

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

DENISE LONDON,)	
Petitioner)	Docket No.: 2602662-
v.)	OSAH-DFCS-M
)	NH-155- Teate
)	
DHS, DIVISIONS OF FAMILY AND)	Agency Ref. No.: 136030789
CHILDREN SERVICES,)	
Respondent)	

MOTION TO DISMISS APPEAL

The Department, is committed to providing every applicant with the right to a hearing. In this matter the London file has been reviewed for correctness. The Department was not able to locate a document appointing an Authorized Representative in Denise London’s file. The Department received a Letter of Representation (LOR)¹ dated July 22, 2025 from Attorney David McGuffey stating a fair hearing request had been signed by the attorney who was also providing legal representation for Mrs. London. The LOR defines the “scope of my representation covers all matters associated with her Medicaid eligibility including, but not limited to, fair hearings and other appeals”.

The obituary for the Petitioner documents her death as occurring on January 29, 2025². The fair hearing request was submitted after Denise London’s death when the authority to act on her behalf as an Authorized Representative (AREP) or an attorney had terminated. There is no authority for an AREP to advocate for Denise London post-houmously.

I. DEATH TERMINATES AUTHORITY OF AUTHORIZED REPRESENTATIVE AND ATTORNEY-IN-FACT

Termination of authorized representation is governed by subsection (c) of 42 C.F.R.

§ 435.923:

¹ Attached as “Respondent’s Exhibit 1”.

² Attached as “Respondent’s Exhibit 2”.

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.

Id. § 435.923(c). The issue here is whether Ms. London's death effectuated "a change in the legal authority upon which" the Petitioner derived the authority to act on her behalf.

Here, the Petitioner represented Ms. London as attorney-in-fact. 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. 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"). In essence, authorized representatives "derive their authority . . . through the [Medicaid applicant/beneficiary's] personal assignment of these powers." Carespring Healthcare Mgmt., LLC v. Dungey, No. 1:16-cv-1051, 2018 U.S. Dist. LEXIS 34460, at *37 (S.D. Ohio Mar. 2, 2018). "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." Id.; see also Hillspring Health Care Ctr., LLC, v. Dungey, No. 1:17-cv-35, 2018 U.S. Dist. LEXIS 1337, at *16-18 (S.D. Ohio Mar. 2, 2018) (analyzing series of cases where attorney-in-fact or representative was deemed to have lost power over Medicaid appeals upon applicant/beneficiary's death).

In the present matter, Denise London passed away before the request for a fair hearing was filed. The authority to represent Petitioner terminated indefinitely upon her death. It is her estate which would have the authority to act on her behalf; but one does not exist to the Department's knowledge.

Therefore, the Department moves to dismiss the present case, as there is no authority for authorized representative to act on behalf of the deceased Denise London.

The Department hereby submits a REVISED Motion to correct the Scrivner's error in the Motion submitted on the 27th day of January, 2026 on this 3rd day of February, 2026.

Respectfully submitted,

DHS Office of the General Counsel
47 Trinity Ave., SW
Atlanta, GA 30334
(678) 238-9105
Madelyn.suriel@dhs.ga.gov

/s/ Madelyn A. Pavon Suriel
Madelyn A. Pavon Suriel
State Bar No.: 586531
Associate General Counsel

