

RE: WILMA K LAWRENCE, Petitioner

Docket No.: OSAH-DFCS-NH-0929216-55-Woodard

MAIL TO:

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DEPARTMENT OF COMMUNITY HEALTH
LEGAL SERVICES UNIT, ATTN: APPEALS REVIEWER
2 PEACHTREE STREET, 40TH FLOOR
ATLANTA GA 30303

(DECISION ONLY)

STATE OFFICE
LONG TERM CARE UNIT
2 PEACHTREE STREET, 39TH FLOOR
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**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

WILMA K LAWRENCE, Petitioner,	:	Docket Nos.: OSAH-DFCS-ABDA-0931931-55-Woodard OSAHS-DFCS-NH-0929216-55-Woodard
v.	:	
DFCS, DEPARTMENT OF HUMAN SERVICES, Respondent.	:	Agency Reference No.: 599410414

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.: Ebonie Prather, eprather@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).

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

WILMA K. LAWRENCE, : Docket Nos.:
Petitioner, : OSAH-NH-0929216-55-Woodard
 : OSAH-ABDA-0931931-55-Woodard
V. :
 : Agency Reference No.: 629551611
DIVISION OF FAMILY AND :
CHILDREN SERVICES, GEORGIA :
DEPARTMENT OF HUMAN RESOURCES, :
Respondent. :

INITIAL DECISION

I. Introduction



This matter was heard via telephone on June 23, 2009. Petitioner was represented by David McGuffey, Attorney at Law, Dalton, Georgia. Respondent was represented by Teresa Ross, ABD Medicaid Specialist, and Janet Simpson, Medicaid Supervisor, Fannin County Department of Family and Children Services (DFCS), Blue Ridge, Georgia.

II. Findings of Fact

1. Petitioner has resided in a nursing home since July 2006. Applications for Medicaid coverage were filed on her behalf on November 24, 2008 and again on January 8, 2009. The first application was denied because Petitioner's representatives did not provide certain information prior to the deadline imposed by DFCS. The second application was approved for Medicaid coverage under the "Nursing Home" class of assistance on April 16, 2009. Petitioner's Medicaid coverage did not pay for her nursing home stay, however, as DFCS determined that Petitioner was ineligible for a nursing home vendor payment through August 2009, based on a transfer of assets to her son, Kenneth Lawrence. Petitioner appealed this adverse action, but no vendor payment was authorized by DFCS during the pendency of this appeal.

2. Kenneth Lawrence is a disabled adult child. Acting on Petitioner's behalf, her attorney in fact transferred assets from Petitioner's checking account with United Community Bank to Mr. Lawrence in October 2008, and transferred her interest in a prepaid burial contract in March 2009. These assets were transferred directly to Mr. Lawrence, and not to a trust set up for Kenneth's sole benefit. Because the assets were not transferred to a trust, DFCS determined that the transfer was not exempt from its transfer penalty policy. DFCS calculated that the total value

of the assets transferred to Kenneth Lawrence was \$24,739.11. This resulted in the imposition of a transfer penalty of 5.36 months, which was calculated by dividing the total amount transferred by the private pay nursing home billing rate of \$4,614.90 per month. DFCS determined that \$1,664.61 would be applied to Petitioner's Medicaid patient liability for nursing home Medicaid in September 2009, if she is otherwise eligible for benefits.

3. DFCS also became aware that Petitioner might own another asset which could affect her resource eligibility for Medicaid. Upon Petitioner's retirement from the Federal civil service, she owned a term life insurance policy with a death benefit of \$9,500.00. Petitioner's family was unaware of this policy until March 2009. Petitioner has suffered from Alzheimer's Disease since 2002, and was unable to communicate to her family or to DFCS that she owned the policy, or how to go about getting more information. DFCS considered the value of the term policy to be an asset to Petitioner once her family learned of the life insurance policy.

