

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



JANET REED,
Petitioner,

AUG 21 2012

v.

Docket No.:

OSAH-DFCS-NH-1231251-25-TEATE

DEPARTMENT OF HUMAN SERVICES,
Respondent.

Agency Reference No.: 158071210

INITIAL DECISION

I. Introduction

In response to the Chatham County Department of Family and Children Services's (DFCS) denial on January 20, 2012 of Ms. Reed's September 27, 2011 application for Medical Assistance, Petitioner requested a hearing on February 9, 2012. Prior to a hearing last scheduled on August 2, 2012, the parties agreed to submit jointly stipulated facts and respective written legal arguments in lieu of a hearing.¹

For reasons indicated, Respondent's denial of Petitioner's Medicaid application is REVERSED.

II. Stipulation of Facts

1. Medicaid applicant Janet Reed (hereinafter called "A/R") applied for Medicaid for assistance for her nursing home costs during September 2011 with the Chatham County Department of Family & Children Services (hereinafter called "DFCS");
2. A/R is married, and has a "Community Spouse" living at home named Irwin Reed (hereinafter called "C/S");
3. The Medicaid application was denied on 1/20/2012. See attached Exhibit A;
4. The reason for the denial was for being over the resource limit, as was indicated on the 1/20/2012 denial notice.
5. The parties agree that A/R and spouse (C/S) were not over the resource limits for a couple, with one spouse living at home in the community.

¹ This matter was referred to OSAH on April 16, 2012 and a hearing was originally scheduled on June 7 and then continued at Petitioner's request. Following the prehearing conference on August 2, the record closed on August 17, 2012 with the submissions of stipulated facts as agreed for the judge's review on the record.

6. C/S Irwin Reed has a Medicaid Compliant Promissory Note (hereinafter called "the Note"), under which C/S loaned a child funds to be paid back under the note as is required by both the Note's terms and Medicaid rules.
7. The parties agree that there are no defects in the Note itself, and that the language and structure of the Note meets the requirements of the Georgia ABD Medicaid Manual Section 2313, entitled "Contracts: Promissory Notes, Loans, and Property Agreements."
8. There were several payments under the Note that were not made initially, by the borrower, back to the C/S under the Note terms.
9. DFCS takes the position that the Medicaid Application was denied due to fact that the Note payments were not made at the time they were supposed to be made. This was the real reason for the denial, and remains the position of DFCS today (but not that of Petitioner).
10. When the missing or unpaid Note payments were discovered, the missing payments were made and proof of those payments under the Note being "caught up" was sent to DFCS.
11. The parties agree that all back payments called for by the loan were paid up or caught up, and C/S was paid each and every payment he was due under the Note.
12. DFCS maintains their position (contrary to Petitioner's position) that, because the loan payments were unpaid for certain months at the beginning of the application process (even though later repaid or "cured"), that this makes the A/R ineligible and that the denial was appropriate.
13. The parties agree that other than the DFCS position regarding the late but cured Note payments discussed above, that there are no other issues that would preclude eligibility for A/R Janet Reed.

III. Conclusions of Law

1. If a borrower defaults on payments on a Medicaid qualifying contract, the owner of the contract is required to take the following action:
 - Must take legal action to foreclose on the contract within 60 days of the default.
 - Must provide verification of the action being taken.
 - If no action to foreclose on the contract is taken, the owner of the contract is considered to have transferred assets equal to the remaining value of the contract. The effective date of this transfer is the date the payments stopped.

Economic Support Services Manual (ESSM), Volume II/MA, Section 2313, p. 2313.7.


In this case, the borrower initially failed to make several payments back to the C/S who was the owner of the Note. Further, upon such a default, the borrower failed to initiate legal action to foreclose on the contract occurred within 60 days of the borrower's default. Respondent appropriately determined that the owner had transferred assets equal to the remaining value of the contract; however, the borrower has cured all default payments without necessity of legal action and continues to comply with the terms of the Note.

2. Although a penalty may be imposed for asset transfer that exceeds appropriate resource limits, such a penalty is subject to special considerations and exceptions. *ESSM*, Volume II/MA, Section 2342, p. 2342.9. A transfer of assets penalty does not apply if all of the transferred resources/assets have been returned to the individual. *ESSM*, Volume II/MA, Section 2342, p. 2342.2. *Id.* While it is arguable that curing the default does not mean that all of the transferred resources/assets have been returned to the C/S, more specific provisions of Section 2342 that control the imposition of a transfer penalty suggest otherwise. In the absence of specific language to the contrary, it is more reasonable to assume that within the meaning of Section 2342, the defect was cured. As a corollary, it is unlikely that the C/S would have had any legal right of foreclosure in the absence of a notice of right to cure the default and reinstate the underlying obligation. See *Fife v. Anderson Realty Brokers, Inc.*, 155 Ga. App. 475 (1980); *Moore v. Branch Banking & Trust Co.*, 2012 GA S. Ct. Briefs 21790 (Ga. July 19, 2012).

IV. Decision

Inasmuch as the borrower cured the default with the C/S and the underlying obligation is no longer in default, such a cure constitutes a cure of the default within the meaning of Section 2342 regarding exception to the imposition of a transfer penalty. Accordingly, Respondent's denial of Petitioner's Medicaid application is REVERSED.

SO ORDERED, this 22nd day of August 2012.


Steven W. Teate
Administrative Law Judge

RE: JANET REED, Petitioner

Docket No.: OSAH-DFCS-NH-1231251-25-Teate

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☒ DEPARTMENT OF COMMUNITY HEALTH
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(DECISION ONLY)

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Petitioner,

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DHS, FAMILY & CHILDREN SERVICES,
Respondent.

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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.: Gloria McDonald, gmcdonal@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, 40th 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).