

**Final agency action regarding decision below:**

**AAREJ Agency Rejects decision: DECISION dated and issued 8-10-00; FF #8, CL #5 and the Recommended Decision are stricken in their entirety; appeal is denied\cct (Document has been scanned into Prolaw)/dw**

**IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

XXXXXXXXXX,

Complainant,

-v-

ARIZONA HEALTH CARE  
COST CONTAINMENT SYSTEM  
ADMINISTRATION,

Respondent.

No. 99F-XXXXXXXX-AHC19  
RECOMMENDED DECISION  
OF ADMINISTRATIVE  
LAW JUDGE

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**HEARING:** May 15, 2000

**APPEARANCES:** Complainant XXXXXXXXX; Attorneys at Law;XXXXXXXXXX,  
Authorized Representative; XXXXXXXXXXXXX, Daughter.

Respondent : Joe Garcia, Arizona Health Care Cost  
Containment System ("AHCCCS") Employee Representative; Kathy Sponagle, Arizona  
Long Term Care System ("ALTCS") Policy Representative; Bonnie Yarnell, Eligibility  
Interviewer.

**ADMINISTRATIVE LAW JUDGE:** Gary B. Strickland

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Complainant (also Applicant/Recipient), XXXXXXXXXXXXXXXXXXXX, by and through  
her legal representatives, appeals an Arizona Long Term Care System determination  
finding her ineligible for benefits pursuant to an application filed on her behalf on

October 29, 1999. XXXXXXXXXXXXXXXX has since reapplied and has been determined eligible. Complainant believes that she should have been accorded coverage as of an earlier date because the ALTCS conclusion that she had made uncompensated transfers was

not supported by the facts and was adduced contrary to law or that the full amount of the transfer likewise should not have been attributed to her to her disadvantage. Complainant argues that ALTCS improperly found her resource ineligible. Having heard the testimony of the witnesses and having read and considered the entire record, the following Findings of Fact are made, Conclusions of Law rendered, and Recommended Decision issued.

### **FINDINGS OF FACT**

1. XXXXXXXXXXXXXXX, who currently resides XXXXXXXXXXXXXXX, suffered a stroke in June 1999 which resulted in her filing an application for Arizona Long Term Care System coverage on October 29, 1999, subsequent to her admission into the home.

2. ALTCS denied eligibility on January 21, 2000, the period of ineligibility effective as of October 1, 1999. The reason stated for the denial was that Complainant had participated in the transfer of funds for uncompensated value, an attribution of the funds to her account rendering her resource ineligible.

3. In an effort to "spend-down" resources, Complainant's representatives purchased a large-screen television with the asserted intent that the TV be used for Complainant's entertainment on such occasions as Complainant would be permitted to visit her daughter. The representatives further had executed a Personal Services Agreement between Complainant and her daughter whereby the daughter agreed to perform financial, healthcare and domestic support services in consideration for a payment of \$250. per month during Complainant's lifetime. Additionally, Complainant paid out of her account her monthly nursing home bill, at a rate of \$3,900. per month. Moreover, Complainant's representatives have sought to exempt from attribution a vehicle owned by Complainant with a value greater than \$4,500. It is asserted that the automobile would be used for the transport of Complainant to and from medical appointments.

4. Based upon an ALTCS policy clarification that advised against an exemption for the vehicle, advised that the TV purchase be deemed a transfer for

uncompensated value, and advised that the Personal Services Agreement likewise be deemed an uncompensated transfer, the application was denied.

5. ALTCS has since determined XXXXXXXXXXXXXXXXXXXX eligible for long term care services pursuant to a second application filed on her behalf.

6. The issue concerning whether the Personal Services Agreement had value was obviated at the hearing by way of a stipulation offered by ALTCS that payments made under the Agreement did not constitute a transfer without value.

7. Two issues remain: (1) whether Respondent improperly deemed the automobile in question as a countable resource; and (2) whether Respondent improperly treated the television purchase as a transfer of a countable resource.

8. The weight of the evidence made a part of this record, having probative value while, at the same time, lacking a prejudicial effect, in light of all of the salient facts presented, requires a finding that: (1) Respondent improperly deemed the vehicle in question as a countable resource. The articulated policy in effect at the time of the application under consideration, and that, in turn, governed an interpretation of the transaction, required that the interviewer processing the application exclude the imputation of value of a vehicle to the Applicant for resource purposes if [asserted by the applicant] necessary for transportation to/from medical treatment sessions. *The ALTCS Eligibility Policy and Procedure Manual (the Manual)* § 906.59 (B) and (C). No further verification was required. This Applicant, by and through her representatives, claimed that the vehicle was necessary for medical services transportation, XXXXXXXXXXXXXXXXXXXX being aged, blind and having recently experienced a stroke. However, the ALTCS Policy Unit required that the interviewer treat the vehicle as a resource.<sup>1</sup> If ALTCS had not counted the vehicle as a resource, Complainant would properly have been deemed eligible as of November 1, 1999.

