

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA**

**DENISE LONDON,**  
Petitioner,

v.

**DHS, DIVISION OF FAMILY AND  
CHILDREN SERVICES,**  
Respondent.



Docket No.: 2602662  
2602662-OSAH-DFCS-M-NH-155-Teate

FILED  
OSAH

Agency Reference No.: 136030789

02/23/2026

A handwritten signature in blue ink, appearing to read "Kristan Moses", is written over a horizontal line.

Kristan Moses, Legal Assistant

**INITIAL DECISION  
ORDER OF DISMISSAL**

**I. Introduction**

In response to the denial on June 24, 2025, of the Petitioner's December 4, 2024, Medicaid application, David McGuffey, Esq. filed a hearing request as the Petitioner's attorney on July 17, 2025. The Respondent then referred the matter to the Office of State Administrative Hearings (OSAH) on July 24, 2025. A hearing was originally scheduled for September 9, 2025, and then rescheduled several times upon request from the respective parties to January 13, 2026.

Prior to that hearing date on January 6 and January 7, 2026, due to email correspondence between the parties that copied the Court, the undersigned first became aware that the Petitioner had died in January 2026, on a date prior to the denial of her December 4, 2024, application and that the Respondent was disputing Mr. McGuffey's authority to file the July 17, 2025, hearing request.

Per the Order issued on January 7, 2026, the Court temporarily stayed the case, removed it from the calendar, and issued a directive to the parties to file any appropriate motions within 15 days of the issuance of this Order. The Petitioner filed a letter dated January 22, 2026, in response to the Order issued on January 7. The Respondent filed a motion to dismiss on January 27, 2026, to which the Petitioner filed an email response on the same date, reasserting the Petitioner's response in the letter dated January 22, 2026. On February 16, 2026, Mr. McGuffey and Ms. Suriel participated in the prehearing conference.

The following documents are hereby admitted as ALJ Exhibits 1, 2, 3, and 4, respectively, subject to objection, if any, within the 10 day reconsideration period: (1) the June 24, 2025, application denial; (2) the July 17, 2025, appeal of the denial; (3) the July 22, 2025, letter indicating the scope of Mr. McDuffey's legal representation that was attached as Exhibit 1 of the Respondent's Motion to

Dismiss; (4) the Petitioner's obituary that was attached as Exhibit 2 to the Respondent's Motion to Dismiss.

Having read and considered the Motion to Dismiss and the Petitioner's response in opposition to the same, and finding no need for further evidentiary determination, the undersigned **GRANTS** the Respondent's Motion to Dismiss.

## II. Legal Issue and Legal Arguments Asserted

**Primary Legal Issue Raised:** Other than a decedent's estate, who has standing to appeal a Medicaid application denial in Georgia after the death of the applicant?

*Petitioner's legal positions:*

- A State Medicaid plan must...provide such safeguards as may be necessary to assure that eligibility for care and services under the plan will be determined, and such care and services will be provided, in a manner consistent with simplicity of administration and the best interests of the recipients. (underlined in the Petitioners' argument for emphasis). 42 U.S.C. § 1396a(a)(19);
- Section 2025 of the Georgia Medicaid Manual<sup>1</sup> provides that "anyone may apply for Medical Assistance benefits, including the following individuals: the individual requesting assistance, ...and the parent, specified relative or individual who provides/provided care and control of a child or deceased." Medicaid Manual, Section 2025. Therefore, the Georgia Medicaid Manual provides standing to applicants on behalf of deceased individuals, which would grant Mr. McGuffey all the rights of any other applicant;
- Medicaid Manual Section 2068 allows applications on behalf of deceased individuals to be processed, and therefore also gives a right to appeal an adverse action;
- Because 42 U.S.C. § 1396a(a)(19) states that Medicaid is supposed to help people, this regulation suggests that Section 2068 of the Medical Manual would provide a right to appeal an adverse action;
- Disallowing a hearing on the deceased's behalf would be a violation of O.C.G.A. § 50-13-3(b) because such would constitute an unpromulgated rule against allowing hearings for deceased individuals; and
- If the Respondent's manual allows individuals to file applications on behalf of deceased

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<sup>1</sup> See GA. DIV. OF FAMILY AND CHILDREN SERVS., Medicaid Manual, available at <https://pamms.dhs.ga.gov/dfcs/medicaid/> (PAMMS or Medicaid Manual).

individuals, then O.C.G.A. § 50-13-13(a)(1) allows this court to grant them a hearing.

