IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

IRENE S. BOSSEN,	)	Civil Action File No.: _____
Petitioner/Appellant,	)	OSAH-Fulton DFCS-NH-0922489-60-Malihi
v.	)	
DEPARTMENT OF HUMAN RESOURCES, DIVISION OF FAMILY AND CHILDREN SERVICES,	)	Agency Reference No: 222344516
Respondent/Appellee.	)	

APPELLANT'S BRIEF IN SUPPORT OF APPEAL OF COMMISSIONER OF GEORGIA DEPARTMENT OF COMMUNITY HEALTH FINAL DECISION

INTRODUCTION

On December 31, 2008, Irene Adele Bossen and Catherine Sevelia Hailey entered into a Lifetime Care Management Agreement (hereinafter referred to as the "Agreement") (Petitioner's Exhibit 1). Under the Agreement, Ms. Bossen agreed to pay Ms. Hailey Twenty Three Thousand Dollars and Zero Cents (hereinafter referred to as "$23,000.00") in exchange for various services enumerated in the Agreement, including but not limited to: (1) arranging personal and medical services for Ms. Bossen; (2) assisting Ms. Bossen with daily living activities like eating, bathing, dressing, undressing, and walking; (3) identifying and contacting professionals and other service providers; (4) performing crisis intervention; (5) advocating on Ms. Bossen's behalf with healthcare providers and professional advisers; and (6) assisting with physical therapy. Ms. Hailey agreed to provide said services for $23,000.00 for the rest of Ms. Bossen's life.

In January 2009, Ms. Bossen applied for nursing home Medicaid benefits through the Department of Human Resources, Division of Family and Children Services (hereinafter referred to as "Fulton DFCS"). Fulton DFCS denied the Medicaid application and imposed a five (5) month transfer penalty.

On April 2, 2009, an Office of State Administrative Hearings (hereinafter referred to as "OSAH") hearing was held on the issue of whether the Payment to Ms. Hailey constituted an uncompensated transfer for Medicaid eligibility purposes so as to create a transfer penalty. On April 29, 2009, Judge Michael Malihi, in his Initial Decision,[1] concluded "that given the disparity between the contractual terms and the federal minimum wage, Petitioner's transfer to Ms. Hailey under the contract was not a fair market transfer." In short, Judge Malihi ruled against the Petitioner and affirmed Fulton DFCS imposition of the five (5) transfer penalty because the contract that Mrs. Bossen negotiated and entered into with Ms. Hailey may not have been a good bargain for Ms. Hailey.

On June 25, 2009, Richard L. Greene, the Agency Review Officer designated by the Georgia Department of Community Health Commissioner, Rhonda M. Meadows, M.D. (hereinafter referred to as "DCH" or the "Agency"), affirmed Judge Malihi's Initial Decision. The Petitioner appealed the Agency's Final Decision on July 25, 2009 to the Superior Court of Fulton County.

STATEMENT OF FACTS

Mrs. Bossen was admitted to Golden Living Nursing Home in October 2008 after a one-month hospital stay. Initially, Mrs. Bossen and her family expected her to rehabilitate and return

[1] The Court should note that Judge Malihi inadvertently titled his decision as a "Final Decision" when he clearly meant it to be an "Initial Decision."

to her apartment within a relatively short period of time. In December 2008, however, it became clear she would continue to require nursing home level care.

During Mrs. Bossen's hospital and nursing home stay she was assisted by a caregiver, Ms. Hailey. Ms. Hailey is a competent and compassionate adult, who is not related to Mrs. Bossen. Because Mrs. Bossen has a history of falls due to her medical condition, her doctor and other healthcare providers advised that she have constant supervision and recommended that she continue to be assisted by a caregiver in order to maintain her health and safety and to communicate with staff, personnel, and other healthcare providers on her behalf.

Mrs. Bossen's son, Gregg S. Bossen, acting as Mrs. Bossen's agent under her Durable Financial Power of Attorney dated March 2, 2004, realized that Mrs. Bossen would soon exhaust her limited resources if she continued to pay the nursing home privately, which would also preclude her from being able to retain Ms. Hailey's services. As such, on December 31, 2008, Mrs. Bossen, through Gregg S. Bossen acting as her agent under her Durable Financial Power of Attorney, and Ms. Hailey entered into the Agreement, under which Ms. Hailey agreed to provide the various services enumerated in the Agreement to Mrs. Bossen for Mrs. Bossen's lifetime. Also on that date Mrs. Bossen paid Ms. Hailey the Payment as consideration for her performance of the services as required under the Agreement (hereinafter referred to as the "Payment").

