

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

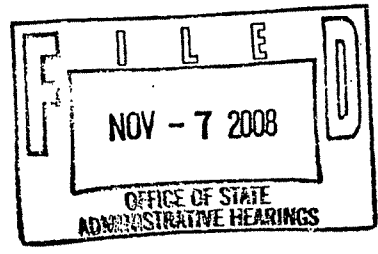
[Redacted]

Petitioner,

v.

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

:
: Docket No.: OSAH-DFCS-NH-0903044-
: 36-Woodard
:
: Agency Reference No.: 7768016511
:



INITIAL DECISION

APPEARANCES

For Petitioner: [Redacted] Administrator, University Extended Care Westwood,
Evans, Georgia, as witness.

For Respondent: [Redacted] Medicaid Eligibility Case Manager, Columbia
County Department of Family and Children Services, Appling, Georgia

I. INTRODUCTION

This matter concerns the imposition of a transfer of resources penalty against Petitioner that prohibits her from receiving a nursing facility vendor payment through the Georgia Medicaid program. Columbia County asserts that Petitioner's attorney-in-fact transferred resources worth approximately \$104,000, but Petitioner received only \$40,000 as compensation. DFCS assessed a penalty on the uncompensated value of the transfer of \$64,010.19. It is argued on Petitioner's behalf that the homeplace property transferred by the attorney-in-fact is worth far less than its tax-assessed value, and therefore the transfer penalty should be significantly reduced.

For the reasons set forth below, I AFFIRM the imposition of a transfer of resources penalty based on the uncompensated value of the transfer of Petitioner's homeplace and other property in the amount of \$64,010.19.

II. FINDINGS OF FACT

The following Findings of Fact are based solely on the evidence presented at the hearing.
OSAH Rule 616-1-2-.21(4).

1. [REDACTED] (Petitioner) has resided since February 2007 at University Extended Care Westwood, an intermediate care facility in Columbia County, Georgia. An application for Medicaid was filed on her behalf on January 28, 2008 with Columbia County DFCS, and processed by DFCS under the "Nursing Home" category of assistance.
2. In order to determine Petitioner's eligibility for Medicaid and Medicaid-funded nursing home vendor payments, DFCS was required to verify what assets were currently owned or recently transferred by Petitioner. DFCS learned that Petitioner's homeplace property located at [REDACTED] Martinez, Georgia, valued by the county tax assessor at \$90,351, was transferred to [REDACTED]. [REDACTED] is a close friend of Petitioner's, and Petitioner had granted her power of attorney prior to the transfer of the homeplace property.
3. Initially, DFCS believed that Petitioner received no compensation for her homeplace, but [REDACTED] verified that they paid \$40,000 for the property. DFCS also learned that [REDACTED] had withdrawn \$10,000 from Petitioner's account with Edward Jones, written checks to herself in the amounts \$710.89 and \$762.30 drawn on Petitioner's bank account, and had transferred Petitioner's car valued at \$2,486.00 to herself. There is no proof that [REDACTED] paid Petitioner for any of these transfers, or that any money received by [REDACTED] was used for Petitioner's benefit.
4. All transfers of Petitioner's property took place within three years' prior to the filing of Petitioner's application for Medicaid.

5. DFCS concluded that Petitioner did not receive fair market value compensation for the transfer of her homeplace, car, Edward Jones or bank account transfers. At first, DFCS determined that the total uncompensated value of the transfers was approximately \$104,000, and assessed a transfer penalty that made Petitioner ineligible for a nursing home vendor payment from January 2008 through at least July 2008. Once DFCS became aware that [REDACTED] had paid \$40,000 for Petitioner's homeplace, the total uncompensated value of all transfers was reduced to approximately \$64,000.

6. [REDACTED] is the administrator at University Extended Care Westwood.¹ [REDACTED] testified that [REDACTED] have put many thousands of dollars into repairs and renovations of Petitioner's homeplace property in an effort to make it livable. [REDACTED] produced a "Proposal" submitted to [REDACTED] by Dan Williams Renovations, Grovetown, Georgia, which showed the estimated cost of repairs could be as high as \$40,000. [REDACTED] argued that because the property was in such bad repair, its actual fair market value was significantly less than its tax-assessed value. [REDACTED] did not have documentation to prove a lower value of the property, such as an appraisal prepared by a licensed real estate appraiser. [REDACTED] also testified that he learned from [REDACTED] that the \$10,000 payment from Petitioner's Edward Jones account had been set aside as a burial fund. However, there is no documentary evidence that such an account was actually established.²

7. There is no evidence that Petitioner or her representative have requested that [REDACTED] return any of the assets that [REDACTED] transferred as Petitioner's attorney-in-fact, or that criminal or civil proceedings have been initiated to recover the assets.

