(10)(A). The State may also provide medical assistance under Medicaid for the "medically needy," or persons "who have insufficient income and resources to meet the costs of necessary medical and remedial care and services." 42 U.S.C. §1396a(a)(10)(C)(i).

However, an institutionalized individual becomes ineligible to receive Medicaid benefits if he or she disposes of assets for less than fair market value (FMV) during the

thirty-six (36) months (the "look back" period) before the date the individual has applied for medical assistance under the State plan. 42 U.S.C. §1396p(c)(1). Certain transfers are excepted. 42 U.S.C. §1396p(c)(2).[4] Accordingly, an individual may be ineligible for MA benefits if he or she has engaged in improper transfers.

In order to obtain federal Medicaid dollars, the SSA requires participating states to draft their own Medicaid legislation compliant with federal Medicaid laws and appoint a state agency to administer the program. See 42 U.S.C. § 1396 et seq.; 42 C.F.R. § 430.0 (1988); 42 C.F.R. § 435.10 (1988). Accordingly, the Rhode Island Legislature (the "Legislature") promulgated the Rhode Island Medical Assistance program (the "RI MA program") to participate in the federal Medicaid scheme and empowered DHS to manage that program. §§ 40-8-1(c), 42-12-4; DHS Regulation 0300.10; see also Esposito v. O'Hair, 886 A.2d 1197, 1201-02 (R.I. 2005). Among other responsibilities, DHS must fashion a scheme of rules pertaining to payment and fee schedules and income and resource eligibility requirements for prospective MA benefits applicants. § 40-8-13. Section 40-8-13 further directs the agency to promulgate regulations "conform[ing] to the provisions of the federal Social Security Act, 42 U.S.C. § 1396 et seq., or any rules or regulations promulgated pursuant thereto."

[4] One exception provided in Section 1396(c)(2) stipulates:

> [a]n individual shall not be ineligible for medical assistance by reason of paragraph (1) [transfers of assets less than fair market value] to the extent that . . . (C) a satisfactory showing is made to the State (in accordance with regulations promulgated by the Secretary) that . . . (ii) the assets were transferred exclusively for a purpose other than to qualify for medical assistance . . . . (Emphasis added.) Ms. LaPointe has not sought shelter under any of the exceptions.

Accordingly, DHS Regulations provide for periods of ineligibility when a MA benefits applicant "transfers . . . assets . . . for less than fair market value [—] . . . if the transfer was made . . . on or after February 8, 2006 [—] within sixty (60) months immediately prior to or anytime after the date the individual was both institutionalized AND applied for [MA benefits]" (the "look-back" period). DHS Regulation 0384.10. DHS Regulation 0384.15 further defines "transfer" as "[t]he conveyance of right, title, or interest in either real or personal property from one person to another by sale, gift, or other process," and "assets" as including "any income and resources to which the individual or his/her spouse is entitled but does not receive because of action taken by . . . the individual or his/her spouse." (Emphasis added.) Such a transfer is for less than "full market value" when the transferor receives less than "[t]he amount for which the property (real and personal) can be expected to sell on the open market in the geographic area involved and under existing economic conditions at the time of transfer." Id. Thus, DHS will find an institutionalized MA applicant ineligible to receive benefits for a period of time (the "penalty period") when that applicant causes a resource that the applicant is entitled to but does not receive because of an action taken by the applicant to pass by sale or other process, for less than the resource is worth on the open market, to another person, within sixty months of applying for benefits.

Concurrently, DHS Regulations also mandate "[a]s a condition of eligibility, the MA applicant must meet certain cooperation requirements. These requirements include . . . [m]aking resources available and utilizing resources." DHS Regulation 0308.05. DHS defines "resources" as "either real or personal property which the applicant/recipient can use (either directly or by sale or conversion) to provide for his/her

basic needs for food, clothing, shelter or medical care." DHS Regulation 0308.10. An applicant makes resources available by engaging in any "reasonable actio[n] . . . that will likely result in more financial benefit accruing to a household than the cost of obtaining the benefit." DHS Regulation 0308.15. Thus, MA benefits applicants are also required to affirmatively identify and make available any and all property that can be used to pay for the applicant's MA benefits as a component of their eligibility for the program as well.

Essentially, Ms. LaPointe argues that these regulations do not apply to her disclaimers because, per Section 34-5-8(c) of the RI Disclaimer Statute, her inherited one-half interest in the Grant Drive property never vested in her. As such, she maintains, she could not have transferred property she never owned in the first instance.[5] DHS counters that, though legally valid, Ms. LaPointe's disclaimers fall within the scope of these regulations as uncompensated transfers, resulting in a penalty period of ineligibility for MA benefits.

IV

Discussion

A. Application of DHS Regulations

Section 34-5-8(b) of the RI Disclaimer Statute states:

> [u]nless the will or inter vivos instrument creating the interest in property so disclaimed provides for another disposition of the interest, the interest shall pass in the same manner as if the disclaimant had died immediately preceding the event determining that he, she, or it is the beneficiary of the interest.