*Respondent's legal positions:*

- Termination of authorized representation is governed by 42 C.F.R. § 435.923;
- Federal Medicaid law frames recovery and adjustment in terms of the “estate” of a deceased recipient and assigns recovery authority to the state against such estates. The federal statutory and regulatory scheme contemplates post-death action through estate administration, not continued agency action under an expired power of attorney. *See* 42 U.S.C. § 1396p(b)(1)(A); 42 C.F.R. § 433.36(h).
- Under Georgia law, a power of attorney terminates upon the death of the principal, and a legal guardianship terminates upon the death of the adult ward. *See* O.C.G.A. §§ 10-6B-10(a)(1), 29-4-42(e). The authority to act on the former principal/ward’s behalf would then transfer to the decedent’s estate. *See* O.C.G.A. § 53-7-1 *et seq.*;
- The Medicaid Manual Policy 2066 does not apply since the Petitioner was alive at the time of application.

### **III. Findings of Fact**

1. The Petitioner filed a Medicaid application on December 4, 2024, shortly preceding her death on January 29, 2025. She was survived by two brothers and by her nieces and nephews. (ALJ Exhibit 1; ALJ Exhibit 4).

2. The denial of the December 4, 2024, Medicaid application did not occur until June 24, 2025, approximately five months following the Petitioner’s death. (ALJ Exhibit 1; ALJ Exhibit 4).

3. Petra Calhoun, a sister-in-law of Ms. London, who previously acted as a caretaker for Ms. London and was possibly named as the Petitioner’s personal representative in the December 4, 2024, application. Although possibly a beneficiary, but not an heir-at-law, Ms. Calhoun is reported to be designated as Executrix in Ms. London’s last will and testament. Contrary to Mr. McGuffey’s legal advice, Ms. Calhoun declined to probate Ms. London’s will and to be appointed as Executrix because of personal and family issues that included insolvency of the Estate and potential problems with one of the heirs-at-law. (ALJ Exhibit 2; ALJ Exhibit 3; statement by Mr. McGuffey in response to ALJ query at prehearing conference on February 18, 2026).

4. Although not retained by Ms. London’s estate, by Ms. Calhoun to represent the deceased as a personal representative, or by the facility in which Ms. Landon died, Mr. McGuffey had previously represented Ms. London, and he filed the July 17, 2025, appeal without compensation as “attorney in

fact.” (statement by Mr. McGuffey in response to ALJ query at prehearing conference on February 18, 2026).

#### IV. Conclusions of Law

1. It is well established under federal law that although constitutional rights must generally be asserted by the person to whom they belong, Barrows v. Jackson, 346 U.S. 249 (1953), a litigant may assert the rights of a third party in exceptional circumstances. To successfully establish third-party standing, a federal litigant must have suffered an “injury in fact,” thus giving him or her a sufficiently concrete interest in the outcome of the issue in dispute; the litigant must have a close relationship to the third party; and, there must exist some hinderance to the third party’s ability to protect his or her own interest. Powers v. Ohio, 499 U.S. 400, 411 (1991).

2. Neither the controlling federal regulation, 42 C.F.R. § 435.923,<sup>2</sup> nor Georgia’s Medicaid Manual expressly addresses whether an authorized representative’s powers survive the Medicaid applicant/beneficiary’s death. That said, an analogy can be drawn from the endurance of powers held by an attorney-in-fact and a legal guardian, both of whom can serve as Medicaid authorized representatives in the State of Georgia. See 42 C.F.R. § 435.923(a)(2); Medicaid Manual, App’x B, p. 2. As applied, the responsible party or the power to act as an authorized representative is valid until the applicant or beneficiary modifies the authorization or notifies the agency that the representative is no longer authorized to act on his or her behalf, or the authorized representative informs the agency that he or she no longer is acting in such capacity, or there is a change in the legal authority upon which the individual or organization’s authority was based. 42 C.F.R. § 435.923(c). The issue here is whether Ms. London’s death instituted “a change in the legal authority upon which” the Petitioner derived the authority to act on her behalf. Id. An analogy can be drawn from the endurance of powers held by an attorney-in-fact and a legal guardian, both of whom can serve as Medicaid authorized representatives in the State of Georgia. See 42 C.F.R. § 435.923(a)(2); Medicaid Manual, App’x B.<sup>3</sup>

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<sup>2</sup> Section 435.923 requires the state agency managing Medicaid to “permit applicants and beneficiaries to designate an individual or organization to act responsibly on their behalf in assisting with the individual’s application and renewal of eligibility and other ongoing communications with the agency.” 42 C.F.R. § 435.923(a).

