

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA

EFFIE PRESSLEY,  
Petitioner,

v.

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

Docket No.  
OSAH-DFCS-NH-1332342-61-Woodard  
Agency Reference No.: 27095808



JUL 12 2013

*Hazel Jackson*  
Hazel Jackson, Legal Assistant

INITIAL DECISION

I. Introduction

Respondent assessed a transfer of assets penalty against Petitioner, which caused her to be ineligible for Medicaid funding for her nursing home bill. Petitioner appealed, and a fair hearing was scheduled and held at the Cherokee County Justice Center in Canton, Georgia on March 22, 2013. Petitioner was represented by her daughter Carol Gibson and her son Chris Pressley. Gilmer County Nursing Home was represented by David McGuffey, Attorney at Law, Dalton, Georgia.<sup>1</sup> Respondent, who was acting as agent for the Department of Community Health, was represented by Mary Knowles, Aged, Blind, and Disabled Supervisor for the Department of Human Services, Division of Family and Children Services ("DFCS"). For the reasons set forth below, Respondent's assessment of a transfer of asset penalty in the approval of Petitioner's Medicaid benefits is **REVERSED**.

II. Findings of Fact

1.

Petitioner is a resident of Gilmer County Nursing home in Ellijay, Georgia. Petitioner paid her nursing home bill from her private funds until these ran out in 2012. (Testimony of Carol Gibson; Testimony of Mary Knowles)

2.

Petitioner's first application for Medicaid was submitted on or around June 2012. DFCS denied that application because Petitioner failed to provide DFCS with information it needed to process the application. (Testimony of Mary Knowles)

3.

Petitioner's second Medicaid application was filed in December 2012. DFCS approved the application under the "Nursing Home" class of assistance, and Petitioner was eligible for

<sup>1</sup> Gilmer County Nursing Home and Petitioner's interests were aligned and both parties waived all potential conflicts. Gilmer County Nursing Home has standing as an intervenor in the above- referenced matter.

Medicaid coverage for her routine medical expenses including doctor visits, medications, and hospitalizations. DFCS was required by Medicaid policy to make further review of any transfers of assets that Petitioner may have made in the 60 months prior to the Medicaid application. DFCS discovered that Petitioner and her late husband had owned real property located at 362 Rose Garden Drive in Ellijay, Georgia, that they transferred on November 3, 2008 to their son, Chris Pressley. The warranty deed stated that Chris Pressley paid "\$10.00" in consideration for the property. (Testimony of Knowles; Exhibits R-1, R-2)

4.

DFCS verified through the Gilmer County tax assessor's office that no money actually was exchanged for the property transfer. The tax assessor valued the property at the time of transfer at \$110,700. (Testimony of Knowles; Exhibit R-3)

5.

DFCS determined that Chris Pressley did not pay fair market value to his parents for the property, and that a transfer penalty must be established in Petitioner's Medicaid case. DFCS used the tax assessor's valuation of \$110,700 as the property's fair market value. DFCS divided the fair market value by the state's average private pay nursing home billing rate in Georgia of \$4,988.33. A transfer of asset penalty was assessed for twenty-two (22) full months and one (1) partial month penalty, with \$956.74 counted as income to Petitioner in that month. The penalty runs from October 2012 (the third month prior to the date of filing of the second Medicaid application) through September 2014. Petitioner's undue hardship waiver application was denied by DFCS because Petitioner presented no evidence to show she took legal action or asserted her right to equitable remedies to recover the asset or its fair market value. (Testimony of Knowles; Exhibits R-5, R-7)

6.

Petitioner appealed the imposition of any transfer of assets penalty. She has not been eligible for a Medicaid-funded nursing home vendor payments while this decision was pending. (Testimony of Knowles)

7.

Petitioner and Gilmer County Nursing Home produced testimony and documentary evidence in support of their position that Petitioner and her husband received compensation from Chris Pressley in exchange for the property. Chris Pressley testified that he initially purchased the property for \$35,000 in 1984, then sold it to his parents for \$45,000 in 1988. Less than one year later, Chris decided to repurchase the property from his parents, and they verbally agreed to a purchase price of \$50,000. Chris agreed to make monthly payments of \$250.00 until the property was paid in full. (Testimony of Chris Pressley; Testimony of Carol Gibson)

8.

Chris made \$250 monthly payments to his parents from 1989 through April 1992. He paid \$300 per month from May 1992 through December 2006. Chris often paid cash, but sometimes paid by check made out either to his parents or to "Cash." Most of his checks had

long been destroyed by the time of this hearing, but he was able to produce three checks written between October 2000 and November 2007 which showed monthly payments to his mother and to "Cash." The existence of these monthly payments from Chris to his parents was also shown in a letter from Clifford S. Lancey, Esq., who represented Chris Pressley at the property closing in 2008. (Testimony of Chris Pressley; Exhibits R-3, R-9).