[5] Ms. LaPointe does not challenge the regulations establishing the "look-back" period. Instead, she challenges the inclusion of the inherited Grant Drive property in the look back period to determine her eligibility.

Therefore, "[t]he interest in property disclaimed shall never vest in the beneficiary." Section 34-5-8(c). Ms. LaPointe relies on these provisions to argue that she could not have transferred her inherited one-half interest in the Grant Drive property by disclaimer because she never owned or possessed the property. See generally Dyer v. Eckols, 808 S.W.2d 531, 534 (Tex. App. 1991). Ms. LaPointe cites Troy v. Hart, 697 A.2d 113 (Md. App. 1997) for the proposition that executing a disclaimer is not a transfer under the Medicaid laws and thus does not eliminate a MA applicant's eligibility.

In the Decision, the Appeals Officer acknowledged that a reading of the RI Disclaimer Statute "support[s] the appellant's argument that she never held title to her deceased husband's ½ of the property." (Dec. at 6.) According to the Appeals Officer, however, DHS Regulations 0384 et seq. require DHS to consider as transferred assets those assets "that the individual is entitled to receive but does not receive because of an action taken by the individual" when evaluating an application for MA benefits. Id. The Appeals Officer further determined that Ms. LaPointe transferred an "asset" within the meaning of the applicable regulations because she was entitled to receive the interest as a surviving joint tenant and the sole beneficiary of her husband's will, but did not receive it because of her own actions; that is, she disclaimed the interest twice, allowing it to pass by intestacy to her two children. The Appeals Officer concluded that, because Ms. LaPointe was entitled to receive her inherited one-half interest in the Grant Drive property but did not because of the disclaimers, they constituted an uncompensated transfer of assets.

Courts in other jurisdictions have recognized that disclaimers and renunciations of inherited interests act as transfers of those interests under applicable Medicaid laws

because they cause the interests to pass from the MA benefits applicants to other parties by operation of law. As a result, those courts upheld their states' Medicaid agencies' decisions to impose eligibility penalties on the disclaiming MA applicants.

In Troy, the decedent had executed a disclaimer of his inheritance, thereby causing the property to pass to his sister and another taker by intestacy. The disclaimer also ensured that the decedent remained eligible to receive MA benefits that would have otherwise been rescinded if he had accepted the inheritance. The appellant sought to rescind the decedent's disclaimer of his inheritance, arguing that, among other theories, the disclaimer was contrary to state Medicaid laws and public policies. The Court of Special Appeals of Maryland first determined that the decedent's disclaimer was valid under applicable state law. Troy, 697 A.2d at 118. The Court further found, however, that under applicable state Medicaid laws the disclaimer "should incur the same penalty of disqualification that acceptance [of the disclaimer] would have brought about." Id. Therefore, the Court upheld the disclaimer's validity but allowed the state Medicaid agency to impose retroactive eligibility penalties on the disclaimer. Id. at 118-19; see also Molloy v. Bane, 214 A.D.2d 171, 176, 631 N.Y.S.2d 910, 914 (1995); The Matter of Scrivani's Estate, 455 N.Y.S.2d 505, 511, 116 Misc. 2d 204, 210 (1982); Georgia Dep't of Community Health v. Medders, 664 S.E.2d 832, 836 (Ga. App. 2008).

Likewise, as the Appeals Officer found in the Decision, Ms. LaPointe's disclaimers resulted in a transfer of "assets" under DHS Regulations 0384 et seq. because they operated to convey an interest to Ms. LaPointe's two children via her disclaimers, which can reasonably be described as a "process" within the meaning of Section 0384.15. This transfer was for less than fair-market value, as defined by the regulations, because

Ms. LaPointe failed to garner a return in value equaling "[t]he amount for which the property (real and personal) can be expected to sell on the open market in the geographic area involved and under existing economic conditions at the time of transfer." DHS Regulation 0384.15. In fact, she received no compensation at all from her two children after executing the disclaimers. (Tr. at 2.) Finally, the record shows that Ms. LaPointe executed both disclaimers on January 14, 2009, less than eighteen months before she applied for MA benefits on April 19, 2010. Therefore, the asset transfer occurred within the sixty-month "look-back" period mandated in DHS Regulation 0384.10.

Before executing the disclaimers, Ms. LaPointe's inherited interest in the Grant Drive property was a resource available for her to use to pay for the cost of her medical care, within the meaning of DHS Regulation 0308.10, because it could be liquidated into cash. In fact, Ms. LaPointe's two children sold the property for $137,048.99 on February 25, 2010. (Tr. at 2.) As the Appeals Officer found, the disclaimers resulted in the interest passing to her two children and placing it beyond DHS's reach, therefore constituting a failure to cooperate with DHS in taking reasonable actions to acquire and utilize all available resources. See Cluley, 808 A.2d at 1105; Pawtucket Power Associates, 622 A.2d at 457.

