

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

RUTH FOX,

Petitioner

v.

DHS, FAMILY & CHILDREN
SERVICES,

Respondent



FILED
OSAH

JUN 30 2014

Docket No:

OSAH-DFCS-QII-1444758-64-Walker-

Russell

Agency Reference No: 978084017

Jenna Judy
Jenna Judy, Legal Assistant

INITIAL DECISION

**ORDER GRANTING PETITIONER'S
MOTION FOR SUMMARY DETERMINATION**

I. INTRODUCTION:

Petitioner appeals the Department of Human Services' (Respondent's) denial of Petitioner's November 30, 2012, application for retroactive nursing home Medicaid to cover September 2012 and October 2012, for being over the resource limit.¹ A hearing in this matter was scheduled for April 24, 2014. Petitioner filed a Motion for Summary Determination on April 18, 2014, alleging that there is no genuine issue of material fact to be determined in this matter; Petitioner is eligible to retroactive Medicaid for September 2012 and October 2012; and that a transfer of assets penalty be assessed beginning September 2012 and ending in May 2015.² Respondent failed to file a response to the Motion. The record was held open until May 8, 2014, for the parties to submit a Proposed Order. Petitioner submitted her Proposed Order via facsimile on May 8, 2014. Respondent failed to submit a Proposed Order and has not responded to Petitioner's Motion for Summary Determination. Oral argument on the Motion was heard on Thursday, June 19, 2014. Upon reviewing all of the documentary evidence received, and for the reasons stated herein, Petitioner's Motion for Summary Determination is **HEREBY GRANTED**.

II. STANDARD OF REVIEW:

To prevail at Summary Judgment, the moving party must demonstrate that there is no genuine issue of material fact and that the undisputed facts, viewed in the light most favorable to the

¹ See, Petitioner's March 24, 2014, Request for Hearing.

² The hearing in this matter has been stayed pending a ruling on the Motion for Summary Determination. OSAH Rule 15.

nonmoving party, warrant judgment as a matter of law. Lau's Corp. v. Haskins, 261 Ga. 491 (1991); Rule 15 of the Rules of the Office of State Administrative Hearings. Respondent has failed to respond to the Motion for Summary Determination in this matter. Therefore, the record does not contain disputed material facts. Accordingly, Petitioner is entitled to Summary Judgment on the record.

III. STATEMENT OF UNDISPUTED MATERIAL FACTS:

1.

Petitioner applied for Medicaid on November 30, 2012, requested a retroactive eligibility determination for September 2012 and October 2012, and requested that a transfer of resources penalty be assessed beginning in September, 2012. (Petitioner's March 24, 2014, Request for Hearing; Petitioner's Motion for Summary Determination, Statement of Undisputed Facts, at pp. 3).

2.

Respondent granted Petitioner Qualified Medicare Beneficiaries (QMB) Medicaid on January 4, 2013. The application for nursing home Medicaid was not acted upon at that time. A Form 981 request for additional information was received on January 21, 2013, with a deadline of February 1, 2013. That notice was followed by a notice of application delay dated January 14, 2013, but not received until January 25, 2013. (Petitioner's Motion for Summary Determination, Statement of Undisputed Facts, at pp. 2).

3.

Petitioner required additional time to locate and secure the information requested in Form 981. Petitioner provided the information, along with a new Medicaid application on February 8, 2013. On February 11, 2013, Petitioner's application was denied because Petitioner did not give Respondent the information Respondent requested.³ This scenario continued through March 20, 2014, with Respondent continuing to request more information and Petitioner providing it as it could be gathered. (Petitioner's Motion for Summary Determination, Statement of Undisputed Facts, at pp. 2).

4.

Petitioner's sole countable asset at the time of the November 30, 2012, application was a checking account in the amount of \$1,750.30, which is below the Medicaid resource limit.⁴

³ Pursuant to Section 2053 of the ABD Manual, a denial based on failure to provide information does not bar reconsideration and approval. "Potential eligibility for Medicaid for all retroactive/intervening months is protected indefinitely for all Medicaid COAs including SSI. Medicaid can be approved at any time for any retroactive months if all eligibility criteria are met."

⁴ Appendix A1, ABD Financial Limits, Volume II/MA, MT 45-10/12, Section A1-1 (2012).

Petitioner's gross monthly income from Social Security was \$750.30. A payment was owed under a promissory note in the amount of \$5,103.79.⁵ Petitioner's income was placed in a Qualified Income Trust consistent with Section 2407 of the ABD Manual. (Petitioner's Motion for Summary Determination, Statement of Undisputed Facts, at pp. 3).

5.