¹ The administrative law judge allowed [REDACTED] to testify as a witness in the hearing. As the pecuniary interests of Petitioner and University Extended Care Westwood may appear to be similar, the administrative law judge believes there may be an inherent conflict of interest if the facility attempts to also serve as Petitioner's "Representative," as the facility has the legal right to take action against Petitioner should she fail to pay her nursing home bill.

² [REDACTED] testified that [REDACTED] had recently suffered a stroke, and was therefore not available to testify at the hearing. The administrative law judge allowed [REDACTED] to testify regarding what he was told by [REDACTED] although such statements are hearsay that are not admissible under any acknowledged hearsay exception. Further, [REDACTED]'s statements do not support a conclusion that Petitioner's transfer penalty should be eliminated or reduced, and therefore no harm is caused from admitting his testimony.

III. CONCLUSIONS OF LAW

1. As an applicant for Medicaid vendor payments to an intermediate care nursing facility, Petitioner bears the burden of proof. At the hearing, the administrative law judge required DFCS to present its evidence first, but this did not shift the burden of proof from Petitioner. 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. Medicaid is a joint State-Federal program. In Georgia, Medicaid is administered by the Department of Community Health, Division of Medical Assistance. Responsibility for determination of an individual's eligibility for Medicaid has been delegated to the Department of Human Resources, Division of Family and Children Services (DFCS). DFCS has issued guidelines for the day-to-day administration of the Medicaid program in the Economic Support Services Manual, Volume II (Hereafter "ESSM")

3. Section 2342 of the ESSM contains guidelines for handling transfers of a Medicaid applicant or recipient's assets, and mandates a penalty for the gift or sale of "assets for less than current market value (CMV) during the "look back period." For Medicaid applications filed since October 1, 2006, the provisions of the Deficit Reduction Act (DRA) of 2005 apply. ESSM Section 2342-1. According to DRA, the look back period is calculated "on all assets transferred on or after 2/8/06." ESSM Section 2342-8.

4. The process for calculating a transfer penalty is as follows:

Determine the number of months of the penalty by dividing the total uncompensated value (UV) of the transferred resource by the average Georgia private pay rate.....

ESSM, Section 2342-8, 9. If DFCS determines that a transfer penalty should be imposed, then the individual will be eligible for Medicaid coverage, but not eligible for a vendor payment to the nursing facility and will be responsible for the facility's bill for all penalized months. ESSM Section 2342-9.

5. There is no transfer of assets penalty if:

- •••• An A/R [applicant / recipient] can provide a satisfactory showing that he/she intended to dispose of the asset for fair market value, or for other valuable considerations
- The transferred resources have been returned to the individual.
- Denial of eligibility would cause an undue hardship. Undue hardship must be considered in every case. Refer to Section 2345, Undue Hardship.
- An asset was transferred exclusively for a purpose other than to qualify for Medicaid. **NOTE: This policy does not apply to transfer of homeplace property.**

(Emphasis added by the administrative law judge). ESSM, Section 2342-3. However, a penalty must be imposed if:

- •••• An [applicant/recipient] gives away or sells an asset for less than [current market value], or refuses an inheritance, during the 36 month look back period or anytime thereafter.
- •••• If an A/R's asset is given to someone (other than spouse) who has provided care to the A/R who at the time provided the care for free, presume that the services were intended to be provided without compensation....

ESSM, Section 2342-3,4

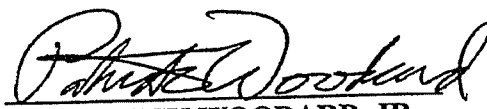
6. In the present case, there is no evidence that [REDACTED] compensated Petitioner for any of her resources that were transferred to them through [REDACTED] as attorney-in-fact, other than the partial compensation paid for Petitioner's homeplace. There also is no evidence that [REDACTED] returned any of the resources to Petitioner, or that they used a resource for Petitioner's benefit. Therefore, DFCS correctly followed the provisions of ESSM Section 2342 when it determined that the Deans did not compensate Petitioner for the transfers of her car, the Edward Jones account, or the checks written on her bank account. Further, there is insufficient credible evidence to prove that the Petitioner's homeplace property was worth less than its tax-assessed value of \$90,351 at the time it

was transferred, and the uncompensated value of that transfer is \$50,351 as [REDACTED] only paid Petitioner \$40,000.³

IV. DECISION

The imposition of a transfer of assets penalty against Petitioner is hereby AFFIRMED based on the total uncompensated value of all transfers of \$64,010.19.

SO ORDERED, this 6th day of November 2008.


M. PATRICK WOODARD, JR.
Administrative Law Judge

³ Petitioner or her representative may take action to have the property appraised, or to have the tax valuation modified. Nothing in this Decision shall prohibit DFCS from reassessing the transfer penalty should a lower valuation of the property be provided. Further, [REDACTED] may provide DFCS with proof that a burial fund was in fact established using the \$10,000 transferred from Petitioner's Edward Jones account. Either course of action may result in a reduction of the months of transfer penalty.