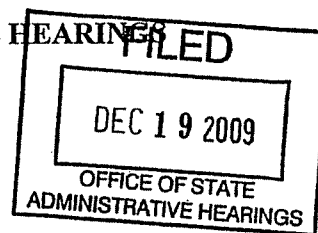


BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA



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

Docket No.:
OSAH-DFCS-NH-0909273-122-Langston
Agency Reference No.: 191530613

INITIAL DECISION

I. Introduction

This matter came on for hearing on November 3, 2008. The parties agreed to submit stipulated facts and briefs. Based upon a review of the evidence and law, and for the reasons set forth below, the undersigned finds for the Petitioner. The decision of the Respondent to impose a penalty in this matter is reversed as the transfer at issue is deemed an exempt transfer under federal law. Petitioner is approved for Medicaid for the months of February, May and June of 2008.

II, Stipulated Facts

1.
Petitioner applied for Medicaid to cover Petitioner's nursing home and other medical expenses.
2.
Prior to applying for Medicaid Petitioner transferred certain cash assets from Petitioner to her daughter, an adult disabled child.
3.
Respondent imposed a penalty or period of ineligibility for Medicaid, issued through the Department of Community Health, to pay the nursing home vendor payment, based on the transfer of assets set forth above.
4.
Petitioner has been deemed eligible for Medicaid for the months of February, May and June of 2008 with a transfer of assets penalty imposed by Respondent. As such, if a transfer penalty was not imposed, Medicaid would have been fully approved, to include the nursing home vendor payment. No other issues remain, as to Petitioner's Medicaid eligibility, except for the issue of the transfer.

5.

Petitioner's daughter is an adult disabled child of Petitioner. Petitioner's daughter has been determined disabled by the Social Security Administration and is receiving RSDI.

6.

The reason for the imposition of the penalty being imposed by Respondent, is that the cash assets were transferred to the adult disabled child of Petitioner outright, as opposed to having been transferred to trust for the sole benefit of Petitioner's disabled child.

7.

The only issue on this appeal is the treatment of the transfers of certain cash assets from the Petitioner, to her daughter.

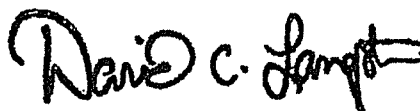
III. Conclusions of Law

Assets may be transferred either "to, or to a trust . . . established solely for the benefit of, the individual's child . . .". It appears that Congress specifically, in enacting this federal statute, exempted the outright transfer by using the language "to, or to a trust." This means that a Medicaid applicant "shall not be ineligible for medical assistance", as stated in paragraph (2) for any transfer denoted in the statute, including the outright transfer to a disabled child. 42 U.S.C.A. § 1396p (c)(2)(B)(iii); See: Georgia's Medicaid Manual, at Section 2342, page 3 (2342-3).

IV. Decision

The decision of the Respondent to impose a penalty in this matter is reversed as the transfer at issue is deemed an exempt transfer under federal law. Petitioner is approved for Medicaid for the months of February, May and June of 2008.

SO ORDERED THIS 18th day of December, 2008



DAVID C. LANGSTON
Administrative Law Judge