

GEORGIA DEPARTMENT OF HUMAN SERVICES
Contact Letter and Information/Verification Checklist for Aged, Blind, and Disabled Medicaid

Miriam Roberson for Aline Sellers _____ Region 7 _____ County DFCS _____
1246 Country Club Circle _____ CL ID:709053963 _____ AU# _____
Wrens, GA 30833-3528 _____ Region 7 Fax: 706-434-6195 Date: 05-01-14 _____

XX We received your Medicaid application/review. In order to make an eligibility determination on your case, we need the information or proof listed below. Failure to provide this by the time requested will result in closure of your case or denial of your application.

_____ An interview is also required by phone or at your home or at our office. You are scheduled for a telephone/office interview on _____ at _____ with _____

You may contact me at the phone number listed at the bottom of this letter. I can be reached Mon-Fri between 8:00 AM and 5:00 PM. _____ (days of week)

We need the following by: 05-12-14 _____

Written Proof:

- _____ Amount of monthly gross earnings for: _____
- _____ Declaration of Citizenship/Alien status
- _____ Social Security Number for: _____ and copy of Medicare card.
- _____ Copies of bank statements: checking/savings, certificates of deposit, and any other investments
- _____ Copy of award letters for pension, retirement, disability, SSI, VA, Child Support
- _____ Workman's Compensation
- _____ Tag Receipt for vehicles
- _____ Copies of life insurance showing face value and cash value
- _____ Burial contract, burial funds, cemetery lots, burial designation form
- _____ Medical Records needed for disability determination
- _____ Copies of Medical Bills owed
- _____ Physicians Referral form, DMA 526 for Emergency Medical Assistance.
- _____ Health Insurance Information Questionnaire, DMA 285, completed and signed by: _____

_____ For Katie Beckett Deeming Waiver, psychological, DMA 6 completed by physician, care plan

Other: _____

_____ Statement of shared household expenses

_____ Proof you have applied for _____ benefits.

_____ Information on real property; deed or property tax statement.

XX Other: Please verify that life estate interest in the Gilmer County property is still for sale. _____

ABD MEDICAID _____ Renewal _____ 1-877-423-4746 _____
Team Name _____ Caseload ID _____ Phone Number _____

PLEASE RETURN THIS REQUESTED INFORMATION TO THE FAX NUMBER ABOVE OR YOUR LOCAL COUNTY DFCS OFFICE

May 7, 2014

VIA FAX ONLY TO 706-434-6195
ABD REGION 7

RE: Client ID # 709053963
A/R: Sellers, Aline

Dear ABD Case Management Specialist:

I represent Aline Sellers and am responding to your 981 dated 5/1/2014. This property was the subject of a fair hearing, which we won, which states the property was exempt for two separate reasons. First, we provided two valuations from realtors stating that a life estate has zero value – and the Administrative Law Judge agreed in his Final Order. Also, the judge gave a second reason why the property was exempt, which is the fact that it was up for sale, despite having no value.

As we have rebutted the value of the property and shown it has zero value, as the judge agreed, the non-homeplace property is countable as an asset, BUT it has zero value as established by the two valuations and the judge's ruling. As such, it does not also need to be "up for sale" to remain exempt. The proper thing to do is to count it as an asset, at the proper value – which is \$0.00. Again, this countable value of \$0.00 was established at the hearing and made permanent by the judge in his ruling.

As such, we do not have it listed for sale, and will not do so. It is countable against the \$2,000 limit, but the countable value is \$0.00 as the judge verified and ruled. If you have any questions, please do not hesitate to contact us. We will appeal any denial based on "not" having it up for sale, and someone from DFCS can explain to the ALJ at fair hearing why he is forced to re-look at the issues he has already ruled on. I am attaching for your reference the ALJ's Final Order/Decision, along with the two valuations for your review. These are already in the file, of course, as well. Thanks in advance for your assistance.

Sincerely,



Patrick C. Smith, Jr.

