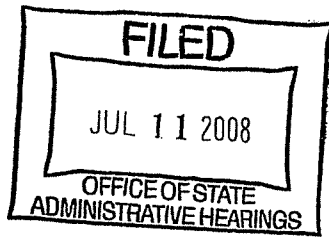


BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

[REDACTED])
Petitioner,)
v.)
DEPARTMENT OF HUMAN RESOURCES)
DIVISION OF FAMILY AND CHILDREN)
SERVICES,)
Respondent.)

Docket No.:
OSAH-DFCS-NH-0825617-67-Langston
Agency Ref. No.: 369531814



INITIAL DECISION
ORDER GRANTING SUMMARY DETERMINATION
IN FAVOR OF PETITIONER

I. Introduction

The above matter came before the undersigned pursuant to a request for an administrative hearing by the Petitioner. Prior to the hearing Petitioner timely filed a Motion For Summary Determination on May 5, 2008. The Respondent has failed to respond to the motion in a timely manner required by OSAH Rule 15. Thereafter, Respondent filed a response and a counter Motion for Summary Determination June 16, 2008. Petitioner filed a response to the counter motion on June 20, 2008.

After due consideration of Petitioner's motion and Respondent's counter motion, and for the reasons stated herein, the Petitioner's motion for Summary Determination is GRANTED. Respondent shall remove the transfer penalty retroactive to the date of application. The nursing home vendor payment is authorized effective July 1, 2007.

I. Findings Of Undisputed Facts

1.
Petitioner is a 98 year old resident of the LifeCare Center of Gwinnett nursing home.
2.
On May 10, 2007, Petitioner purchased improved property known as [REDACTED], Norcross, Georgia (the "Real Property") where she had been living in with her daughter and son-in-law, [REDACTED] from them.
3.
Petitioner hoped to live there for the rest of her life and wanted to make substantial modifications to the Real Property to accommodate her disabilities.
4.
Petitioner paid \$406,300 for the Real Property.

5.
The assessed value of the Real Property at the time of the sale was \$162,520 and the appraised value was \$406,300.

6.
Petitioner also purchased personal property the from [REDACTED] on May 10, 2007.

7.
Petitioner paid \$26,775 for the Personal Property. The purchase price represents the fair market value of the Personal Property sold.

8.
Petitioner paid for the Real Property and the Personal Property by transferring securities to the [REDACTED] worth \$484,766.78.

9.
\$51,691.78 was transferred back to Petitioner as overpayment for the purchase of the property.

10.
On July 9, 2007, Petitioner transferred the Real Property to [REDACTED] her care-giving daughter.

11.
[REDACTED] paid nothing for this transfer.

12.
Petitioner gave [REDACTED] the Property because Petitioner understood that since [REDACTED] had cared for Petitioner in the Real Property for over two years Petitioner could give it to her without a penalty.

13.
On July 18, 2007, [REDACTED] applied for Medical Assistance to help her pay the cost of her care at Lifecare which is about \$5,400 per month.

14.
The Medicaid application was approved but a 96 month transfer of assets penalty was imposed because of the transfer of the Real Property.

15.
Petitioner argued at Fair Hearing that she was eligible for the care-giving child exception to the transfer penalty but this Court sustained the penalty on February 18, 2008.

16.
On February 25, 2008, [REDACTED], transferred title to the homeplace back to [REDACTED]

17.
On February 28, 2008, DFCS was notified of this re-transfer.

18.
Petitioner did not pay anything for the February 25, 2008, transfer.


III. Conclusions Of Law

1. When a transferred asset is transferred back to the A/R, DFCS is required to void the transfer penalty and to determine eligibility as if no transfer ever occurred. MEDICAID MANUAL § 2342-9.
2. A transfer penalty only applies when someone gives away or sells an asset for less than current market value. MEDICAID MANUAL § 2342-1. A transfer penalty does not apply if A/R can provide a satisfactory showing that she intended to dispose of an asset for fair market value. MEDICAID MANUAL § 2342-2. FMV is defined as the same as Current Market Value. MEDICAID MANUAL APPENDIX E-7. Current market value is defined as the assessed tax value multiplied by 2.5 for real property, and the going price for which it can reasonably be expected to sell on the open market in a particular geographic area, for personal property. MEDICAID MANUAL § 2303-1.
3. No transfer penalty should apply to the May 10, 2007, exchange of securities for the homeplace and personal property since no gift was made. The securities were worth \$484,766.78, the home was worth \$406,300, the personal property was worth \$26,775 and Petitioner received back \$51,691.78 in cash.
4. On July 9, 2007, Petitioner gave the home to her care-giving daughter. [REDACTED] paid nothing for this transfer. This was a gift. This Court ruled on February 18, 2008, that this gift was subject to the transfer penalty.
5. On February 25, 2008, [REDACTED] gave the house back to Petitioner. On February 28, 2008, Petitioner asked DFCS to void the penalty and determine eligibility as if no transfer had ever occurred. Thus far, DFCS has refused to abide by the rules of the Medicaid Manual. See MEDICAID MANUAL § 2342-9.
6. This is not a case like Johnson v. Ellis, 174 Ga. App. 861 (1985) or Johnson v. Llewellyn, 194 Ga. App. 186 (1990) where the A/R made a gift and argued that the transfer penalty should not apply because the gift was made exclusively for a purpose other than to qualify for Medicaid. Petitioner admits in this case that a gift was made on July 9, 2007. But that gift was returned to Petitioner on February 25, 2008.

IV. Decision

Petitioner's motion for Summary Determination is GRANTED. Respondent shall remove the transfer penalty retroactive to the date of application. The nursing home vendor payment is authorized effective July 1, 2007.

SO ORDERED, this 10 day of July, 2008.


DAVID C. LANGSTON

Administrative Law Judge

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