9.

Based on monthly payments of \$250 from 1989 through April 1992 and \$300 per month payments from May 1992 to December 2006, with interest included, Chris Pressley paid-off the \$50,000 purchase price by September 1, 2005. Chris continued to make payments through the end of 2006 because he did not realize he had paid the debt in full. (Testimony of Chris Pressley)

10.

Carol Gibson is Petitioner's daughter, and has her power of attorney. Ms. Gibson testified that she is fully aware of the purchase and repurchase of the property, and the three agreements for its sale between her parents and Chris Pressley. She testified that she truthfully reported to DFCS during the Medicaid application process that the property had not been sold recently, as the property was actually conveyed in 1988 or 1989 and was paid in full by no later than 2006. (Testimony of Gibson; Exhibits R-8, R-9).

11.

Chris Pressley paid all routine expenses related to the property from 1989 onward, including utilities, maintenance, and repairs. Further, he paid for a large addition to the house that included a kitchen, bedroom, and bathroom. Because the property was titled in his parents' names until 2008, Chris paid the property taxes by writing a check or paying cash to his parents, who would then pay the Gilmer County tax assessor. (Testimony of Chris Pressley).<sup>2</sup>

### III. Conclusions of Law

1.

Petitioner disputes the transfer of asset penalty assessed by DFCS to Petitioner's Medicaid benefits. Therefore, the above referenced matter involves an agency action reducing, suspending, or terminating a benefit and as such, the burden of proof is on DFCS. Ga. Comp. R. & Reg. r. 616-1-2-.07. The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Reg. r. 616-1-2-.21.

2.

A transfer penalty applies if any transfer of assets occurred on or after February 8, 2006

---

<sup>2</sup> The evidentiary record was held open for two weeks from March 29, 2013 to allow Chris Pressley the opportunity to submit copies of the checks used to pay for property insurance. Mr. McGuffey's office provided three checks and a copy of the evidence of insurance for the property. The insurance premium for the property is \$559 every six months. the packet of checks included a check made out to his father, Ray Pressley, on June 6, 2005 for \$601, with the abbreviation "Ins" in the memo; a check made out to Ray Pressley on October 10, 2005 in the amount of \$559, and a check made out to Alfa Mutual Insurance Company on November 4, 2008.

and within a sixty (60) month look back period before the application. The number of months of the penalty is computed by dividing the total uncompensated value of the transferred resource by the average Georgia private pay rate. Medicaid Manual, §2342.

3.

A penalty cannot be imposed until the applicant is found to be Medicaid eligible with the sole exception of the transfer of assets. Petitioner's Medicaid eligibility in every aspect except for the nursing home vendor payment based on the transfer of assets is not in question, and Petitioner's application for Nursing Home benefits was approved by DFCS on February 1, 2013. Medicaid Manual, §2342.

4.

A transfer of penalty asset does not apply if the applicant can, "provide a satisfactory showing that he/she intended to dispose of the asset for fair market value, or for other valuable considerations." Medicaid Manual, §2342.

5.

In the case before the undersigned Administrative Law Judge, Petitioner and Gilmer County Nursing Home's representatives have demonstrated the necessary intent of Petitioner to sell the property to Chris Pressley for \$50,000. The full \$50,000, including interest, was effectively paid off in 2005. The testimony of Petitioner's representatives is also consistent with the letter from Mr. Lancey, which details his conversations with Chris Pressley in 2008 that Chris Pressley had been making payments to his father, and subsequently his mother, in order to re-purchase the property. The \$50,000 price is deemed to be adequate consideration for the purposes of this matter given the 1984 and 1988 sale prices for the property of \$35,000 and \$45,000 respectively.

6.

Further, a transfer of assets penalty does not apply if, "an asset was transferred exclusively for a purpose other than to qualify for Medicaid." Medicaid Manual, §2342. Chris Pressley took possession of the property in 1989 and used it for his homeplace. The conveyance of the property was not formalized until 2008, but by then Chris Pressley had long paid off his obligation to his parents. Even at the time the Warranty Deed was recorded, the intent of the parties was clearly not to establish Medicaid eligibility for Petitioner. It is noted that this policy does not apply to transfers of homeplace property. The property in the above referenced matter is not the homeplace property of Petitioner because it is not, nor does it appear it ever was, her principal place of residence. Medicaid Manual, §2316.

**IV. Decision**

Based on the foregoing, DFCS's assessment of a transfer of asset penalty on Petitioner's approved Medicaid benefits is **REVERSED**.

This 12<sup>th</sup> day of July,



M. Patrick Woodard, Jr.  
Administrative Law Judge  
Office of State Administrative Hearings  
State of Georgia