

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

\_\_\_\_\_ :  
Petitioner, :  
 : Docket No.: OSAH-DFCS-NH-\_\_\_\_\_ Woodard  
 :  
v. : Agency Reference No.: \_\_\_\_\_  
 :  
DHS, FAMILY & CHILDREN SERVICES, :  
Respondent. :



JUN 29 2015

**INITIAL DECISION  
ORDER OF REMAND**

*Victoria Hightower*  
Victoria Hightower, Executive Assistant

This Initial Decision and Order of Remand is issued pursuant to OSAH Published Rules 616-1-2-.28 and 29. This matter was heard on June 17, 2015 at Houston County State Court. Petitioner was represented by Patrick Smith, Attorney at Law, Warner Robins, Georgia. Respondent was represented by Stacey Law, Medicaid Eligibility Specialist, Houston County Department of Family and Children Services (DFCS).

The undisputed evidence is that Petitioner was eligible for Medicaid under the "Nursing Home" class of assistance from January 2015 onward, but for the imposition of a transfer of resources penalty. Petitioner transferred \$20,020.46 of her assets without receiving fair market value in return. Based on the average private pay nursing home billing rate in Georgia in 2015 of \$5,825.00 per month, DFCS determined that Petitioner was not eligible for a nursing home vendor payment for 3.43 months. This meant that Petitioner was not eligible for a nursing home vendor payment for three full months, with \$2,545.46 (0.43 month x \$5,825.00 private pay billing rate) applied to her patient liability in the fourth month.

DFCS imposed the transfer penalty against Petitioner in January 2015, February 2015, and March 2015. Rather than impose the partial month penalty in April 2015, however, DFCS waited until May 2015, when it added \$2,545.46 to Petitioner's patient liability budget. The net result was that Petitioner had to pay the nursing home from her own funds in April 2015, and the patient liability for May 2015 was increased from \$1,118.00 (Petitioner's Social Security payment ( - ) the \$50.00 personal needs allowance) to \$3,664.00 (the administrative court is not certain from the evidentiary record as to how this amount was determined).

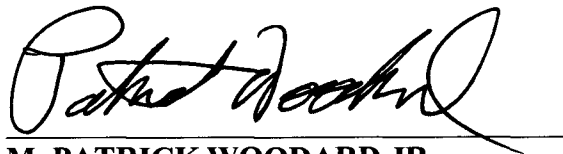
Transfer of assets penalties in Medicaid cases are calculated under Federal law found at Section 1917(c)(1)(D) of the Social Security Act, as amended by Section 6011(b) of the Deficit Reduction Act of 2005 ("DRA"). According to a publication titled "Sections 6011 and 6016- New Medicaid Transfer of Asset Rules Under the Deficit Reduction Act of 2005" issued on July 27, 2006 by the Centers for Medicare and Medicaid Services' Center for Medicaid and State Operations, transfer of assets penalties must be calculated by the States using the following procedures:

The penalty period will continue to run for the number of months determined by dividing the total value of assets transferred within the look-back period by the State's average monthly cost to a private patient of nursing facility services in the State... ***Once the penalty period is imposed, it will not be tolled (i.e., will not be interrupted or temporarily suspended), but will continue to run even in the individual subsequently stops receiving institutional level of care.***

(Emphasis added by the administrative court). The evidence produced at the hearing indicates that DFCS may have applied the partial penalty month in May 2015 instead of April 2015 because Petitioner's income in April would have exceeded the private pay billing rate. It is unclear where DFCS found support in the Federal law for this position. However, by not applying the partial penalty in April 2015, DFCS improperly "tolled" the penalty in abrogation of the above-cited Federal policy.

In order to correct the improper tolling of the transfer of assets penalty, **IT IS ORDERED** that this matter is **REMANDED** to **DFCS** to impose the 0.43 partial month transfer penalty in April 2015. DFCS is authorized to perform a manual override of its computer program in order to perform this duty.

**SO ORDERED** this \_\_\_\_ day of June, 2015.



**M. PATRICK WOODARD JR.**  
**Administrative Law Judge**

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STATE OF GEORGIA

[REDACTED] Petitioner,	:	Docket No.: OSAH-DFCS-NH-[REDACTED] Woodard
	:	
v.	:	Agency Reference No.: [REDACTED]
	:	
DHS, FAMILY & CHILDREN SERVICES,	:	
Respondent.	:	

**NOTICE OF INITIAL DECISION**

This is the Initial Decision of the Administrative Law Judge (Judge) in the case. This decision is reviewable by the Referring Agency. If a party disagrees with this decision, the party may file a motion for reconsideration, a motion for rehearing, or a motion to vacate or modify a default order with the OSAH Judge. A party may also seek agency review of this decision.

**FILING A MOTION WITH THE JUDGE AT OSAH**

The Motion must be filed in writing within ten (10) days of the entry, i.e., the issuance date, of this decision. **The filing of such a motion may or may not toll the time for filing a request for agency review.** See OSAH Rules 616-1-2-.28 and .30 in conjunction with O.C.G.A. § 49-4-153. Motions must include the case docket number, be served simultaneously upon all parties of record, either by personal delivery or first class mail, with proper postage affixed, and be filed with the OSAH clerk at:

Clerk  
Office of State Administrative Hearings  
Attn.: Victoria Hightower, [vhightower@osah.ga.gov](mailto:vhightower@osah.ga.gov)  
225 Peachtree Street, NE, South Tower, Suite 400  
Atlanta, Georgia 30303-1534

**REQUEST FOR AGENCY REVIEW**

A request for Agency Review must be filed within thirty (30) days after service of this Initial Decision. O.C.G.A. § 49-4-153(b)(1). A copy of the application for agency review must be simultaneously served upon all parties of record and filed with the OSAH clerk. The application for Agency Review should be filed with:

Department of Community Health  
Legal Services Unit, Attn: Appeals Reviewer  
2 Peachtree Street, 40<sup>th</sup> Floor  
Atlanta, Georgia 30303

This Initial Decision will become the Final Decision of the agency if neither party makes a timely application for agency review. O.C.G.A. § 49-4-153(b)(1) and (c). When a decision becomes Final, an application for judicial review must be filed within thirty (30) days in the Superior Court of Fulton County or the county of residence of the appealing party. If the appealing party is a corporation, the action may be brought in the Superior Court of Fulton County or the superior court of the county where the party maintains its principal place of doing business in this state. O.C.G.A. § 49-4-153(c).