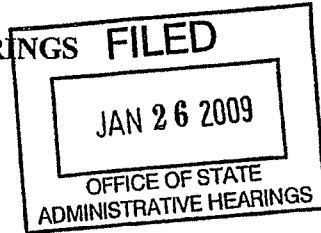


OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA



[REDACTED]

Petitioner,

Docket No.
OSAH-DFCS-NH-0914084-57-KENNEDY

v.

Agency Reference No. 656315218

GEORGIA DEPARTMENT OF HUMAN
RESOURCES, DIVISION OF FAMILY
AND CHILDREN SERVICES,

Respondent.

INITIAL DECISION

Petitioner requested administrative review of Respondent's adverse action imposing a Transfer of Resource penalty. For the reasons set forth below, Respondent's determination is **REVERSED**.

FINDINGS OF FACT

1.

Petitioner, through her authorized representative, applied for Medicaid through Floyd County Department of Family and Children Services (DFCS) in September 2008.

2.

Petitioner has two adult daughters. [REDACTED] is able-bodied and has a durable power of attorney for Petitioner. [REDACTED] has been determined disabled by the Social Security Administration office. [REDACTED] receives RSDI benefits through the Social Security Administration office based on her disability.

3.

[REDACTED] acting on behalf of Petitioner, transferred \$24,000.00 to [REDACTED] on July 16, 2008.

4.

Respondent determined that Petitioner qualifies for Medicaid benefits effective September 2008, and on-going; however, no vendor payments have been issued because Respondent imposed a five month Transfer of Resource penalty based on Petitioner's cash transfer to her disabled daughter. Respondent determined that a Transfer of Resource penalty had to be imposed because the transfer was made directly to Petitioner's disabled daughter rather than into a trust established for the benefit of Petitioner's disabled daughter.

CONCLUSIONS OF LAW

1.

Respondent determined Petitioner qualified for Medicaid, but notified her that no vendor payments would be issued for a specified period of time because Respondent had also determined that a transfer of resource penalty applied based on the cash transfers made in July 2008. Accordingly, Respondent bears the initial burden of proof because this matter involves a reduction or suspension of public assistance benefits; however, Petitioner bears the burden as to any affirmative defenses raised. Both Petitioner and Respondent bear the burden of proof as to any fact, asserted by them, if the proof of the fact is essential to their case or defense. O.C.G.A. § 24-4-1, OSAH Rule 616-1-2-.07(1)(d). 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.

An applicant for Medicaid benefits may be subject to a transfer of resource penalty if they have given away or sold a resource for less than fair market value during the applicable look-back period. 42 U.S.C. 1396p(c)(1)(A), (D), and (E); Georgia Department of Human Resources, Economic Support Services Policy Manual (ESSM), Section 2342, p. 2342-1.

3.

Federal law provides various situations in which a transfer would not cause a person to be ineligible for Medicaid. Essentially, the law specifies certain transfers for which no penalty is assessed. 42 U.S.C. § 1396p(c)(2); ESSM § 2342. Respondent's policy mirrors some provisions found in the federal law, but not all.


4.

Respondent's policy requires assets to be transferred to a trust established for the sole benefit of an applicant/recipient's disabled child for a transfer penalty to not apply. In contrast, federal law goes further to say that an individual shall not be ineligible for Medicaid if the assets "were transferred to, or to a trust . . . established solely for the benefit of, the individual's [disabled] child . . ." ESSM Section 2342; 42 U.S.C. § 1396p(c)(2)(B)(iii) and (iv). Given that federal law allows Petitioner to transfer assets directly to her disabled child, the monies Petitioner transferred to her adult disabled child in July 2008 cannot result in a transfer of resources penalty.

DECISION

Respondent's determination to impose a transfer of resource penalty is **REVERSED**. Respondent is not authorized to impose a transfer of resources penalty for any monies transferred to Petitioner's adult disabled child.

This 26th day of January 2009.



Ana Kennedy
Administrative Law Judge