The Agreement was in writing, executed simultaneously with the Payment, and enumerated thirty (30) different types of care, assistance, or advocacy responsibilities that Ms. Hailey agreed to provide to Mrs. Bossen subsequent to the date of the Agreement. The signature of each party to the Agreement was notarized and it was an arms length transaction. Further, the terms of the Agreement provide that it can be amended by the Parties.

Additionally, the Agreement identifies the specific compensation that Ms. Hailey receives for providing this value and it provides for a lump-sum payment of $23,000.00. Based on Mrs. Bossen's life expectancy (10.71 to 10.85 years; Medicaid Manual Volume II/MA, MT 32-11/08, § 2339-11 and POMS SI 01150.005 F.) and the value of the Agreement, Ms. Hailey is compensated at the rate of nearly $200.00 per month -- which is unquestionably less than the market rate for the comprehensive list of services listed in the Agreement.

In January 2009, the month in which she applied for nursing home Medicaid benefits through Fulton DFCS, Mrs. Bossen's countable resources were valued at less than $2,000.00. Subsequently, the Medicaid application was denied and a five (5) month transfer penalty imposed because the caseworker considered the Payment to be an uncompensated transfer.

On April 29, 2009, following an administrative hearing at OSAH, Judge Malihi issued an Initial Decision affirming the Summary Notification issued by Fulton DFCS. Judge Malihi recognized that "an individual shall not be ineligible for medical assistance to the extent that a satisfactory showing is made that the individual intended to dispose of the assets either at fair market value or for other valuable consideration or the assets were transferred exclusively for a purpose other than to qualify for medical assistance. 42 U.S.C. § 1396p(c)(2)(C)." Judge Malihi's decision, however, turned on his conclusion that the disparity between the payment of $.87 per hour that Ms. Hailey will receive under the contract, if Mrs. Bossen lives another ten (10) years, and the federal minimum wage of $6.55 per hour at the time of the Agreement is effectively a transfer for less than fair market value.

ISSUE

The issue at hand is whether the Payment from Mrs. Bossen to Ms. Hailey under the Agreement is a transfer for value for Medicaid eligibility purposes so as to create a transfer penalty?

CITATION OF AUTHORITY

Federal Medicaid Law

There is ample authority for a Medicaid applicant or recipient to enter into a personal care contract and for the funds paid for such services to be treated as a transfer for value such that the payment is not considered a penalized transfer. Specifically, federal law at 42 U.S.C. §1396p(c)(2)(C)(i)[2] provides that transfers for fair market value are not sanctionable. Transmittal No. 64, issued by the Health Care Financing Administration (now the Centers for Medicare and Medicaid Services (hereinafter referred to as "CMS")), serves as guidance to the states on how to interpret the federal transfer statute, recognizing that "relatives and family members legitimately can be paid for care they provide to the individual."[3] Therefore, payments made pursuant to a personal care contract under which the care provider is paid the fair market value of the contract are not subject to a transfer penalty.

The Social Security Administration's rules for Supplemental Security Income (hereinafter referred to as "SSI") eligibility allow specifically for lump-sum payment for personal service contracts. "A transferor receives compensation when he/she receives something of value pursuant to a legally binding agreement (e.g., a contract, a bill of sale, a deed) that was

[2] An individual shall not be ineligible for medical assistance due to a transfer of assets to the extent that "a satisfactory showing is made to the State that the individual intended to dispose of the assets either at fair market value, or for other valuable consideration."

[3] State Medicaid Manual, Health Care Financing Administration, Pub. No. 45-3, Transmittal 64, § 3258.1.A.1. (November 1994).

in effect at the time of transfer. The transferor may actually receive the compensation before, at, or after the actual time of transfer."[4] Moreover, the instruction in POMS § SI 01150.005 D.4.c. defines how fair value is determined under a personal service contract: "If the services are to be provided for the life of the claimant, first determine the yearly value of the services, and use the life expectancy table in SI 01150.005F to determine the value of compensation for services for life."