On August 30, 2012, Petitioner entered into a Comprehensive Transfer Agreement with her children, Dan Fox and/or Ann Fox, in which Petitioner transferred all of her rights, title and interest in several uncompensated assets. The total value of these uncompensated transfers was \$165,003.75. Petitioner noted in the transfer agreement that she intended to apply for Medicaid as of September 1, 2012. (Petitioner's Motion for Summary Determination, Statement of Undisputed Facts, at pp. 5; Respondent's Exhibit 1). Petitioner transferred the following uncompensated assets in the August 30, 2013, Comprehensive Transfer Agreement:

<u>Item Transferred</u>	<u>Value</u>	<u>Explanation of Value</u>
Monumental Life Insurance Policy # MM5236623	\$2,058.00	Cash Surrender Value
3461 shares of Synovus Financial Corp common stock	\$7,025.83	value as of closing on 8/30/2012 (\$2.03/share)
1674 shares of Total System Services, Inc common stock	\$38,585.70	value as of closing on 8/30/2012 (\$23.05/share)
1993 Ford Aerostar Van	\$1,250.00	Est. Trade-in Value
1989 Dodge D100 Pick-up Truck	\$773.00	Est. Trade-in Value
\$18,283.22 cashier's check	\$18,283.22	
117 Peters Street	\$97,028.00	FMV as shown on 2012 Tax Card

6.

The transfer of assets penalty divisor (Georgia pay rate) was \$4,988.33 in 2012.⁶ The total value of Petitioner's uncompensated transfers was \$165,003.75. To determine the months of penalty, divide the total uncompensated value (UV) of the transferred resource by the average Georgia pay rate. \$165,003.75 divided by \$4,988.33 is 33. Therefore, the transfer penalty in this matter is 33 months and should have been calculated, beginning September 2012. The transfer of assets

⁵ The terms of the promissory note were consistent with ABD Manual section 2313.

⁶ Volume II/MA, MT 45-10/12, Section A1-2 (2012).

penalty should expire in May, 2015, which is 33 months after September 2012. (Petitioner's Motion for Summary Determination, Statement of Undisputed Facts, at pp. 5-6).

IV. STATEMENT OF ISSUE:

Petitioner's Motion for Summary Determination sets forth the following issues to be decided: Whether Petitioner meets eligibility requirements for retroactive Medicaid on November 30, 2012, and whether a transfer of assets penalty applies in this matter and if so, what is the start and expiration date.

V. CONCLUSIONS OF LAW:

1.

As the applicant of Medicaid benefits, Petitioner has the burden of proof in this matter. However, both Petitioner and Respondent bear the burden of proof as to any fact asserted, if proof of said fact is essential to their case or affirmative defenses raised by them. OSAH Rule 07(1)(e).

2.

This proceeding is de novo in nature and the standard of proof is by preponderance of the evidence. OSAH Rule 21(4).

3.

A party may move, based on supporting affidavits or other probative evidence, for summary determination in its favor on any of the issues being adjudicated on the basis that there is no genuine issue of material fact for determination. OSAH Rule 616-1-2-.15(1).

4.

When a Motion for Summary Determination is supported as provided in this Rule, a party opposing the motion may not rest upon mere allegations or denials, but must show, by affidavit or other probative evidence, that there is a genuine issue of material fact for determination. OSAH Rule 616-1-2-.15 (3). In this matter, Respondent has failed to submit affidavits or other probative evidence to establish that there is a genuine issue for determination. Therefore, Summary determination is appropriate in this case since there is no genuine issue as to any material fact.

Standard of Promptness

5.

After an applicant files a Medicaid application, Respondent has a limited period of time to determine eligibility. That time period is known as the Standard of Promptness (SOP). The Standard of Promptness is ninety (90) days for applicants who apply for Medicaid on the basis of

disability; and **forty-five (45) days for all other applicants.** 42 C.F.R. § 435.911(a). Respondent must determine eligibility within the standards except in unusual circumstances and must document any reason for delay. 42 C.F.R. § § 435.911(c) and (d). The SOP cannot be used as a waiting period or as a reason for denying eligibility. 42 C.F.R. § 435.911(e). In this matter, Petitioner applied for nursing home Medicaid on November 30, 2012. Therefore, Respondent had forty five (45) days or until January 14, 2013, to determine eligibility. Respondent issued its denial of Petitioner's Medicaid application on February 11, 2013, and has exceeded the Standard of Promptness established by the Medicaid program.⁷

Resources

6.

