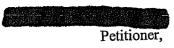
BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS STATE OF GEORGIA



v.

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

Respondent.

FILED
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Docket No.: OSAH-DFCS-NH-0915370-64-Baxter

INITIAL DECISION

Petitioner requested administrative review of Respondent's imposition of a 5.766 month Transfer of Resource penalty. A hearing was held on January 8, 2008. The record was left open until January 23, 2009 for Petitioner to submit a supporting brief. After reviewing the record and the relevant authority, Respondent's action in imposing a Transfer of Resource Penalty is **REVERSED**.

Findings of Fact

- 1. Petitioner is a widow and is 86 years old. In May 2005, Petitioner moved to an assisted living facility. At the time, she held a life estate in real property located at Calhoun, Georgia that had been her place of residence. Her son and Power of Attorney, owned the property. (Testimony of Anne Krueger & Greg Mealor; Exhibit ("Ex.") R-1.)
- 2. Petitioner's monthly income is \$1,311.00 in Social Security benefits and \$38.64 from a private pension. From May 2005 until late 2006, Petitioner paid her own expenses, including her assisted living facility expenses, with her income and savings. In late 2006, Petitioner closed her checking/savings account. In early 2007, Petitioner closed her savings account. In early 2007, Petitioner's savings were depleted. She had one bank account in which her benefits and pension were deposited. (Testimony of A. Krueger & G. Mealor; Ex. P-1.)
- 3. Sometime in early 2006 Petitioner decided not to return to her home. In May 2006, the home was listed for sale. After realizing that fee simple title to the property was subject to a life estate, Petitioner in December 2006 conveyed the life estate to in order to proceed with selling the house. The house sold in January 2007 and the sale (\$71,651.05) into his own bank account (the 'Account'). (Testimony of Ex. P-2, P-4, P-9.)
- 4. Used the majority of the proceeds from the sale of the house for Petitioner's living expenses. From March 2007 to August 2008, sent checks totaling \$42,495.00 from the Account and other personal accounts to the assisted living facility on behalf of Petitioner. (Testimony of Ex. P-1, P-10.)

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

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 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

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.