Under the Medicaid scheme set out in Title XIX of the Social Security Act, the rules for Medicaid eligibility in Georgia cannot be more restrictive than the rules for SSI. Hence, DCH cannot issue any Medicaid regulations that are more restrictive than the SSI rules expressed in the regulations and the POMS. The core issue as mandated by Congress is "comparability" between SSI eligibility rules and Medicaid eligibility rules.[5] The CMS State Medicaid Manual specifically provides that state Medicaid programs "may not use income or resource methods that are more restrictive than those used under the most closely related cash assistance program. A method is more restrictive if any individual who is otherwise eligible under the rules of the most closely related cash assistance program is ineligible under your alternative method. Therefore, do not employ a policy which, although it may result in a more liberal application of policy in some instances, results in denying Medicaid to persons who are eligible if the equivalent cash assistance rule is used to determine eligibility."[6]

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4 Social Security Administration POMS § SI 01150.005 C.2.

5 42 U.S.C. § 1396a(a)(10)(C)(i)(III) and 42 U.S.C. § 1396a(r)(2)(A).

6 CMS State Medicaid Manual § 3240.4.

Inasmuch as federal statutory law and policy clearly contemplate and authorize payments made under contracts for care, Georgia must do likewise. Moreover, to the extent that DCH applies its rules in a way that is more restrictive than SSI, it violates Social Security Act.[7]

Georgia Medicaid Rules

The Georgia Medicaid rules specifically contemplate a situation where the applicant or recipient purchases goods or services at fair market value. The rules clearly establish that such a purchase does not constitute a penalized transfer. The Georgia Medicaid rules further provide that the difference between the fair market value of the asset at the time of the transfer and compensation received for the resource is the "uncompensated value." A transfer of assets penalty specifically does not apply if an applicant can provide a satisfactory showing that she intended to dispose of the asset for fair market value or for other value considerations.[8]

The Georgia Department of Community Health has in place a process for caseworkers to approve contracts for services rendered as transfers for value. The Medicaid caseworker is instructed to obtain written evidence of the transaction, including a statement regarding assets exchanged for goods or services and the amount of compensation received, in order to determine if a transfer of assets was made. The receipt by the caseworker of an executed copy of a contract for care, and documentation substantiating the value paid for such contract, are sufficient for a determination that fair value was received and the transfer is not subject to a transfer penalty.[9]

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[7] *Caldwell v. Blum*, 621 F.2d 491 (2d Cir. 1980), striking down a state rule that penalized transfer of assets for Medicaid before there was such a penalty for SSI recipients; *Anna W. v. Bane*, 863 F.Supp. 125, 129 (W.D.N.Y. 1993), striking down N.Y. law regarding treatment of primary residence as more restrictive than SSI.

[8] Medicaid Manual Volume II/MA, MT 32-11/08, § 2342-2.

[9] Medicaid Manual Volume II/MA, MT 32-11/08, § 2342-5.

Georgia Case Law

Georgia law is well settled that contracts, including those for which the consideration was personal services rendered, are enforceable in law or equity. See *Banks v. Howard*, 117 Ga. 94, 96 (43 SE 438) and *Brogdon v. Hogan*, 189 Ga. 244, 248."[10] More specifically, OSAH has recognized that the Georgia Medicaid rules specifically contemplate a situation where the applicant or recipient purchases goods or services at fair market value and that such a purchase does not constitute a penalized transfer.

For example, in *Eva Mae Fossett v. Department of Human Resources, Division of Family and Children Services*, OSAH-DFCS-NH-0932233-155-Miller (2009) (hereinafter referred to as the "Fossett Decision"), Eva Mae Fossett applied for nursing home Medicaid benefits on January 28, 2009. (Petitioner's Exhibit 2). Prior to her Medicaid application, she was hospitalized in January 2008 due to a stroke. Consequently, she resided in a nursing home from January 3, 2008 to March 31, 2008. Shortly thereafter, she resided with one of her sons, Danny Fossett, and his wife, Margaret Fossett, in their home. On November 16, 2008, Mrs. Fossett was hospitalized again. Finally, on November 20, 2008, she entered a nursing home, where she continues to reside.

During Mrs. Fossett's stay at her son's home, she required significant assistance in daily living and Margaret Fossett was her primary care giver. Specifically, Mrs. Fossett could not be left alone in a room because she would attempt to walk independently and she was at great risk of falling. She was also incontinent and required assistance to eat. With the exception of two (2) home visits per week and respite care provided by Mr. Fossett and his wife, Frank Fossett

[10] *Couch v. Bioust*, 222 Ga. 836, 838 (1967).

and his wife, an occasional babysitter, Mr. Fossett and his wife provided around the clock supervision of Mrs. Fossett from March 31, 2008 through November 16, 2008.

