



IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

[Redacted]

Petitioner,

vs.

GEORGIA DEPARTMENT OF
COMMUNITY HEALTH,
Respondent.

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Administrative Action No.:
OSAH-DFCS-NH-0912873-44-Gatto

DFCS Case No.: 661031315

INITIAL DECISION

COUNSEL: Felix P. Graham, Jr., for Petitioner.

Deborah Woods, *Pro se*, for Respondent.

GATTO, Judge.

I. INTRODUCTION

This matter comes before the Court from an appeal of [Redacted] ("Petitioner") under the Official Code of Georgia Annotated ("O.C.G.A.") § 49-4-13 from the decision of the Georgia Department of Community Health ("Respondent"), acting through the Georgia Department of Human Resources' DeKalb County Department of Family and Children Services ("DFCS") related to its imposition of a transfer penalty affecting Petitioner's patient liability on her nursing home care. The Court has jurisdiction to hear this matter pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." For the reasons indicated below, the decision of Respondent is **AFFIRMED** in part and **REVERSED** and **REMANDED** in part.

II. FINDINGS OF FACT

The facts of this case are not in dispute and may be simply stated. Petitioner is a resident in a nursing home. Petitioner's three sons as her Conservators obtained from the Franklin County

Probate Court an order permitting them to sell her life estate interest in certain real estate for \$1,500 to the wife of one of the Conservators. The Conservators had three offers on the real estate ranging from \$25,000-\$31,000. The Conservators spent \$13,397 on improvements to the property in an attempt to obtain a higher sale price for the real estate and thereafter received a sale offer for \$55,000. ([REDACTED] Test.)

DFCS determined that the current market value (CMV) of the real estate, based upon county tax records, was \$48,850 and determined that Petitioner's life estate interest was \$28,779.¹ DFCS concluded that the sale of Petitioner's life estate for \$1,500 was less than the fair market value and applied the difference of \$27,279 as a transfer penalty. Since the nursing home private pay billing rate was \$4,615, DFCS determined that there was a 5 month transfer penalty and the remaining \$4,204 was to be counted as unearned income in the patient liability budget to be paid to the nursing home.

III. CONCLUSIONS OF LAW

If an institutionalized individual disposes of assets for less than fair market value on or after 36 months before the date the individual is both institutionalized and has applied for medical assistance, the individual is ineligible for medical assistance beginning on the first day of the first month during or after which assets have been transferred for less than fair market value. 42 USCS § 1396p(c). The ineligibility period is equal to the total, cumulative uncompensated value of all assets transferred by the individual divided by the average monthly cost to a private patient of nursing facility services in the State. Id. Here, the Petitioner was an institutionalized individual that disposed of her assets by selling her property and transferring the proceeds, after

¹ See Medicaid Manual, § 2322-5, Chart 2322.1 where the Life Estate Interest for a person age 71 is determined by multiplying the CMV of the property, minus any encumbrances, by .58914.

allowable deductions, to her family. Therefore, DFCS correctly determined that Petitioner was ineligible for assistance. However, the Court concludes that DFCS erred in the number of months it determined that Petitioner was not eligible as well as the amount of the unearned income to be paid by Petitioner to the nursing home.

The Court finds that the CMV should be based upon the last sale offer received by the Conservators of \$55,000. Therefore the Life Estate Interest for Petitioner was \$55,000, minus the improvements made of \$13,397 multiplied by .58914 or \$24,510. The Court agrees with DFCS that the sale of Petitioner's life estate for \$1,500 was less than the fair market value. Therefore, the difference (based upon the Court's calculation) of \$23,010, is the proper transfer penalty. Since the nursing home private pay billing rate was \$4,615, a four month transfer penalty is applicable and the remaining \$4,550 is to be counted as unearned income in the patient liability budget to be paid to the nursing home.

IV. CONCLUSION

IT IS HEREBY ORDERED THAT the decision of Respondent is **AFFIRMED** as to the ineligibility decision but **REVERSED** on the number of months it determined that Petitioner was not eligible as well as the amount of the unearned income to be paid by Petitioner to the nursing home and the action is **REMANDED** to DFCS to impose a four month transfer penalty with the remaining \$4,550 to be counted as unearned income in the patient liability budget to be paid to the nursing home.

SO ORDERED THIS 15th day of December, 2008.



JOHN B. GATTO, Judge