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V.

Docket No.: OSAH-DFCS-NH-0906767-121-Woodard

Agency Reference No.: 331150019

FILED
NOV 7 2008
OFFICE OF STATE
ADMINISTRATIVE HEARINGS

For Petitioner: Patrick Smith, Attorney at Law, The Smith Law Firm, Martinez, Georgia

For Respondent: Peggy Whittle, Medicaid Eligibility Specialist, Richmond County
Department of Family and Children Services (DFCS), Augusta, Georgia

The following Findings of Fact are based solely on the evidence presented at the hearing held October 6, 2008. OSAH Rule 616-1-2-.21(4).

1. Petitioner, [REDACTED], resided at The Place at Martinez, an intermediate care nursing facility, from May 7, 2008 until her death on July 24, 2008. Her daughter, [REDACTED] filed an application for Medicaid on her behalf on July 3, 2008 with Richmond County DFCS. The application was processed under the "Qualified Medicare Beneficiary / Nursing Home" category of assistance.

2. As part of the Medicaid eligibility determination process, DFCS investigated the assets owned by Petitioner when the Medicaid application was filed, and also any property transferred by her or on her behalf within three years' prior to the application. DFCS learned that on June 19, 2008, [REDACTED] transferred \$22,668.56 to [REDACTED] from Petitioner's account by check number 1001 with UMB Bank NA / Davenport Source Account, and \$4,500.00 to [REDACTED] from Petitioner's account with BB&T by check number 855.

3. DFCS initially determined that Petitioner did not receive compensation from [REDACTED] for these transfers, and a penalty was assessed that made Petitioner ineligible for six months for a Medicaid vendor payment to the nursing facility. However, since Petitioner passed away on July 24, 2008, the penalty was only imposed for the month of July.

4. [REDACTED] and her husband paid for Petitioner's nursing home expenses out of their own pockets. They also paid for private duty nurses and personal care home fees in months prior to Petitioner's admission to The Place At Martinez. [REDACTED] documented that their total payments on Petitioner's behalf exceeded forty thousand dollars. [REDACTED] did not pay these expenses directly from Petitioner's account because Petitioner moved several times in a short period, and they wanted to maintain a fund for her once they found an acceptable nursing facility.

II. CONCLUSIONS OF LAW

1. As an applicant for Medicaid vendor payments to an intermediate care nursing facility, Petitioner's representative bears the burden of proof. DFCS was required to present its evidence first during the hearing, but this did not shift the burden of proof from Petitioner's representative. OSAH Rule 616-1-2-.07. The standard of proof is by a preponderance of the evidence. OSAH Rule 616-1-2-.21(4)

2. Medicaid is a joint State-Federal program. In Georgia, Medicaid is administered by the Department of Community Health, Division of Medical Assistance. Responsibility for determination of an individual's eligibility for Medicaid has been delegated to the Department of Human Resources, Division of Family and Children Services (DFCS). DFCS has issued guidelines for the day-to-day administration of the Medicaid program in the Economic Support Services Manual, Volume II (Hereafter "ESSM")

3. Section 2342 of the ESSM contains guidelines for handling transfers of a Medicaid applicant or recipient's assets, and mandates a penalty for the gift or sale of "assets for less than current market value (CMV) during the "look back period." For applications filed since October 1, 2006, the provisions of the Deficit Reduction Act (DRA) of 2005 apply. ESSM Section 2342-1. According to DRA, the look back period is calculated "on all assets transferred on or after 2/8/06." ESSM Section 2342-8.

4. The process for calculating a transfer penalty is as follows:

Determine the number of months of the penalty by dividing the total uncompensated value (UV) of the transferred resource by the average Georgia private pay rate....

ESSM, Section 2342-8, 9. If DFCS determines that a transfer penalty should be imposed, then the individual will be eligible for Medicaid coverage, but not eligible for a vendor payment to the nursing facility and will be responsible for paying the facility for all penalized months. ESSM Section 2342-9.

5. There is no transfer of assets penalty if:

....

- An A/R [applicant / recipient] can provide a satisfactory showing that he/she intended to dispose of the asset for fair market value, or for other valuable considerations....

ESSM, Section 2342-3. However, a penalty must be imposed if:

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- An [applicant/recipient] gives away or sells an asset for less than [current market value], or refuses an inheritance, during the 36 month look back period or anytime thereafter.

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- If an A/R's asset is given to someone (other than spouse) who has provided care to the A/R who at the time provided the care for free, presume that the services were intended to be provided without compensation. **Thus, a transfer to a relative or others for care provided for free in the past is a transfer of assets for less than [Fair Market value]. However, an individual can rebut this presumption with tangible evidence that is acceptable. (Emphasis added)**


ESSM Section 2342-5. What constitutes "tangible evidence that is acceptable" is not explained further in the ESSM, or in the underpinning Federal regulations found at 42 CFR Part 440.

6. In the present case, [REDACTED] did not personally provide care services for free to Petitioner, which appears to be the situation contemplated by ESSM Section 2342-3. Instead, [REDACTED] paid from their own funds for Petitioner's nursing home care, private duty nurses, and personal care home. Even if the [REDACTED]' payment of third party bills meets the definition of "care provided for free in the past," the evidence proves that the transfer of Petitioner's funds to [REDACTED] was for compensation. O.C.G.A. § 11-3-303(a) provides that a transfer of an instrument (which includes bank drafts under Georgia's Uniform Commercial Code) may be for value if transferred "as payment of, or as security for, an antecedent claim against any person, whether or not the claim is due...." O.C.G.A. § 11-3-303(b) states that a transfer under §11-3-303(a) is also a transfer for consideration. Thus, the evidence is sufficient to rebut the presumption created by ESSM, Manual Section 2342-3 that the payments to the [REDACTED] were for less than fair market value.

III. DECISION

The imposition of a transfer of assets penalty against Petitioner is hereby **REVERSED**. This matter is **REMANDED** to the Richmond County Department of Family and Children Services to approve Petitioner for a Medicaid vendor payment to the nursing care facility for the period July 1, 2008 through July 24, 2008.

SO ORDERED, this 7th day of November 2008.


M. PATRICK WOODARD, JR.
Administrative Law Judge