Mr. Fossett used Mrs. Fossett's resources to pay for occasional babysitting costs. In addition, based on a verbal agreement between the parties, Mr. Fossett paid Frank Fossett, his brother, $200.00 per week from Mrs. Fossett's assets for her personal care.

Prior to May 2009, Fulton DFCS's policy manual contained one provision applicable to personal care services. The relevant passage states that if an applicant's "asset is given to someone (other than spouse) who has provided care to the applicant who at the time provided the care for free, presume that the services were intended to be provided without compensation. Thus, a transfer to a relative or others for care provided for free in the past is a transfer of assets for less than [fair market value]. However, an individual can rebut this presumption with tangible evidence that is acceptable." *Fossett Decision*, page 5.

This OSAH Judge, Judge Kristin Miller, concluded that the payments to Danny Fossett from Mrs. Fossett's assets did not create a transfer penalty. *Fossett Decision*, page 6. Specifically, the $200.00 per week paid to Frank Fossett for 24-hour care and supervision equated to approximately $1.19 per hour. Judge Miller further recognized that this amount is far below the then federal minimum wage, even when the cost of items such as food and diapers is not considered. *Fossett Decision*, page 5. Notwithstanding the above, Judge Miller concluded that Mrs. Fossett's assets were not sold or given for less than fair market value and that DFCS "is not authorized to impose a transfer penalty with regard to the [funds paid] in personal care services." *Fossett Decision*, page 5.

Other States' Case Law

Courts in Florida and Louisiana have issued decisions recognizing the validity of Lifetime Care Management Agreements.

Thomas v. Florida

The case law on the fair value issue begins in 1998 with a Florida decision holding that the recipient of care received fair market value for her payment of a lump sum of $67,725 under a lifetime contract.[11]

Minerva Thomas was found on the concrete pavers surrounding the swimming pool at the assisted living facility where she lived. She had been laying in the hot Florida sun for hours. After an extended stay in the hospital Ms. Thomas was discharged to a skilled nursing facility. Her family resolved that they could never trust a facility's paid staff to care for Ms. Thomas like they would. Just prior to her admission to the nursing home she entered into a lifetime contract with her daughter, Diane, under which Diane agreed to supervise her health care and provide personal services to Minerva in exchange for a lump sum of $67,725. In truth, Diane and her brother, Blair, were performing much of the services contemplated by the agreement before Minerva asked to enter into the contract. Now, however, Diane was legally bound to provide these services, was compensated for them, and would step up her time commitment even more.[12]

In holding that Minerva received fair market value for this transfer the Court relied on federal law at 42 U.S.C. § 1396p(c)(2)(C)(i) which provides that "a transfer of assets shall not render a Medicaid applicant ineligible for benefits if he or she can establish that the individual

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[11] *Thomas v Florida Department of Children and Families*, 707 So. 2d 954 (Fla. Dist. Ct. App. 1998).

[12] *Id.*

intended to dispose of the assets either at fair market value, or for other valuable consideration."[13]

Carpenter v. Louisiana

Eight years later the Court of Appeal of Louisiana, First Circuit held that a payment of $29,339.68 pursuant to a written care agreement was not a transfer for Medicaid eligibility purposes.[14]

In 1989 Louise moved into the home of her daughter, Sheryl, and the two entered into a written care agreement under which Louise would pay Sheryl $1,000 per month, due on demand, in compensation for care and services during her residence with her daughter. In 2004 Louise moved into a nursing home and $29,339.68, the balance in Louise's investment account, was transferred to Sheryl.[15]

The Court held that the written agreement clearly expresses the "meeting of the minds" that signifies a binding contract, and satisfies the Medicaid requirements to rebut the presumption of gratuitous family care and excludes the transfer from penalty as a proper use of a resource to pay a valid debt.[16]

ARGUMENT

A Lifetime Care Management Agreement is a means of better assuring quality care through one's last days. The caregiver is engaged to ensure a higher level of care than would be attained by the elder if she were without an advocate and care provider. The Agreement

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[13] *Id.*

[14] *Carpenter v. State, Department of Health and Hospitals*, 944 So.2d 604 (La. Ct. App. 1 Cir. 2006).

