

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA

[REDACTED]

Petitioner,

v.

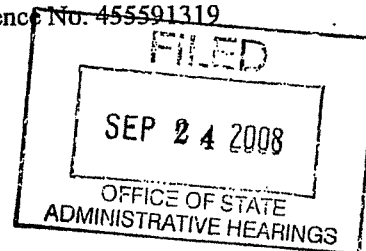
DEPARTMENT OF HUMAN  
RESOURCES, DIVISION OF FAMILY  
AND CHILDREN SERVICES,

Respondent.

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Docket No.:  
OSAH-DFCS-NH-0903040-148-Teate

Agency Reference No. 455591319



INITIAL DECISION

I. Introduction

Disputing Respondent's determination that a resource transfer penalty applied upon Respondent's determination of Medicaid approval for benefits under the Nursing Home class of assistance, Petitioner filed a request for hardship waiver that Respondent denied on July 1, 2008. Petitioner requested a hearing on July 18, 2008, and a hearing was held on September 2, 2008. For reasons indicated, Respondent's determination is AFFIRMED.

The parties stipulated the following facts:

II. Stipulations

1. Petitioner is a single individual who was married and divorced several years ago. His ex-wife later assisted him by purchasing real property that Petitioner had previously rented for his accounting business thereby eliminating his rental overhead. Upon purchase, the ex-wife conveyed Petitioner a life estate in the property and retained the remainder interest.

2. Petitioner, who was born March 7, 1929, is 79 years old with a history of diabetes mellitus, hypertension (HTN), chronic obstructive pulmonary disease (COPD), and severe dementia with confusion. He is prone to falls and is unable to care for himself without assistance requiring constant supervision as provided in a nursing home setting. (Petitioner's Exhibit 1).

3. Petitioner first applied for Medicaid on February 29, 2008, and was admitted to a nursing home on March 3, 2008. His application was denied as being over resources since Respondent determined the fair market value of his life estate in the business property to be \$34,721.00, and such amount was included in determining if his resources exceeded the allowable resource limit.

4. On April 28, 2008, Petitioner transferred his life estate interest to his ex-wife who holds the remainder

interest without receiving any compensation for the transfer.

5. On April 29, 2008, Petitioner re-applied for Medicaid and Respondent approved the application with the computation of a transfer resources penalty of three months.
6. Petitioner has no family other than a daughter who resides with a family of her own.
7. Petitioner's sole income is a Social Security retirement benefit of \$913.00 monthly.
8. Petitioner has not sought to take legal or equitable action to recover the life estate interest that he transferred to his ex-wife.

### III. Findings of Fact

1. Respondent determined the fair market value of the business property transferred to be \$34,721.00. To calculate the penalty, Respondent utilized tables contained in its manual that valued a life estate interest of a 79 year-old individual at .45357 of the fair market value, which is \$15,748.40. Applying \$4,614.90 as the nursing home private pay benefit rate (NH PP BR), Respondent calculated a three months' penalty for the transfer within the look-back period. (Testimony of [REDACTED] Respondent Exhibit 2).
2. The caseworker requested that [REDACTED] her assigned Medicaid Field Program Specialist, reviewed Petitioner's application for undue hardship upon notice that the transfer penalty would be approved. [REDACTED] determined that the valuation was consistent with the tables based on Petitioner's age and life expectancy, that the transfer of the property occurred after the application on February 29, 2008 was denied as over resources, that no compensation was received for the transfer, and that no evidence was submitted that any equitable remedies had been taken to recover the asset so transferred. Based on this determination [REDACTED] concluded that undue hardship was not currently applicable. (Testimony of [REDACTED] Exhibit 1).

### IV. Conclusions of Law

1. When appealing from a denial of a Medicaid application, Petitioner has the burdens of persuasion and going forward in this matter. OSAH Rule 616-1-2-.07(1)(d). Effectively, there is no dispute that the transfer occurred within the "look back" period and that there is a presumption that such a transfer within the "look back" period is a transfer of resources to someone in order to qualify for Medicaid or that the penalty was correctly calculated inasmuch as no alternative valuation of the life estate interest was tendered.<sup>1</sup> Petitioner argues only that undue hardship exists such that an exception should be granted and that Petitioner should not be required to take action to recover the asset transferred since it would place him over the resource limit again

<sup>1</sup> Resource limits for the Medicaid program are set by either federal or state law or the Division of Medical Assistance depending upon the individual program. Resource limits under the Aged, Blind or Disabled Medicaid (ABD) program include resources that an applicant gives away or sells for less than current market value (CV) during the look-back period. *Economic Support Services Manual*, Volume II, Section 2342-1. *Id.* If an applicant or anyone acting legally on an applicant's behalf, gives away or sells assets for less than current market value (CMV) during the look-back period, the applicant may be subject to a transfer of assets penalty. The resource penalty begins the month that the resource was transferred and there is no limit to the number of months a penalty may last. *Id.* Section 2342-6. There is no penalty for a fraction of a month. *Id.* The penalty is determined by dividing the total uncompensated value (UV) of the transferred resource by the average Georgia private pay rate dropping all fractions as indicated in Appendix A. *Id.*

if he did so. However, review of the *Economic Support Services Manual* suggest that although Petitioner's life estate interest would be a countable resource if transferred back to him, the value of the life estate may be excluded because he has applied for a non federal benefit rate (Non-FBR) class of assistance (COA). See *Economic Support Services Manual*, Sections 2101, 2302 (Chart 2302-1), and 2322.<sup>2</sup>


2. Undue hardship denotes a situation in which an individual would be deprived of medical care such that the individual's health or life would be endangered or that the individual would be deprived of food, clothing, shelter, or other necessities of life. *Economic Support Services Manual*, Volume II, Section 2345, p. 2345-1. Such a hardship does not exist when the application of assets penalty merely inconveniences or restricts the applicant's lifestyle or when total available income and assets are sufficient to provide the applicant's medical care and food. *Id.* As applied, the record is construed to conclude that Petitioner requires 24-hour medical care at a cost exceeding his income and resources and that the failure to have such care in place might be life threatening; however, as a prerequisite to a consideration of hardship, procedural requirements must be met.

3. Effective February 1, 2007, for transfers made on or after February 8, 2006, an applicant or the applicant's representative must have taken legal action and equitable remedies to recover the asset transferred within the look-back period before undue hardship can be considered. *Id.* p. 2345-2. Further, the applicant has the burden of proof that the applicant's health and age did not indicate a need for long-term care services at the time the asset was transferred. *Id.* Petitioner's argument that such a requirement is inappropriate in Petitioner's case since re-acquiring the asset would place Petitioner over resources lacks merit. Petitioner expressly conveyed the asset to attempt immediate qualification for Medicaid. Further, if Petitioner still had the asset, there is the possibility that the asset could have been transferred for some value whether or not it equaled the table calculations asserted which could be rebutted with evidence of alternative fair market valuations. Respondent's Medicaid Specialist correctly determined that undue hardship is not currently applicable.

#### V. Decision

Respondent's action denying Petitioner's application for a hardship waiver for a transfer of resource penalty imposed is **AFFIRMED**.

**SO ORDERED**, this 24<sup>th</sup> day of September 2008.

  
Steven W. Teate  
Administrative Law Judge

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<sup>2</sup> This Court makes no specific determination as to whether the life estate should be excluded inasmuch as Petitioner does not appear to have filed an appeal of Respondent's initial determination that he was over-resources.