Accordingly, this Court finds that the Appeals Officer's interpretation of DHS Regulations 0384 et seq. and 0308.05-15 is "reasonable" and, therefore, is not clearly erroneous, arbitrary, capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion. See Cluley, 808 A.2d at 1105; Pawtucket Power Associates, 622 A.2d at 457. As such, this Court gives deference to that interpretation.

B. Application of the Social Security Act

DHS further contends that certain provisions of the SSA, 42 U.S.C. § 1396 et seq., support the Decision. In reply, Ms. LaPointe merely asserts that the Medicaid laws cannot infringe upon the right of an individual to disclaim property afforded in § 34-5-2.

As discussed supra, 42 U.S.C. Section 1396p provides rules and regulations pertaining to asset transfers.

> In order to meet the requirements of this subsection for purposes of section 1902(a)(18) [42 U.S.C. 1396a(a)(18)], the State plan must provide that if an institutionalized individual . . . disposes of assets for less than fair market value on or after the look-back date . . . the individual is ineligible for medical assistance . . . . (Emphasis added.)

42 U.S.C. Section 1396p(c)(1)(A). More pertinent to this case is Section 1396p(c)(3), which provides that:

> [I]n the case of an asset held by an individual in common with another person or persons in a joint tenancy . . . the asset (or the affected portion of such asset) shall be considered to be transferred by such individual when any action is taken, either by such individual or by any other person, that reduces or eliminates such individual's ownership or control of such asset. (Emphasis added.)

In considering specific sections of the SSA in the context of the instant case, it is evident to the Court that Section 1396p(c)(1)(A) is an almost-verbatim analog of DHS Regulation 0384.10—the regulation dealing with asset transfers and associated penalties. As the Appeals Officer stated in the Decision, "the Medicaid rules relative to LTC MA and uncompensated transfers as outlined in SSA Title XIX Section 1917 [42 U.S.C. 1396p] appea[r] in DHS policy section (sic) 0384 titled Resource Transfers." (Dec. at 7.)

Accordingly, like Section 0384.10, SSA Section 1396p(c)(1)(A) penalizes MA applicants for transferring assets for less than fair-market value within the applicable "look-back" period. Therefore, this Court's foregoing analysis of DHS Regulation 0384.10's applicability to this case pertains with equal force to Section 1396p(c)(1)(A) as well. See also Austin v. Indiana Family and Social Services Admin., 947 N.E.2d 979, 982-86 (Ind. App. 2011).

Moreover, the SSA also contains Section 1396p(c)(3), which further clarifies what constitutes an "asset" for the purposes of Section 1396p(c)(1)(A)–and, by implication, in DHS Regulation 0384.10 as well. Specifically, Section 1396p(c)(3) defines "asset" to include the exact circumstances found here: it encompasses a situation where a joint tenant takes an action that "reduces or eliminates" that person's interest in the asset held in the joint tenancy. See 1 Elderlaw Advoc. Aging § 11:41 (2d ed.); Tannler v. Wisconsin Dep't of Health & Social Servs., 211 Wis. 2d 179, 185-88 (1997); see generally Wagner v. Sheridan Cty. Social Servs. Bd., 518 N.W.2d 724, 726-30 (N.D. 1994). Even the narrowest reading of this section embraces Ms. LaPointe's disclaimers and, as such, supports the Appeals Officer's determination in the Decision that the disclaimers are transfers.

Ms. LaPointe's argument—that the SSA cannot infringe on the rights afforded an individual by § 32-5-2—is unavailing. No provision of the SSA mandates that a MA applicant cannot disclaim an inheritance or other interest. That right still exists for all MA applicants as afforded by state law. Indeed, there is no argument here that Ms. LaPointe's disclaimers were not a valid exercise of her right to disclaim an inheritance as provided in § 34-5-8. See, eg., Troy, 697 A.2d at 118; Molloy, 214 A.D.2d at 174, 631

N.Y.S.2d at 912; Scrivani's Estate, 455 N.Y.S.2d at 508-09; Medders, 664 S.E.2d 834. However, what the SSA does mandate—specifically, in Sections 1396p(c)(1)(A) and (c)(3)—is the imposition of eligibility penalties on those MA applicants who engage in actions, such as disclaimers, that render unavailable for use assets that could otherwise be used to pay for care. See 1 Elderlaw Advoc. Aging § 11:41 (2d ed.); Tannler, 211 Wis. 2d at 186-88. Accordingly, the Court finds that the agency's determinations concerning 42 U.S.C. 1396p et seq. deserve deference because they are not clearly erroneous, arbitrary, capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

V

Conclusion

After a review of the entire record, this Court finds that the Decision is supported by reliable, probative, and substantial evidence and is not affected by error of law. The Decision is not arbitrary or capricious and does not constitute an abuse of discretion. Ms. LaPointe's substantial rights have not been prejudiced. For the reasons above, this Court affirms DHS's Decision to deny Ms. LaPointe MA benefits on the ground that her disclaimers of her inherited interest in the Grant Drive property constitute uncompensated transfers of an asset.

Counsel shall submit the appropriate judgment for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

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JUSTICE/MAGISTRATE:	Matos, J.
ATTORNEYS:	
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