

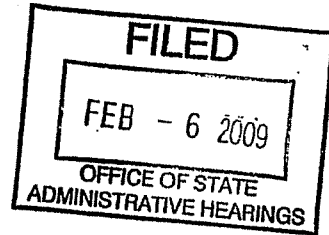
BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARING  
STATE OF GEORGIA

[Redacted]  
Petitioner

:  
: Docket No.  
: OSAH-DFACS-NH-0906362-67-Langston  
:  
: Agency Ref No. 222402114

vs.

DEPARTMENT OF HUMAN RESOURCES,  
DIVISION OF DEPT OF FAMILY &  
CHILDREN SERVICES



INITIAL DECISION

I. Introduction

The above matter came before the undersigned pursuant to a request for an administrative hearing by the Petitioner. Prior to the hearing both parties filed Motions for Summary Determination. After due consideration both Motions were denied and an evidentiary hearing was held on December 2, 2008. For the reasons set forth below, the denial of the application for benefits by the Respondent is AFFIRMED.

II. Findings of Fact

1.

Petitioner applied for Medicaid nursing home benefits on May 22, 2007. Documentation supplied to Respondent in conjunction with the Petitioner's Medicaid application was a copy of a trust document titled as an Irrevocable Special Needs Trust with the listed assets of the trust being an annuity in the amount of \$18,890.21 , a promissory note of \$65,000 from the beneficiary to the grantor, and a bank balance of \$85,213.96. The trust was dated February 26, 2008.

2.

Petitioner, is eighty-six years old and a resident of Laurel Baye Health Care of Lake Lanier, Georgia. Petitioner's daughter is the beneficiary of the Irrevocable Special Needs Trust ("daughter"), who is sixty-four years old, and who has been disabled since April 2004 per a Social Security determination.

3.

As the Irrevocable Special Needs Trust was a trust established by the Petitioner, the trust document was sent to the Department of Community Health (DCH) Legal for review, pursuant to Medicaid Manual § 2337. Under § 2337-2, several forms of trusts are not counted as resources or considered a transfer of assets as long as the document is considered a valid document by DCH Legal, including special needs trusts.

4.

The parties stipulated that the trust at issue in this case has not been approved by DCH.

5.

No evidence was submitted by the Petitioner that the trust in question comported with the requirements of Medicaid Manual § 2346, pertaining to special needs trust, such that the trust would be recognized as an exception under Medicaid Manual § 2337-2, and that the non-approval by DCH Legal was, therefore, in error.

6.

The \$65,000 promissory note within the trust was found by Respondent to not be actuarially sound, as required by Medicaid Manual § 2313-2, based upon the monthly schedule of payments of \$25.00 per month. Further, as the promissory note was executed by the daughter of the Petitioner, promising to repay her mother (the Petitioner), and then the note was transferred to the trust for the benefit of the daughter, the net effect was for the daughter to repay herself.

7.

Respondent could not determine if the trust established by the Petitioner for the benefits of her daughter was for the "sole benefit" of the daughter, as required by Medicaid Manual § 2342-3, since page four of the trust provided for reimbursement to the State of Georgia for benefits paid to both the Grantor and the Beneficiary. Respondent also relied on the fact that DCH had not approved the trust. A question was also raised as to the sentences on page two which provided for the right to amend the trust to keep it in compliance with state and federal laws and regulations.

8.

The Medicaid application of the Petitioner was denied on July 28, 2008 as "value of the resources is more than the resource limit for the program." Further explanation was provided that the promissory note was not actuarially sound.

9.

As the trust document created by the Petitioner in this case was not approved by DCH Legal, if the sixty-four year old disabled daughter were to apply for Medicaid herself in the future, the assets in the trust would need to be spent down before the daughter would be eligible for Medicaid as the daughter would be over the resource limit due to the trust assets.

### **III. Conclusions of Law**

1. In this case, Respondent has the burden to go forward in this matter, OSAH Rule 616-1-2.07(1)(d), and establish that the action undertaken by DFACS was proper under a preponderance of the evidence presented. OSAH Rule 616-1-2-.21(4).
2. Under the Georgia, Aged, Blind and Disable Medicaid Manual 3480 ("Manual"), Section 2141, Nursing Home Medicaid is a class of assistance ("COA") that provides benefits to eligible individuals residing in a Medicaid-participating nursing home. Any applicant or

recipient ("A/R") is eligible for such benefits when basic and financial eligibility criteria regarding income and resources are met. Id.

3. The applicable Sections of the Medicaid Manual in this case are : § 2313 pertaining to promissory notes, §2337 pertaining to trust property, § 2342 pertaining to transfer of assets, and § 2346 pertaining to special needs trusts.
4. Respondent acted reasonably by denying the A/R's Medicaid application in the absence of DCH Legal approving the trust in question. As the trust was not approved, and therefore part of A/R's estate, the resources available to the A/R placed the A/R over the resource limit. Medicaid Manual § 2313, §2337, § 2342 and § 2346
5. Respondent properly considered § 2337 of the Manual in determining A/R had failed to meet the exception for the transfer of assets penalty under § 2342 of the Manual. The interpretation of a statute by an administrative agency which has the duty of enforcing or administering it is to be given great weight and deference. See Georgia Department of Revenue v. Owens Corning, 283 Ga. 489, 660 S.E. 2d 719 (2008).
6. The actions of the Respondent in denying the application of the Petitioner is proper under a preponderance of the evidence. The burden shifts to the Petitioner, to show by convincing evidence that the transfer of resources was for some other reason other than for the A/R to qualify for Medicaid nursing home benefits. See Johnson v. Llewellyn, 194 Ga. App. 186, 390 S.E.2d 94 (1990).
7. The burden of proof has not been met by the Petitioner that the establishment of the trust was for a reason other than to qualify for nursing home benefits. No evidence was submitted by the Respondent that the trust in question comported with the requirements of Medicaid Manual § 2346, pertaining to special needs trust, such that the trust would be recognized as an exception under Medicaid Manual § 2337-2, and that the non-approval by DCH Legal was, therefore, in error.

#### IV. Decision

Respondent correctly determined that a transfer of resource penalty applies in this case under Medicaid Manual Section 2342. Petitioner has not rebutted the presumption that the transfer was executed for the sole purpose to qualify for Medicaid benefits. The action of the Petitioner in denying the application is AFFIRMED.

SO ORDERED THIS 4th day of February, 2009