<sup>3</sup> Authorized representatives “derive their authority . . . through the [Medicaid applicant/beneficiary’s] personal assignment of these powers.” Carespring Healthcare Mgmt. v. Dungey, No. 1:16-cv-1051, 2018 U.S. Dist. LEXIS 34460, at \*37 (S.D. Ohio Mar. 2, 2018) (holding “When a [Medicaid applicant/beneficiary] dies, the authority to act on that [applicant/beneficiary’s] behalf no longer can come from that individual’s assignment, but must instead come from his or her estate.”); see also Hillspring Health Care Ctr. v. Dungey, No. 1:17-cv-35, 2018 U.S. Dist. LEXIS 1337, at \*16-18 (S.D. Ohio Mar. 2, 2018) (analyzing a series of cases where attorney-in-fact or representative was deemed to have lost power over Medicaid appeals upon applicant/beneficiary’s death); Diversicare v Glisson, No. 16-141-HRW, 2017 U. S. Dist. LEXIS 178392, at \*11 (E.D. Ky. October 27, 2171) (concluding that nursing home serving as the Medicaid authorized

3. Under Georgia law, a power of attorney terminates upon the death of the principal, and a legal guardianship terminates upon the death of the adult ward. See O.C.G.A. §§10-6B-10(a)(1), 29-4-42(e). The authority to act on the former principal/ward's behalf would then transfer to the decedent's estate. See O.C.G.A. § 53-7-1 et seq. (addressing powers and duties in administration of estates); Myers v. Myers, 297 Ga. 490, 494 (2015) (stating that administrator or executor has general duty to settle the estate "with as little sacrifice of value as is reasonable."). Unless an exception can be found, either Mr. McGuffey's authority as Ms. London's prior attorney or by Ms. Calhoun's authority as a personal representative terminated upon her death.

4. Per federal statute, a State Medicaid plan must provide such safeguards as may be necessary to ensure that eligibility for care and services will be determined in a manner consistent with simplicity of administration and the best interests of the recipient. 42 U.S.C. § 1396a(a)(19). Georgia Medicaid regulations indicate that "the Medical Assistance application process begins with the request for health coverage and ends with notification to the Assistance Unit (AU) of the eligibility status." Medicaid Manual, Section 2050. Although there is no regulation explicitly addressing the authority of a party, other than the estate of a decedent applicant who has died following an application to proceed with an appeal following the death of the applicant, it is noted that a special circumstance authorizes an application for a deceased individual. Medicaid Manual, Section 2068. That special circumstance allows such an application for a deceased individual "by a relative, or other responsible party who can provide sufficient information for an eligibility determination for the application month and the three months prior to the application." Id.

5. In this matter, Mr. McGuffey has not established that he meets the provisions to represent a deceased individual. He is not the representative of the Petitioner's estate. As the deceased's attorney, the attorney-client relationship terminated with the deceased's death. The analogy to the Department processing applications on behalf of deceased individuals is weak inasmuch as the Petitioner's application was made by the Petitioner and not by Mr. McGuffey after her death. Further, Mr. McGuffey, as a former attorney, is neither a relative nor a responsible party, as he lacks a legal relationship to the deceased.<sup>4</sup> Mr. McGuffey's position regarding unpromulgated rules is irrelevant,

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representative could not represent resident in federal suit after the residents death, because only an administrator of her estate could bring a federal claim on her behalf). As applied in the present matter, Denise London passed away before the request for a fair hearing was filed. Federal Medicaid law frames recovery and adjustment in terms of the "estate" of a deceased recipient and assigns recovery authority to the state against such estates. The federal statutory and regulatory scheme contemplates post-death action through estate administration, not continued agency action under an expired power of attorney. See 42 U.S.C. § 1396p(b)(1)(A); 42 C.F.R. § 433.36(h).

<sup>4</sup> Under Georgia Medicaid, a "responsible party" typically refers to an individual with legal authority to bind a

as he is actually disputing how the agency is applying its existing rules regarding deceased applicants. Mr. McGuffey's other legal arguments are conclusory and not well supported.

6. The Respondent's Motion to Dismiss is supported by legal arguments presented and is not effectively rebutted by the Petitioner's legal arguments.

#### V. Disposition

Based on the above findings of facts and conclusions of law, the undersigned finds that Mr. McGuffey lacks standing to assert claims here raised independent of the authorization of the decedent's estate. Accordingly, the Respondent's Motion to Dismiss is **GRANTED**.

**SO ORDERED**, this 23<sup>rd</sup> day of February 2026.

  
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Steven W. Teate, Judge



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provider entity (e.g., a corporate officer), or a legally liable third party like an insurer. See MEDICAID.GOV, COORDINATION OF BENEFITS & THIRD PARTY LIABILITY, <https://www.medicaid.gov/medicaid/eligibility-policy/coordination-of-benefits-third-party-liability> (last accessed February 20, 2026).

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