Enclosures as noted above

RE: ARLINE SELLARS, Petitioner

Docket No.: OSAH-DFCS-NH-1330678-17-Woodard

MAIL TO:

ARLINE SELLARS
KEYSVILLE NH
P.O. BOX 220
KEYSVILLE, GA 30816

MIRIAM ROBERSON
1246 COUNTRY CLUB CIRCLE
WRENS, GA 30833

PATRICK SMITH
THE SMITH LAW FIRM
4141 COLUMBIA RD
STE-D
MARTINEZ, GA 30907

BURKE COUNTY DFCS OFFICE
HANDY, PAMELA, CASEWORKER
JEFFERSON COUNTY DFCS
P O BOX 570
LOUISVILLE, GA 30434

SAMANTHA RILES, REGIONAL HEARING COORD.,
P.O. BOX 808
MILLEN GA 30442

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
PO BOX 38420
ATLANTA GA 30303

SCANNED

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

ARLINE SELLERS,)

Petitioner,)

v.)

GEORGIA DEPARTMENT OF)

HUMAN SERVICES,)

Respondent.)

Docket No.: OSAH-DFCS-NH-1330678-15-
Woodard

Agency Reference No.: 351200613



FILED
OSAH

MAY 3 2013

INITIAL DECISION

Hazel Jackson
Hazel Jackson, Legal Assistant

Introduction

This matter concerns Petitioner's appeal of the denial of her application for Medicaid under the "Nursing Home" class of assistance. An evidentiary hearing was held on March 13, 2013 at Richmond County Department of Family and Children Services ("DFCS"), Augusta, Georgia. Petitioner was represented by Patrick C. Smith, Attorney at Law, Martinez, Georgia. Respondent was represented by Pamela Handy, Medicaid Eligibility Specialist, Burke County DFCS, Waynesboro, Georgia.

Petitioner filed her Proposed Findings of Fact and Conclusions of Law on March 20, 2013. Respondent did not file a response, and the hearing record was closed on April 8, 2013.

After reviewing the record and relevant authority, Respondent's action in denying nursing home vendor payments is REVERSED and REMANDED.

Findings of Fact

The following Findings of Fact are based on the parties' stipulation of facts and the exhibits admitted by the administrative court.

1.

Petitioner is a 90 year-old woman who resides in a Medicaid-accepting nursing facility. After spending down her countable assets below the Medicaid limit of \$2,000.00, Petitioner applied for Medicaid through Burke County DFCS.

2.

More than five years prior to filing her Medicaid application, Petitioner transferred a remainder interest in non-homeplace property she owned in Ellijay, Gilmer County, Georgia. Petitioner retained a life estate in the property. The local tax assessor placed a fair market value on the property of \$276,400.00.

3.

DFCS used the "Life Estate and Remainder Interests" tables found in Section 2322 of the *Economic Support Services Manual, Volume II* (hereafter "*ABD Medicaid Manual*") to calculate the value of Petitioner's interest in the property. The table shows that the life estate multiplier for a 90 year-old person is .28221. Therefore, DFCS calculated the value of Petitioner's life estate interest at \$78,002.84.

4.

Petitioner is unmarried, as has no dependents to whom she could divert sufficient resources to become Medicaid eligible. Therefore, DFCS denied Petitioner's Medicaid application as the countable value of her life estate exceeded the \$2,000.00 limit. Petitioner appealed, and this matter was referred to the Office of State Administrative Hearings for adjudication.

5.

Petitioner has listed her interest in the Gilmer County property for sale with a local realtor. She also obtained property valuations from two local real estate professionals. Both state that, in their opinion, the Petitioner's life estate is unmarketable, and therefore has no value.

6.

The parties stipulated that Petitioner meets all requirements for Medicaid under the Nursing Home COA but for the valuation of her life estate interest, although DFCS needed to verify her resources for the benefit months of January 2013 onward.

Conclusions of Law

1.

Petitioner appealed from the denial of an initial application for Medicaid, and therefore she bears the burden of proof. OSAH Rules 616-1-2-.21(4) and 616-1-2-.07(1)(d).

2.

According to Section 2141 of the *ABD Medicaid Manual*, Nursing Home Medicaid is a class of assistance ("COA") that provides benefits to eligible individuals residing in a Medicaid-participating nursing home. An applicant or recipient ("A/R") is eligible for such benefits when basic and financial eligibility criteria regarding income and resources are met. *Id.*

3.