III. Conclusions of Law

1. This matter involves the denial of a nursing home vendor payment funded through Medicaid. Therefore, the burden of proof rests on Petitioner, although both Petitioner and Respondent bear the burden of proof as to any fact, asserted by them, if the proof of said fact is essential to their case or defense. O.C.G.A. § 24-4-1, OSAH Rule 616-1-2-.07(1)(d). At the hearing, the Administrative Law Judge required the Respondent to present its case first, but this did not shift the burden of proof from the Petitioner to the Respondent. The standard of proof is preponderance of the evidence. O.C.G.A. § 50-13-15(1), O.C.G.A. § 24-4-3, OSAH Rule 616-1-2-.21(4).

2. The Medical Assistance Only Program ("Medicaid") is jointly funded by the Federal government and the various states. The Federal enabling statute governing Medicaid is found at 42 U.S. Code § 1396 *et seq.* In Georgia, the Department of Community Health has overall authority over the administration and funding of the Medicaid program. Administration of the program at the local county level is delegated to the Department of Human Resources (DHR), Division of Family and Children Services. DHR has issued guidelines for use by DFCS in the Economic Support Services Manual ("Medicaid Manual"), Volume II.

3. An applicant for or recipient of Medicaid under the Nursing Home class of assistance may be subject to a transfer of resources penalty if the individual or their representative gives away or

sells an asset for less than fair market value during the “look back period,” the time of which can vary depending on the date of the Medicaid application. 42 U.S.C. 1396(p; Medicaid Manual, Section 2342-1.

4. 42 U.S.C. 1396p(c)(2)(B)(iii) states as follows in pertinent part:

An individual shall not be ineligible for Medical assistance by reason of paragraph 1 [transfer of assets for less than FMV] to the extent that...the assets ...were transferred to, or to a trust...established solely for the benefit of, the individual's [disabled] child.”

This language does not require that assets be transferred into a trust established for the disabled child, but rather can be transferred outright to the child. However, Respondent's Medicaid Manual, Section 2342, requires that the assets be transferred to a trust established for the sole benefit of the Medicaid applicant / recipient's disabled child. As the Federal law allows Petitioner to transfer assets directly to her disabled child, the administrative law judge concludes that any assets so transferred do not result in a transfer of resources penalty.

5. In regard to the issue of the term life insurance policy, the evidence establishes that Petitioner's family was unaware of such a policy until confronted with the possibility of its existence during the Medicaid eligibility determination process. Medicaid Manual, Section 2300-2, provides as follows:

If an individual is unaware of his/her ownership of an asset, the asset is not a resource during the period for which individual was unaware of the ownership. The previously unknown asset, including any monies (such as interest) accumulated on it through the month of discovery by the individual, is income only in the month of discovery.

Based on the facts presented here, Petitioner's family first became aware in March 2009 that Petitioner owned a term life insurance policy with a face value of \$9,500.00. Therefore, the policy only became a consideration in Petitioner's Medicaid case in March 2009.


6. The face value of a term life insurance policy may be set aside for burial in an amount up to \$10,000.00, and that value is not counted against the Medicaid resource limit. Medicaid Manual, Sections 2312 and 2323. In order for the funds to be designated for burial, however, a Form 985 must be signed and filed with DFCS. There is no evidence in the evidentiary record that a Form 985 has been submitted to DFCS, and, therefore, the life insurance policy is a countable resource. It is unclear from the hearing record if DFCS previously considered the face value of the term life insurance policy as an issue that could cause Petitioner's ineligibility for benefits. Further, it is

possible that the Petitioner's representatives have already filed a Form 945 with DFCS, which would shelter the face value of the policy from any consideration as a resource.

IV. Decision

It is the Initial Decision of the administrative law judge that Petitioner is not subject to a transfer of assets penalty for the months April 2009 through August 2009. However, this matter is REMANDED to DFCS for its consideration of how to treat Petitioner's term life insurance policy. If the policy renders Petitioner ineligible for Medicaid or a vendor payment in any month after its discovery in March 2009, then DFCS shall issue written notice of such action to Petitioner, her family representative, and her attorney.

SO ORDERED, this 24th day of July, 2009


M. PATRICK WOODARD, JR.
Administrative Law Judge

