

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

[REDACTED]

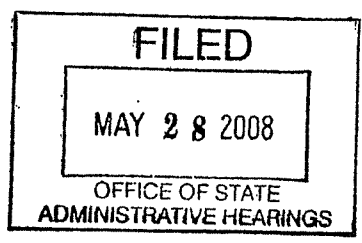
Petitioner,

v.

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

Respondent.

*
*
* Docket No.:
* OSAH-DFCS-NH-0827228-16-Teate
*
* Agency Reference No. 240381012
*
*
*
*
*



INITIAL DECISION

I. Introduction

Petitioner requested administrative review of Respondent's adverse determination 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.

II. Stipulations of Fact

1. [REDACTED] (Petitioner's son) cared for Petitioner from the time of Petitioner's discharge from a nursing home in early 2004, until her return to the nursing home in 2008.
2. Petitioner and Petitioner's son created and submitted a signed agreement (Exhibit A) dated March 1, 2004, declaring an exchange under which the land in question would be transferred.
3. Petitioner submitted an itemization of the value of the transferred land and of the expenses incurred by Petitioner's son in caring for the Petitioner.
4. Deeds were submitted transferring land from Petitioner to Petitioner's son, and from Petitioner's son to Petitioner. The deeds are dated November 27, 2006.
5. The fair market value of Petitioner's property, when transferred in 2006, was \$262,970.
6. The 2008 fair market value of Petitioner's son's property, that Petitioner transferred to him in 2006, less the value of the property that he transferred to her, is \$229,160.

7. The fair market value of Petitioner's son's property (transferred to Petitioner) is \$55,560.
8. The private pay rate for Petitioner, if she had been in a nursing home, would have been \$132.00 per day.

II. Findings of Fact

1. Petitioner's son cared for Petitioner from April of 2004 until December 2007, a total of 45 months. (Testimony of Petitioner's son).
2. Petitioner's son would receive occasional assistance in caring for Petitioner from his aunt. (Testimony of Petitioner's son).
3. Petitioner's son provided Petitioner with transportation to doctor's appointments. (Testimony of Petitioner's son).
4. Prior to moving in with her son for care, Petitioner agreed with her son to devise her property to him in exchange for his property and the care he would provide. (Testimony of Petitioner's son, Exhibit A).
5. Petitioner's son and his wife were the primary caretakers of Petitioner while she lived with them. (Testimony of [REDACTED]). The care provided involved preparation of Petitioner's food, feeding Petitioner, bathing Petitioner, taking Petitioner to the restroom, and running various errands for Petitioner. (Testimony of [REDACTED], testimony of Petitioner's son). Petitioner, her son, and his wife were the only three persons living in the [REDACTED] house. (Testimony of Petitioner's son).
6. Using the stipulated private pay rate at a nursing home (\$132/day), one year would cost \$48,180. ($\$132/\text{day} * 365 \text{ days/year} = \$48,180/\text{year}$). The cost for April of 2004 through December of 2007 would have been \$180,840¹. ($\$48,180/\text{year} * 3 \text{ years} + 275 \text{ days} * \$132/\text{day} = \$180,840$).

III. Conclusions of Law

1. 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, for all applications filed after February 8, 2006. *Economic Support Services Manual*, Volume II, Section 2342-2. In this case, Petitioner transferred the deed to her property on November 27, 2006 and agreed to a conditional transfer in March of 2004; either of these dates falls within 60 months of the application date.
2. If an applicant, or anyone acting legally on an applicant's behalf, gives away or sells assets

¹ Petitioner submitted a figure of \$180,675, presumably figured by multiplying the yearly rate by 3.75 years, although April through December is 275 days not 273.75 days (3/4 year).

for less than current market value (CMV) during the look-back period, the applicant may be subject to a transfer of assets penalty. *Id.* at 2432-1. If the value of Petitioner's son's services is calculated on the basis of the private pay rate for a nursing home, Petitioner's son provided services valued at \$180,840 and gave property valued at \$55,560, such that Petitioner received \$236,400 worth of value for her home. By further analogy, if the value of Petitioner's son's services is calculated on the basis of a minimum wage of \$5.15 per hour that prevailed from 2004 to July 1, 2007, and \$5.85 that currently prevails, Petitioner's son and his spouse provided approximately \$183,522 (four years) and gave property valued at \$55,560 such that Petitioner received \$239,082 worth of value for her home. Although the \$236,400 and \$239,082 so calculated are lower than the 2006 property value upon transfer that was \$262,970, the indeterminate amount of potential care services contemplated in the parties Agreement constitute a value in excess of the sums so calculated. Fair Market Value is determined based on the value of the transferred property at the time of the transfer; however, the value of the services provided by Petitioner's son was not yet complete at the time of the transfer. *Id.* at 2342-1.


3. Beyond value considerations indicated above, if an applicant's asset is transferred to someone who at the time provided the care for free, there is a presumption 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. *Id.*, §2342, p. 2342-4. As applied to this case, Petitioner was in a nursing home at the time Petitioner and her son executed the Agreement with an agreed upon compensation for care services with the proviso that such compensation would be the transfer of property at issue within three years of their Agreement. Incident to the terms of the Agreement, Petitioner's son and his wife provided the services, Petitioner transferred the property to her son and her son transferred his house back to Petitioner.

4. Petitioner has effectively rebutted the presumption that the property was transferred to qualify for Medicaid. The exchange in which Petitioner was involved was a reasonable exchange of similarly valued properties and services, and was not a gift nor was it an exchange for the purpose of qualifying for Medicaid. 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.

SO ORDERED, this 28th day of May 2008.



Steven W. Teate
Administrative Law Judge