

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

[REDACTED]

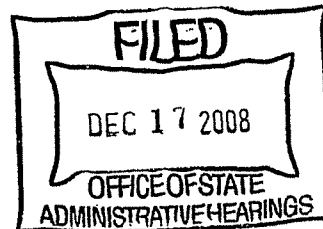
Petitioner,

v.

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

Respondent.

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* Docket No.:
* OSAH-DFCS-NH-0911280-25-Teate
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* Agency Reference No. 611543907
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INITIAL DECISION

I. Introduction

Petitioner requested administrative review of Respondent's decision to impose a transfer of resource penalty resulting in no vendor payments being issued for the calculated period. For reasons indicated, Respondent's determination is **REVERSED** and **REMANDED**.

II. Stipulations of Fact

1. Petitioner transferred the real property at issue to a revocable living trust that she created on May 17, 2006 naming [REDACTED], her son, and [REDACTED] her granddaughter by a deceased son, as trustees and beneficiaries.
2. Incident to a real estate closing, Petitioner revoked the living trust on September 26, 2007, and the real property was deeded back to her from the trust.
3. Incident to the same real estate closing on September 26, 2007, Petitioner executed a quit-claim deed for the real property to [REDACTED] who then simultaneously executed a warranty deed conveying the property to the purchaser who had acquired Petitioner's real property for a sales price of \$80,000.00. [REDACTED] received \$4,473.33 as net proceeds after the pay-off of Petitioner's mortgage and other closing costs.

III. Findings of Fact

1. Petitioner created the trust in May of 2006. In July 2006, Petitioner had a stroke that affected her balance and cognitive abilities. Thereafter, Petitioner's granddaughter acquired access to Petitioner's credit cards and charged in excess of \$30,000.00 in approximately a year's time. Petitioner's granddaughter was subsequently admitted to Georgia Regional Hospital. While Petitioner's granddaughter was hospitalized, the insurance on the subject real property was allowed to lapse and the mortgage went unpaid raising the possibility of foreclosure. Angry at her granddaughter and in an effort

to avoid foreclosure, Petitioner conferred with her son and decided to sell the real property.¹ (Testimony of [REDACTED]).

2. Exercising his power of attorney, [REDACTED] listed the real property for sale at a price of \$100,000.00. The property attracted only two potential buyers. Both declined to purchase the property due to the price in light of the current market decline, remodeling and repair needs that included roof replacement, carpet replacement, HVAC replacement, driveway repair, exterior siding repair, doors and windows replacement, kitchen tile replacement and other problems not clearly identified. (Testimony of [REDACTED]; Petitioner's Exhibits 2 and 3).

4. [REDACTED] was unable to sell the property at a price of \$100,000.00. To avoid foreclosure, he agreed to a sales price of \$80,000.00 which resulted in a sale and real estate closing on September 26, 2007. At the closing, Petitioner's trust was revoked, [REDACTED], as Trustee conveyed the real property back to Petitioner, Petitioner quit-claimed the real property to [REDACTED] personally who then deeded it by warranty deed to [REDACTED] the purchaser. (Testimony of [REDACTED]; Petitioner's Exhibits 5, 6, 7 and 8).

5. Based on Petitioner's second transfer of the real property to [REDACTED] by quit-claim at the closing on September 26, 2007, Respondent's caseworker, [REDACTED] applied a transfer of resource penalty valuing the real property at \$143,500, the tax appraiser's appraised value for 2007. (Testimony of [REDACTED]; Respondent Exhibit 1).

IV. Conclusions of Law

1. For all applications filed after February 8, 2006, the look-back period (in which Respondent will check a transfer of resources) is 60 months prior to the date of application for Medicaid benefits. *Economic Support Services Manual*, Volume II, Section 2342-2. In this case, Petitioner transferred the deed to the revocable living trust in 2006; however, she revoked the trust and re-acquired the real property at a real estate closing on September 26, 2007 just prior to deeding it to her son who left the closing with only \$4,473.33.

2. Fair market value (FMV) is an estimate of the value of an asset, if sold at the prevailing price at the time it was actually transferred. *Id.*, p. 2342.1. Determining fair market value for this purpose utilizes the same criteria as appraising the value of assets when determining Medicaid eligibility. *Id.* For an asset to be considered transferred for FMV, the compensation received for the asset must be in a tangible form with intrinsic value. *Id.* The current market value (CMV) of a resource is the going price for which it can reasonably be expected to sell on the open market in the particular geographic area involved. *Id.* For real property located in Georgia, the CMV is the *assessed tax value* multiplied by 2.5 unless an applicant or recipient successfully rebuts this value. *Id.*, Section 2303, p. 2303-1. Assessed value of real property in Georgia is 40% of the fair market value unless other specified by law. O.C.G.A. § 48-5-07. Fair market value denotes "the amount a knowledgeable buyer would pay for the property and a willing seller would accept for the property at an arm's length bona fide sale. O.C.G.A. § 48-5-311. Although the caseworker utilized the appraised value, the appraised value for 2007 equals 40% of the assessed value for 2007 when multiplied by a factor of 2.5.

3. If an applicant, or anyone acting legally on an applicant's behalf, gives away or sells assets for less

¹ Frank Miles testimony was credible though uncorroborated.

than current market value (CMV) during the look-back period, the applicant may be subject to a transfer of assets penalty. *Economic Support Services Manual*, Volume II, p. 2432-1. Fair Market Value is determined based on the value of the transferred property at the time of the transfer. *Id.* However, in this case, Petitioner has rebutted Respondent's presumption that the fair market value of the real property was \$143,000.00 with credible evidence that it was worth only \$80,000.00 and that [REDACTED] received only \$4,473.33 at closing. It is unclear why the closing attorney elected to have Petitioner quit-claim to [REDACTED] at closing only to have [REDACTED] simultaneously execute a warranty deed to the purchaser. However, it is clear that the value of the transfer would be reduced by the mortgage pay-off and that [REDACTED] only received \$4,473.33. Given his status as power of attorney and the timing of the execution of the documents, it is unclear whether or not expenses of closing paid by the seller, if any, would be attributable to Petitioner or to [REDACTED].


4. If an asset is transferred back to the applicant or recipient, a transfer penalty can be voided. *Id.*, at p. 2342-9. Inasmuch as the transfer in trust was revoked, there is no issue remaining as to that transfer as it relates to the real property. With regard to the transfer of the \$4,473.33 to [REDACTED], a penalty could be assessed on that value or he could return the sum to Petitioner's funds to Petitioner's funds and pay any outstanding bills such as those incurred on Petitioner's behalf in this proceeding.

5. Petitioner has effectively rebutted the presumption that the property transferred was worth \$143,500 and has established that the FMV was \$80,000.00 in the current market. As a result, Petitioner has met her burden of persuasion in this matter. OSAH Rule 616-1-2-.07(1)(d).

IV. Decision

Respondent's action imposing a transfer of resource penalty barring Petitioner from receiving Medicaid vendor payments is **REVERSED**. Notwithstanding, this matter is **REMANDED** to Respondent. Petitioner is directed to provide Respondent with a copy of the closing statement indicating all respective disbursements made and the \$4,473.33 net proceeds herein asserted within 15 days of this order. Within that same 15 days, Petitioner must elect either to return the \$4,473.33 to Petitioner or in the alternative Respondent must reassess its transfer of resource penalty utilizing the \$80,000.00 fair market value herein determined less the mortgage and any liens held on the property at the time of sale.

SO ORDERED, this 17th day of December 2008.


Steven W. Teate
Administrative Law Judge