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<sup>1</sup> ALTCS is in the process of amending its Manual to restrict recipients in a nursing home to the ownership of a vehicle with a value no greater than \$4500. It was established that Complainant's vehicle has a value greater than \$4500. An application of the new articulated policy retroactively to this application would be unlawful, if for no other reason than its retroactivity. *Taylor v. McSwain*, 54 Ariz. 295, 95 P.2d 415 (1939). An amendment that restricts an application of the previously articulated policy constitutes a change in the policy rather than a permissible clarification. *S & R Properties v. Maricopa County*, 178 Ariz. 491, 500, 875 P.2d 150, 159 (App. 1993). The action recently taken by ALTCS in this matter creates a change in policy. Such change may not lawfully be retroactively applied.

9. The weight of the evidence further reveals: (2) Respondent properly treated the television set as an uncompensated transfer. While ALTCS policy excluded household goods from attribution as resources and while a TV was considered a household good, *Manual* § 906.26 (B), the subject TV was purchased after Complainant had entered the nursing home. It strains credulity that one would be caused to consider a large-screen television situated in Complainant's daughter's home, shopped for and purchased by the daughter with the mother/Applicant's funds, as a household good owned by and purchased for the benefit of the institutionalized Applicant, particularly given this Applicant's diagnoses and prognosis.

### **CONCLUSIONS OF LAW**

1. It is within the jurisdiction of the Director of the Arizona Health Care Cost Containment System ("AHCCCS") Administration to issue a final administrative decision concerning whether the Arizona Long Term Care System properly delayed Complainant's eligibility to July 1, 1999, pursuant to A.R.S. § 36-2903.01 and A.R.S. § 41-1092.08.

2. The powers and responsibilities of administrative agencies are strictly limited by the statute of which they are creature. *Boyce v. City of Scottsdale*, 157 Ariz. 265, 756 P. 2d 934 (App. 1988). Further, regulations promulgated by an administrative agency must cohere with its statutory grant of authority. *Az. Health Care Cost Containment Sys. Admin. v. Carondelet Health Sys.*, 188 Ariz. 266, 935 P.2d 844 (App. 1996). In this case, the Arizona Long Term Care System has improperly failed to accord Ms. Heinz eligibility on the date required by law and policy.

3. The burden of proof generally at an administrative hearing falls to the party asserting a claim, right or entitlement or seeking to impose a penalty. *Culpepper v. Arizona Board of Nursing*, 187 Ariz. 431, 930 P.2d 508 (App. 1997); *See also* Ariz. Admin. Code R2-19-119 (B). Further, the standard of proof is that of the "preponderance of the evidence". *Smith v. Arizona Department of Transportation*, 146 Ariz. 430, 706 P.2d 756 (App. 1985); *See also* Ariz. Admin. Code R2-19-119 (A). Proof by a preponderance means that the evidence is sufficient to persuade the finder of fact that the proposition is "...more likely true than not." *In re Arnold and Baker Farms*, 177

B.R. 648, 654 (9<sup>th</sup> Cir. BAP (Ariz.) 1994). The evidence taken as a whole must convince the decision maker that the party who bears the burden, in this case the Complainant /Applicant, is more probably correct on the issue(s) in dispute.

4. The evidence demonstrates that the Arizona Long Term Care System properly determined that the television purchased by Complainant's daughter and representative, to be placed within the daughter's home for the primary use of the daughter, constituted a transfer with uncompensated value.

5. The preponderance of the evidence further demonstrates that Respondent improperly attributed to Complainant the value of her ownership of the subject vehicle. The then current articulated policy required only an assertion of intended use to qualify the item for exclusion. Complainant satisfied the requirement. To take a different position would manifest an arbitrary application of articulated policy, which action is disfavored. *Samaritan Health Services v. Arizona Health Care Cost Containment System Admin.*, 178 Ariz. 534, 537, 875 Ariz. 193, 196 (App. 1994).

6. Complainant's prayer for an award of attorney's fees, based upon the federal statute cited, does not fall within the jurisdiction of this tribunal. Moreover, Respondent is exempt from the limited provision of attorney's fees allowed under A.R.S. § 41-1007.

**RECOMMENDED ORDER**

IT IS RECOMMENDED that the Director of the Arizona Health Care Cost Containment System uphold this appeal and accord Complainant retroactive Arizona Long Term Care System eligibility to October 1, 1999.

Set forth this 10<sup>th</sup> day of July in the year 2000.

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Gary B. Strickland  
Administrative Law Judge

Original transmitted by mail this  
\_\_\_\_ day of \_\_\_\_\_, 2000, to:

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By \_\_\_\_\_