[15] *Id.* at 606-607.

[16] *Id.* at 614.

provides a legally enforceable guarantee that those services will be provided and Georgia law is well settled that contracts for personal services such as the one at issue are enforceable.[17]

While in an ideal world the care provided to each resident in a nursing home would be comprehensive, as a practical matter it is not. More than 90 percent of all certified facilities were cited for deficiencies in 2006, and nearly one-fifth of all certified facilities were cited for deficiencies that caused harm or immediate jeopardy to residents. A significant number of nursing homes are cited for inadequate care. The best studies suggest that the vast majority of nursing homes are significantly understaffed.[18] Nursing home staff do not have the time required by many residents to ensure that their basic needs, such as feeding, are met. As such, entering into such an agreement shortly before or upon entering a nursing home is a way the elder can exercise a small bit of control over the care she will receive in the future and ensure that she will receive value for the consideration she pays when entering into the agreement.

The Lifetime Care Management Agreement at issue in this case is in writing, was executed simultaneously with the payment, and enumerates thirty (30) different types of care, assistance, or advocacy responsibilities that Ms. Hailey, the caregiver, agreed to provide to Mrs. Bossen, the elder, subsequent to the date of the contract. The signature of each Party to the Agreement was notarized and it was an arms length transaction.

Similar to the applicant in the *Fossett Decision*, Mrs. Bossen has a history of falls, an inability to walk without assistance, and she requires assistance to eat. Moreover, both applicants need constant monitoring and both care givers received lump-sum payments for the

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[17] *Couch v. Bioust*, 222 Ga. 836 (1967).

[18] Joshua M. Wiener, Marc P. Freiman & David Brown, *Nursing Home Care Quality*, December 2007, The Henry J. Kaiser Family Foundation, available at http://www.kff.org/medicare/upload/7717.pdf.

services provided. Based on Mrs. Bossen's life expectancy (10.71 to 10.85 years)[19] and the value of the contract, Ms. Hailey is compensated at the rate of just under $200.00 per month -- which is unquestionably less than the market rate for the comprehensive list of services documented in the Agreement and similar to the caregiver in the *Fossett Decision*.

Here and in the *Fossett Decision*, the care giver was paid about $200.00 per month for constant monitoring of an elder, which was paid in a lump sum. Unlike Judge Malihi, Judge Miller, determined that the payments for personal care were permissable and that they did not create a transfer penalty. Moreover, Courts in at least two other states have found conclusively that a personal service contract such as the Agreement at issue here is a valid contract and that both parties received value for their consideration, such that a transfer penalty did not apply.[20]

To conclude that the payment to Ms. Hailey was a gift would be to hold that the services that Ms. Hailey is legally required to provide to Mrs. Bossen have no value. If Mrs. Bossen expected to receive no benefit from the consideration she paid under the Agreement she had no motive to enter into it, as Ms. Hailey is not related to Mrs. Bossen and would not otherwise inherit or be entitled to these funds. Rather, the funds were in fact exchanged for valuable services which support Mrs. Bossen's "independence, autonomy, well-being and care in ways

[19] At age 77, Mrs. Bossen's life expectancy is 10.71 pursuant to Medicaid Manual Volume II/MA, MT 32-11/08, § 2339-11 (Petitioner's Exhibit 2), and is 10.85 years pursuant to POMS SI 01150.005 F.

[20] *Thomas v Florida Department of Children and Families*, 707 So. 2d 954 (Fla. Dist. Ct. App. 1998); *Carpenter v. State, Department of Health and Hospitals*, 944 So.2d 604 (La. Ct. App. 1 Cir. 2006); *Reed v Missouri Department of Social Services*, 193 S.W.3d 839 (Mo. Ct. App. E.D. 2006); and *Brewton v Dept. Of Health and Hospitals*, 956 So. 2d 15 (La. Ct. App. 5 Cir. 2007).

that the facility's services do not. They enhance [Mrs. Bossen's] life in ways that the facility does not, and are above and beyond the care provided by the facility."[21]

Judge Malihi's analysis overlooks the simple fact that a penalty only applies if the applicant – Mrs. Bossen – received LESS than fair market value under the Agreement as opposed to MORE. For Medicaid eligibility purposes, the "transfer for value" question is raised in order to assess the value that the Medicaid applicant – Mrs. Bossen – received in exchange for the payment she made. Under the Agreement at hand Mrs. Bossen is receiving MORE than fair value. The issue is not whether the caregiver got value – it's whether the applicant got fair value. By implication Judge Malihi's decision says that such an Agreement is unenforceable if the applicant gets a good deal and it is contrary to other contemporaneous OSAH decisions on the issue.