Resources are assets available to the assistance Unit (AU) that can be converted to cash to meet daily living expenses. These assets must be taken into consideration in determining eligibility. ABD Medicaid. Economic Support Services Manual (Medicaid Manual), Volume II/MA, MT 33-02/09, Section 2301-8. In order for the value of a resource to be applied to the resource limit, the A/R must have an ownership interest in the resource and have the legal right to the use and/or disposal of the resource. Medicaid Manual, Volume II/MA, MT 1-01/02, Section 2302-2.

7.

The resource limit for an individual in a nursing home to be eligible for Medicaid is \$2,000. The value of an A/R's countable resources cannot exceed the appropriate resource limit in order for the A/R to be eligible for Medicaid. Appendix, A.1, ABD Financial Limits; Medicaid Manual, Volume II/MA, MT 26-04/07, Section, 2300-2.

Petitioner's Eligibility

8.

The countable value of a resource is its equity value as of the first moment of the first day of the month of verification. If the countable value of the resource **does not** exceed the resource limit on the first moment of the first day of the month, the A/R is eligible for the entire month, regardless of fluctuations during the month. Medicaid Manual, Volume II/MA, MT 1-01/02, Section 2303-3.

In this matter, Petitioner has met her burden of establishing that she meets the resource limit for November 30, 2012, since her resources were under the \$2,000 limit for that month. Petitioner

⁷ Pursuant to Section 2053 of the ABD Manual, a denial based on failure to provide information does not bar reconsideration and approval. "Potential eligibility for Medicaid for all retroactive/intervening months is protected indefinitely for all Medicaid COAs including SSI. Medicaid can be approved at any time retroactive if all eligibility criteria are met."

has established through credible and undisputed evidence that Petitioner's sole countable asset as of November 30, 2012, was a checking account in the amount of \$1,750.30, which is below the Medicaid asset limit. Accordingly, Petitioner meets the resource limit for Medicaid eligibility.

Transfer of Assets Penalty

9.

Assets include all income and resources of the A/R, including income and resources which the A/R is entitled. If an A/R, anyone acting legally on an A/R's behalf, or anyone holding an asset in common with an A/R gives away or sells assets for less than current market value (CMV) during the look-back period, the A/R may be subject to a transfer of assets penalty. Medicaid Manual, Volume II/MA, MT 42- 05/11, Section 2342-1. A transfer penalty applies if an A/R transfers non-excluded assets into a trust during the 60 month look back period or anytime thereafter. Medicaid Manual, Volume II/MA, MT 42- 05/11, Section 2342- 4. To determine the months of penalty, divide the total uncompensated value (UV) of the transferred resource by the average Georgia pay rate (See Appendix A.1). A penalty is imposed until the A/R is determined Medicaid eligible in every aspect **except for the transfer**. Medicaid Manual, Volume II/MA, MT 42- 05/11, Section 2342- 7.

10.

To determine the transfer of assets penalty in this matter, divide the total uncompensated value (UV) of the transferred resource, \$165,003.75, by the average Georgia pay rate. In this matter, the Georgia pay rate was \$4,988.33 in 2012. Volume II/MA, MT 45-10/12, Section A1-2 (2012). \$165,003.75 divided by \$4,988.33 is 33. Therefore, the transfer penalty in this matter is 33 months.

11.

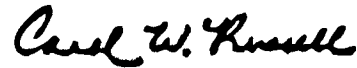
To determine in which month a transfer of resources penalty should begin, Section 2342-8 of the ABD Manual Provides "For applicants, begin the penalty when the A/R is in LA-D beginning with the later of: the month that the resource was transferred, or the month that the A/R is otherwise Medicaid eligible. **The resources were transferred on August 30, 2012. Petitioner has demonstrated that she was otherwise eligible for Medicaid in September 2012. The later month is September 2012. Accordingly, September 2012 is the month that the transfer penalty should be assessed. Therefore, Respondent is directed to calculate the transfer of resources penalty**

beginning in September 2012. The transfer of assets penalty should expire in June, 2015, which is 33 months after September 2012.⁸

VI. DECISION:

Based upon the foregoing, it is concluded that Petitioner meets nursing home Medicaid eligibility requirements for November 30, 2012, and retroactive Medicaid eligibility for September 2012 and October 2012. In addition, a transfer of assets penalty should be assessed in this matter beginning in September 2012 and should expire in June 2015. Accordingly, Petitioner's uncontested Motion for Summary Determination is **HEREBY GRANTED**. This matter is **REMANDED** to Respondent for immediate action in approving Petitioner's November 30, 2012, nursing home Medicaid Application and assessment of a transfer of assets penalty consistent with this decision.

SO ORDERED this 29 day of June, 2014.



CAROL WALKER-RUSSELL
Administrative Law Judge

⁸ Petitioner argues that the transfer of penalty should expire in May 2015. However, thirty three (33) months after September 2012 is actually June 2015.