

RE: JEROLENE GRUBBS, Petitioner

Docket No.: OSAH-DFCS-NH-1124990-36-Woodard

MAIL TO:

- JEROLENE GRUBBS  
C/O UNIVERSITY EXTENDED CARE-WESTWOD  
561 UNIVERSITY DR  
EVANS, GA 30809
  
- ANN EDENFIELD  
3576 PEBBLE BEACH DR  
MARTINEZ, GA 30907
  
- PATRICK SMITH  
THE SMITH LAW FIRM  
4141 COLUMBIA RD  
STE-D  
MARTINEZ, GA 30907
  
- COLUMBIA COUNTY DFCS OFFICE  
SAYLOR, PATRICIA, CASEWORKER  
P. O. BOX 340  
APPLING, GA 30802
  
- DEPARTMENT OF COMMUNITY HEALTH  
LEGAL SERVICES UNIT, ATTN: APPEALS REVIEWER  
2 PEACHTREE STREET, 40<sup>TH</sup> FLOOR  
ATLANTA GA 30303
  
- STATE OFFICE  
LONG TERM CARE UNIT  
2 PEACHTREE STREET, 39<sup>TH</sup> FLOOR  
PO BOX 38420  
ATLANTA GA 30303

(DECISION ONLY)

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA

JEROLENE GRUBBS,	:	
Petitioner,	:	Docket No.: OSAH-DFCS-NH-1124990-36-Woodard
	:	
v.	:	Agency Reference No.: 106593018
	:	
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.: Hazel Jackson, [hjackson@osah.ga.gov](mailto:hjackson@osah.ga.gov)  
230 Peachtree Street, NW, Suite 850  
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).

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

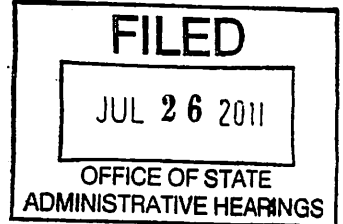
JEROLENE GRUBBS,  
Petitioner,

v.

DEPARTMENT OF HUMAN SERVICES, DIVISION OF  
FAMILY AND CHILDREN SERVICES,  
Respondent.

Docket No.: OSAH-DFCS-NH 1124990-36-Woodard

Agency Reference No.: 106593018



**INITIAL DECISION**

**I. FINDINGS OF FACT**

The following findings of fact are based solely on the evidence presented at the hearing conducted April 11, 2011, at Richmond County Department of Family and Children Services (DFCS), Augusta, Georgia. Petitioner was represented by Patrick Smith, Attorney at Law, Martinez, Georgia.

1. Petitioner resided at 207 Brook Court, Martinez, Georgia, until she entered a personal care home in May 2009. Petitioner moved to University Westwood, an extended care facility, in August 2009.
2. On September 7, 2010, a Medicaid application was filed on Petitioner's behalf with Columbia County DFCS. Petitioner claimed 207 Brook Court as her residence, and asserted that she intended to return there to live. The application was approved under the "Nursing Home" class of assistance, and Petitioner was eligible for a Medicaid-funded vendor payment to University Westwood beginning in October 2010.
3. On or about November 16, 2010, DFCS received a letter from Petitioner's attorney which stated that Petitioner no longer intended to return to her home at 207 Brook Court. Further, the letter informed DFCS that the property was for sale.
4. Petitioner's relatives placed a "For Sale By Owner" sign in the front yard. The sign contained a contact telephone number, but did not list the sales price. According to Petitioner's daughter, the property was offered for its tax-assessed value of \$128,096.
5. There was no interest in the property, except from members of Petitioner's family. In January 2011, Petitioner's attorney notified DFCS that the property had been sold to Petitioner's relatives for \$85,400, which is slightly more than 2/3 of the property's tax-assessed value. The attorney also notified DFCS that Petitioner had made two cash gifts to her daughters totaling \$49,165.44.
6. DFCS determined that because Petitioner received no value for the cash gifts, the gifts were considered uncompensated transfers subject to a Medicaid penalty. Further, DFCS determined that an additional transfer penalty must be imposed on a transfer of \$42,696, which is the difference between the current market value of the former

homeplace property and its actual sale price. The total value of the two transfers was \$91,861.44. DFCS divided this amount by the Georgia nursing home private pay billing rate of \$4,916.55, and calculated that Petitioner was ineligible for a Medicaid vendor payment to the nursing home for 18 months.