Conclusion

Federal and state statute, regulation, policy and case law clearly provide that transfers for value are not penalized and that personal care contracts are transfers for value. Georgia law is well settled that personal services contracts are valid. The Courts in *Thomas* and *Carpenter* specifically authorize personal service contracts with lump-sum payments paid to the care providers at the execution of the contract.

Federal statutory law and policy clearly contemplate and authorize payments made under contracts for care, and Title XIX of the Social Security Act requires that Georgia do likewise. As federal law provides that DCH cannot issue any Medicaid regulations that are more restrictive than the SSI rules which are expressed in the regulations and the POMS, Georgia

[21] *Brewton v Dept. Of Health and Hospitals*, 956 So. 2d 15 (La. Ct. App. 5 Cir. 2007).

must also recognize this arrangement as a legitimate agreement for personal services which has value to both parties.

Taken together, the federal and state authorities cited above recognize the personal service contract as a legitimate arrangement between a Medicaid applicant or recipient and her care provider. A payment from an elder, made in one lump sum, is not an uncompensated transfer giving rise to disqualification for Medicaid benefits. Such a contract can be established and performed when the elder is residing in a nursing home and the services provided under the contract are not duplicative of the services the nursing home performs which is the case here. When an elder transfers assets under a proper contract, the elder is receiving a fair market value return on her investment – namely, the binding promise of care for the rest of the elder's life. As there is no uncompensated value as a result of the payment under the contract, there is no period of Medicaid ineligibility.

To conclude that the fact that Mrs. Bossen received MORE than fair market value in exchange for her payment under the Agreement does not cause this to be a transfer for less than fair market value. The transfer for value rules were established to protect the elder – Mrs. Bossen – not a competent adult who has agreed to provide services at a discount. Rather, the funds were in fact exchanged for valuable services which support Mrs. Bossen's independence, autonomy, well-being and care in ways that the facility's services do not. They enhance Mrs. Bossen's life in ways that the facility does not, and are above and beyond the care provided by the facility.

The Lifetime Care Management Agreement complies in all respects with federal and state law, regulation, policy, and case law. The value of the consideration provided under the Agreement is reasonable given Mrs. Bossen's life expectancy. The only reasonable conclusion

that can be drawn is that this is a valid Agreement under which both parties received value, and a transfer penalty does not apply.

More importantly, OSAH itself has recognized and approved agreements similar to Mrs. Bossen's personal care agreement in the past and as recently as three (3) months of Judge Malihi's decision. See *Fossett Decision*. To treat Mrs. Bossen differently from the applicant in the *Fossett Decision* violates basic tenets of American jurisprudence, such as equal protection under the law and legal precedent.

In conclusion, the Payment Mrs. Bossen made to Ms. Hailey under the Agreement is a transfer for value, for Medicaid eligibility purposes, and it should not generate or be treated as an uncompensated transfer. Hence, Mrs. Bossen's Medicaid eligibility should be approved as of January 2009. To that end, Mrs Bossen asks that the Court reverse the Agency's decision or at the very least remand this matter to OSAH for a new hearing with specific instructions to OSAH on how to view and decide this matter under applicable law.

This ____ day of _____, 2009.

RUTHANN P. LACEY, P.C.

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Donald S. Horace, Esq.

Donald S. Horace, Esq.
Georgia Bar No. 366730
Ruthann P. Lacey, P.C.
3541-E Habersham at Northlake
Tucker, Georgia 30084
(770) 939-4616

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing Appellant's Brief in Support of Appeal of Commissioner of Georgia Department of Community Health Final Decision upon the following by depositing the same in the Regular United States mail with adequate postage thereon and addressed:

Kathryn A. Fox, Esq.
Attorney for Respondent
40 Capitol Square, S.W.
Atlanta, Georgia 30334

This ____ day of _____, 2009.

RUTHANN P. LACEY, P.C.

Ruthann P. Lacey, P.C.
3541-E Habersham at Northlake
Tucker, Georgia 30084
(770) 939-4616
Georgia Bar No. 366730

_____
Donald S. Horace, Esq.