

5. In August 2008, Petitioner transferred from the assisted living facility to a nursing home. On August 29, 2008, Petitioner applied for Nursing Home Medicaid. (Testimony of [REDACTED] & [REDACTED])

6. On October 28, 2008, Respondent approved Petitioner's Nursing Home Medicaid, but pursuant to the Economic Support Services Manual of the Georgia Department of Human Resources § 2342-1 ("Policy Manual"), Respondent imposed a transfer of assets penalty for 5.766 months due to the transfer of the life estate to [REDACTED] for under current market value. (Testimony of [REDACTED]; Ex. P-6.)

7. Respondent calculated the current market value of the property as \$71,932.00, and determined the value of Petitioner's life estate to be \$26,613.40. (Testimony of [REDACTED]; Ex. R-1.)

Conclusions of Law

8. Nursing Home Medicaid is a class of assistance that provides benefits to eligible individuals residing in a Medicaid-participating nursing home. An applicant or recipient is eligible for such benefits when basic and financial eligibility criteria regarding income and resources are met.

9. When an applicant gives away or sells a resource for less than its current market value ("CMV")¹ during the look-back period, the applicant may be subject to a transfer of resource penalty. Under the Deficit Reduction Act of 2005, the look back period is 60 months from the date of application for Medicaid benefits. 42 U.S.C.S. § 1396p(c).

10. Petitioner submitted a Medicaid application in August 2008, and her interest in the homeplace was transferred in December 2006. Thus, the transfer in question took place during the applicable look-back period, and Respondent must determine whether a Transfer of Resource Penalty applies.

11. A legal presumption arises when a resource is given away or sold for less than fair market value within the applicable look-back period that the transfer was done for the purpose of establishing Medicaid eligibility. The burden to rebut the presumption rests with Petitioner, who must then furnish convincing evidence that the resource was transferred *exclusively* for some other reason. 42 U.S.C.S § 1382b(c); 20 C.F.R. § 416.1246(e); Johnson v. Lewellyn, 194 Ga. App. 186, 186 (1990); Johnson v. Ellis, 174 Ga. App. 861, 862 (1985).

12. Respondent's Policy Manual, in conflict with the relevant federal statutory provision, provides that a transfer of homeplace property for less than fair market value will result in a penalty even if the transfer is made exclusively for a purpose other than to qualify for Medicaid. The Respondent's Policy Manual "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," and the policy is preempted by the federal statute. Hines v. Davidowitz, 312 U.S. 52, 67 (1941). Accordingly, the Court finds that the Respondent

¹ The CMV means the price of an item on the open market in the applicant/recipient's locality. 20 C.F.R. § 416.1101.

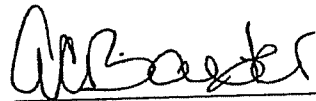
may not impose a transfer of assets penalty where homeplace property is transferred exclusively for a purpose other than to qualify for Medicaid.

13. The evidence clearly demonstrates that Petitioner did not transfer her life estate to be eligible for Medicaid. Rather, the transfer and ultimate sale of the homeplace occurred because the house was vacant and Petitioner was not going to return. Further, the evidence demonstrates that the proceeds from the sale were predominately used to provide for the Petitioner's living expenses. Respondent calculated the Petitioner's life estate to be valued at \$26,613.40. From March 2007 to August 2008, Petitioner received \$42,495.00, well in excess of the value of the life estate, from [REDACTED]. The fact that [REDACTED] did not pay Petitioner immediately upon the conveyance of the life estate or deposit the life estate proceeds into Petitioner's account are technicalities that are ultimately irrelevant. Petitioner received the value of her life estate and did not transfer it for the purpose of establishing Medicaid eligibility. Accordingly, Petitioner has met her burden in showing that Respondent incorrectly imposed a transfer penalty.²

Decision

Based on the foregoing Findings of Fact and Conclusions of Law, Respondent's imposition of a 5.766 month Transfer of Resource Penalty under the Medicaid program is **REVERSED**.

SO ORDERED this 26th day of January 2009.



AMANDA C. BAXTER
Administrative Law Judge

² At the hearing and in her brief, Petitioner put forth additional arguments and evidence against the imposition of the penalty. First, Petitioner argues that the property does not qualify as a "homeplace" and should have been treated as a resource. Second, Petitioner claims the notice received by Petitioner regarding the penalty assessment fails to meet the requirements of federal law. The evidence and law lean toward supporting both of these arguments, but given the Court's decision, it is unnecessary to address them further.