

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

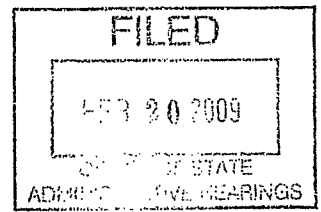
[REDACTED]
Petitioner,

v.

GEORGIA DEPARTMENT OF
Respondent.

) Docket No.:
) OSAH-DFCS-NH
) 0913239-36-WOODARD
)
) Agency Reference No.: 471163213
)
)

ORDER GRANTING PETITIONER'S
MOTION FOR SUMMARY DETERMINATION



I. INTRODUCTION

This Order and Initial Decision is issued pursuant to OSAH Rules 616-1-2-.15, 16 and 27. The Petitioner filed a Motion for Summary Determination on November 26, 2008. Respondent did not file a response to this motion.

OSAH Rule 616-1-2-.15 states that Summary Determination may be granted against a party if the moving party shows "that there is no genuine issue material fact for determination." For the reasons set forth below, the Administrative Law Judge finds that if this matter were brought to a full evidentiary hearing there would be no genuine issue of any material fact to adjudicate. Therefore, the Administrative Law Judge GRANTS the Petitioner's Motion for Summary Determination.

II. FINDINGS OF FACT

The following Findings of Fact are based on the assertions in Petitioner's Motion for Summary Determination, and the attached sworn statements and other documents, and have not been disputed by Respondent.

1. Petitioner is an 83 year-old woman who resides at Westwood Nursing Home in Evans, Georgia. (Petitioner's Motion for Summary Determination).
2. On August 19, 2008, Petitioner applied for nursing home Medicaid. (Ibid.)
3. On October 10, 2008, Respondent approved the application except for the month of August 2008. According to Respondent, Petitioner was slightly over the \$2,000 resource limit. (Id.)
4. On or about September 30, 2002, [REDACTED] and [REDACTED] executed a Promissory Note as "Makers." Under the terms of this note, Petitioner was to be paid \$66,000.00, "payable in monthly installments of principal only in the amount of \$15.00 commencing October 1, 2002, and continuing on the same day each month until the amount loaned has been repaid in full." (Exhibit 1 to Petitioner's Motion for Summary Determination).

5. In a sworn statement, [REDACTED] CPA, PFS, CFP, indicated that he valued the promissory note at approximately \$360.00. This conclusion was based on several factors, including the long-term payout, small monthly payments, and unsecured status of the note. However, [REDACTED] also stated that he would not buy the note, or recommend that his clients do so. (Exhibit 2, Petitioner's Motion for Summary Determination).

6. In a sworn statement, [REDACTED] Executive Vice-president of Citizens Bank of Cochran, Georgia, indicated that he valued the promissory note at only \$90.00. He based this conclusion on the unsecured status of the note, low monthly payments, and extremely long pay-back period. [REDACTED] also stated that he would not buy the note, or advise anyone to do so. (Exhibit 3, Petitioner's Motion for Summary Determination).

III. CONCLUSIONS OF LAW

1. The burden of proof in cases involving denial of a Medicaid application is placed on the Petitioner, as an applicant for benefits, pursuant to OSAH Rule 616-1-2-.07, except for the burden of raising any affirmative defenses, which is placed on the Respondent. The standard of proof is by a preponderance of the credible evidence according to OSAH Rule 616-1-2-.21(4).

2. Guidelines for Medicaid eligibility in Georgia are issued by the Department of Human Resources, and maintained in its Economic Support Services Manual (Manual), Volume II. Appendix A to the Manual states that the resource limit for an applicant under the "Nursing Home" category of assistance is \$2,000.00.

3. In this case, two independent and knowledgeable sources have determined that the promissory note is not marketable based on the lengthy repayment period, extremely low monthly payments, and its unsecured status. Based on the uncontraverted language of both affidavits, the value of the note is zero dollars. Authority: Manual Section 2313.

IV. ORDER AND INITIAL DECISION

It is ORDERED that the Petitioner's Motion for Summary Determination is GRANTED. It is the Initial Decision of the Administrative Law Judge that the value of the promissory note is zero dollars.

SO ORDERED, this 20th day of February 2009.



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