7. Petitioner appealed the imposition of the transfer penalty. Petitioner does not dispute that she must be disqualified from eligibility for a Medicaid vendor payment based on the gifts to her daughters, but objects to the transfer penalty based on the sale of her former residence.

## II. CONCLUSIONS OF LAW

1. The burden of proof rests upon Respondent to prove that its calculation of the transfer penalty is correct, as that action constitutes a termination of Medicaid payments for Petitioner's nursing home care. OSAH Rule 616-1-2-.07. The standard of proof is by a preponderance of the evidence. OSAH Rule 616-1-2-.21(4).

2. In order for an individual to become eligible for Adult Medicaid in Georgia, he or she must have countable resources valued at less than \$2,000. Many types of resources are exempted from consideration for Medicaid eligibility, however, including the individual's homeplace property. If the individual no longer intends to return to the residence, then it ceases to be a homeplace, and its value is counted for purposes of Medicaid eligibility. *ABD Medicaid Manual, Section 2316*. Petitioner notified DFCS in November 2010 of her intent not to return to her former residence, at which time it ceased to be an exempt homeplace.

4. Real property which is no longer considered an exempt homeplace may still be excluded from consideration for Medicaid eligibility if the Medicaid applicant or recipient is making a bona fide effort to sell the property. Evidence of a bona fide effort to sell includes placement of a "For Sale" sign on the property. The owner must market the property at its current market value, or CMV, which is its tax-assessed value. *ABD Medicaid Manual, Section 2304-2*. Petitioner's relatives placed a For Sale sign with a contact phone number on the front yard of Petitioner's former residence. Therefore, the property once again became an exempt resource.

4. *ABD Medicaid Manual, Section 2342*, mandates a penalty for the gift or sale of "assets for less than current market value (CMV) during the 'look back period.'" For applications filed since October 1, 2006, the provisions of the Deficit Reduction Act (DRA) of 2005 apply. According to DRA, the look back period is calculated "on all assets transferred on or after 2/8/06," which covers the transfer of proceeds from the sale of Petitioner's homeplace. DFCS assesses a transfer penalty by dividing the total amount of uncompensated value of the transfer by the private pay nursing home billing rate in Georgia.

5. Petitioner's former homeplace was sold for less than its CMV, and at first analysis it would appear that a transfer penalty must be applied. However, Georgia's Medicaid policy contains a provision not found in the enabling legislation (42 U.S. Code Section 1396) or regulations (42 Code of Federal Regulations 430 et seq.) which states that the owner of a non-exempt resource must not refuse a reasonable offer to purchase the resource. "Reasonable offer" is defined as "2/3 CMV."

6. Petitioner sold the property to her relatives for \$85,400, which is slightly more than 2/3 of CMV. There is no prohibition under federal Medicaid law or in Georgia Medicaid policy against sales of a property to a family member or other inside party. Therefore, Petitioner met the requirements for sale of non-exempt real property as outlined in *ABD Medicaid Manual, Section 2304*, and the transfer is not subject to a transfer of resources penalty. Petitioner does not dispute that DFCS correctly imposed a transfer penalty on the cash gifts to her daughters, and therefore that penalty is not affected by this Decision.

**III. DECISION**

It is the Initial Decision of the undersigned Administrative Law Judge that no transfer penalty can be imposed based on the sale of Petitioner's former residence, although DFCS properly imposed a transfer penalty on the cash gifts to her daughters. Therefore, DFCS' actions in this matter are REVERSED IN PART AND AFFIRMED IN PART.

SO ORDERED this \_\_\_\_ day of July, 2011.



M. PATRICK WOODARD JR.  
Administrative Law Judge