Homeplace property owned by a Medicaid applicant is considered "exempt" from consideration as a resource, according to *ABD Medicaid Manual* Section 2316. However, this property is not Petitioner's homeplace, and *ABD Medicaid Manual* Section 2329 states that "equity value of the applicant/recipient's (A/R's) interest in non-homeplace real property is a countable resource for all ABD and Family Medicaid Classes of Assistance (COAs)." This section also states, however, as follows:

Non homeplace real property may be totally or partially excluded if it meets one of the following conditions:

- The property is jointly owned and the sale of the property would cause undue hardship to a co-owner(s). Refer to Section 2345, Undue Hardship Provision for ABD Medicaid.
- *The A/R is making a bona-fide or good faith effort to sell the property.* Refer to Section 2304, Treatment of Resources.
- The property is restricted allotted Indian land. Refer to Section 2304, Treatment of Resources.
- The property meets undue hardship provisions. Refer to Section 2345, Undue Hardship Provision for ABD Medicaid
- The property is essential to self support (this applies only to ABD COAs). Refer to Section 2327, Property Essential to Self-Support
- *The property is declared unmarketable by a competent authority*
- *The A/R owns a life estate interest in the property (ABD Non-FBR COAs only).* Refer to Section 2322, Life Estate and Remainder Interests.

Emphasis added by the administrative court.

4.

In the present case, Petitioner listed her life estate interest in the property with a local realtor, an exercise which Petitioner's counsel aptly describes as "practical lunacy" due to Petitioner's age and poor health.. Petitioner also obtained two valuations from local real estate professionals who opined that her life estate is unmarketable, and thus is valueless. Finally, the Petitioner's interest is a life estate in non-homeplace property, and the "Nursing Home" COA is a Non-FBR (Federal Benefit Rate) class of Medicaid. Therefore, the administrative court concludes that Petitioner has met three of the criteria found in Section 2329 of the *ABD Medicaid Manual*, and her life estate interest in the property is excluded from consideration as a resource.

Decision

It is the Initial Decision of the Administrative Law Judge that DFCS' imposition of a transfer penalty based on the sale of Petitioner's homeplace real property is REVERSED, and this matter is REMANDED to DFCS to approve Petitioner for a nursing home vendor payment beginning from the date of her initial application, subject to verification of her resources for January 2013 onward.

SO ORDERED, this 3rd day of May, 2012.



M. PATRICK WOODARD, JR.
Administrative Law Judge



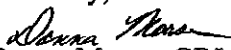
Mountain Aire Realty
97 Mulberry St.
East Ellijay, GA 30540
706-276-1122 Office
706-635-1122 Fax

To Whom it may concern:

The life estate interest in the property at Sutton Place in Ellijay, GA has a fair market value of \$0 as the amount of money paid for this will be \$0 at the passing of Ms. Aline Sellers and the buyer will have no remaining interest in the property. In this market we have never had a life estate sell due to lack of value that is generated from the purchase. Ms. Sellers is 90 years old and will most like not live more than 10 years maximum and most prudent buyers will not be willing to spend \$74000 to have use of a property in the market for that period when they can buy a cabin in the market for the same price and have lifetime ownership and use.

At Ms. Sellers passing the life estate will cease and the asset will be totally owned by Penny, Blake and Leslie Kate Sellers. Again this evolves back to the life estate having a \$0 fair market value.

Sincerely,


Donna Mousa, GRI
Associate Broker

BLANCHARD AND CALHOUN

REAL ESTATE CO.

Sales Office - Evans
1202 Town Park Lane, Suite 201
Evans, Georgia 30809
706.868.1000 • 800.755.3632
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February 15, 2013

To: Mr. Patrick Smith, Attorney at Law

I have reviewed the property known as 217 Sutton Place, Gilmer County, Georgia parcel number 3093 016. This property consist of approximately 31.54 acres of land and has a single family dwelling occupying approximately 2048 square feet. The current value of the property according to the tax digest is \$276,400.00.

I understand Ms. Aline Sellers presently holds a life estate to this property. It is my opinion that due to Ms. Sellers age, the life estate has no marketable value. Should you have any questions, please feel free to contact me.

Sincerely



Woody Trulock
Vice President/Associate Broker

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