

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

[REDACTED]
Petitioner,

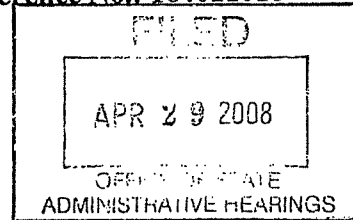
DEPARTMENT OF HUMAN RESOURCES,
DIVISION OF FAMILY AND CHILDREN
SERVICES,
Respondent.

DOLLIE EARLEY,
Petitioner,

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

Docket No.:
OSAH-DFCS-NH-0819745-155-Miller

Agency Reference No.: 164011018



Docket No.:
OSAH-DFCS-NH-0824430-155-Miller

Agency Reference No.: 164011018

INITIAL DECISION

I. Introduction

The Petitioner, **[REDACTED]** sought review of the Respondent's actions imposing a transfer of assets penalty with respect to her receipt of benefits under the Medicaid program and denying her application for an undue hardship exemption.¹ The hearing in this matter was held on March 19, 2008.² The Petitioner was represented by **[REDACTED]** Medicaid Eligibility Specialist for the Whitfield County Division of Family and Children Services, appeared as the Respondent's representative. For the reasons set forth below, the Respondent's action is **REVERSED**.

II. Findings of Fact

1.

The Petitioner has received Nursing Home Medicaid assistance since January 2005, when she was admitted to Quinton Memorial Health Care and Rehabilitation Center. At the time of her

¹ These two actions were the subject of separate appeals and were consolidated by agreement of the parties.

² The record was held open until April 4, 2008, for the submission of post-hearing briefs.

admission to the nursing home, the Petitioner was diagnosed with dementia. According to her treating physician, the Petitioner has moderate cognitive impairment combined with short and long term memory loss, and she is "not capable of making any legal decisions." She is "sometimes" able to express herself and to understand what others tell her. (Testimony of [REDACTED] and [REDACTED]; Exhibit P-7.)

2.

Prior to her admission to the nursing home, the Petitioner lived in a home owned jointly by the Petitioner and her daughter, [REDACTED].³ [REDACTED] continued to live in the home for a short time after her mother entered the nursing home, but [REDACTED] whereabouts are currently unknown. (Testimony of [REDACTED].)

3.

The Petitioner's niece, [REDACTED], is the Petitioner's representative of record with the Respondent and at the nursing home.⁴ In the fall of 2007, [REDACTED] drove past the Petitioner's homeplace and saw that the home had been torn down. [REDACTED] stopped and spoke with a man who was cleaning up debris at the site. He told her that the property was owned by [REDACTED] and that [REDACTED] had hired him to tear down the structure. (Testimony of [REDACTED].)

4.

[REDACTED] then located [REDACTED] a bail bondsman, and spoke with him by telephone. [REDACTED] told her that [REDACTED] had sold him the property in order to satisfy a debt of \$5,000.00 that she owed him. (Testimony of [REDACTED].)

5.

[REDACTED] immediately notified the Petitioner's caseworker, [REDACTED] of the purported sale of the Petitioner's homeplace. After consultation with [REDACTED] the sale was reported to the Respondent during the annual review of the Petitioner's Medicaid eligibility, which took place in January 2008. [REDACTED] spoke to [REDACTED] who confirmed the information he had provided to [REDACTED] but refused to supply any documentation. [REDACTED] also contacted Adult Protective Services, in an attempt to obtain assistance for the Petitioner, but was told that no assistance could be provided. (Testimony of [REDACTED] and [REDACTED]; Exhibit P-2.)

³ The home was originally owned by the Petitioner and her husband, [REDACTED], as tenants in common. When [REDACTED] died intestate, in 1993, his share of the property passed to the Petitioner and [REDACTED] equally. Therefore, the Petitioner owned $\frac{3}{4}$ of the property, while [REDACTED] owned $\frac{1}{4}$. (Testimony of [REDACTED] and [REDACTED]; Exhibit P-10.) See O.C.G.A. §§ 44-6-190(a), 53-2-1(c)(1), 53-2-7(a); Williams v. Studstill, 251 Ga. 466, 467-468 (1983) (common law doctrine of survivorship among joint tenants was abolished in 1977).

⁴ The Petitioner appointed [REDACTED] as her Power of Attorney in 2003. However, [REDACTED] became angry that [REDACTED] had become involved in managing her mother's affairs, and [REDACTED] feared for her life due to threats made by [REDACTED]. After speaking with the attorney who had assisted her with the Power of Attorney, [REDACTED] wrote a note to the Petitioner in June 2004 informing her that she was withdrawing from the Power of Attorney. (Testimony of [REDACTED]; Exhibit P-13.)

6.

According to Whitfield County deed records, the Petitioner and [REDACTED] executed a Deed to Secure Debt With Power of Sale in favor of [REDACTED] on January 3, 2006. According to the Deed, the Petitioner's homeplace was being used to secure a debt of \$10,000.00. In addition, the Deed provided that "[REDACTED] is to repay loan in full w[ith] interest within 60 days."⁵ (Testimony of [REDACTED]; Exhibit P-11.)

7.

On April 10, 2006, the Petitioner and [REDACTED] executed a Quitclaim Deed to the Petitioner's homeplace in favor of [REDACTED]. [REDACTED] told [REDACTED] that he paid \$20,000.00 for the property and discharged [REDACTED]'s \$5,000.00 debt to him. It is undisputed that the Petitioner received no compensation for the sale of the property. In fact, the Petitioner believes that she still owns the property and that she will one day return home to live. (Testimony of [REDACTED] and [REDACTED]; Exhibit P-12.)

8.

Following the January 2008 review of the Petitioner's Medicaid eligibility, the Respondent notified the Petitioner that it was imposing a transfer of assets penalty because she had transferred her homeplace property for less than fair market value. Initially, the Respondent determined that the transfer penalty would last more than one year; however, the proposed transfer penalty has been revised to 7.71 months. The Respondent will discontinue vendor payments to the nursing home during the penalty period. (Testimony of [REDACTED] and [REDACTED]; Exhibits P-2, P-3, P-16.)

9.

The Petitioner requested an exemption from the transfer penalty under the undue hardship provision. The Respondent denied the Petitioner's Undue Hardship Waiver Application on the basis that the Petitioner failed to provide evidence that she had taken legal action to recover the transferred assets, as required by the Respondent's policy manual. (Testimony of [REDACTED]; Exhibits P-15, R-3.)

III. Conclusions of Law

1.

Because this matter involves the proposed suspension of Medicaid benefits, the Respondent bears the burden of proof. GA. COMP. R. & REGS. § 616-1-2-.07(d) [cited hereinafter as Office of State Administrative Hearings ("OSAH") Rule 7(d)]. The standard of proof is a preponderance of the evidence. OSAH Rule 21(4).

⁵ Although the Deed required the Petitioner to repay the loan, there is no evidence that the Petitioner owed any debt to [REDACTED]. Rather, the undisputed evidence was that [REDACTED] owed the debt to [REDACTED]. (Testimony of [REDACTED] and [REDACTED].)

2.

The Medicaid program is a cooperative venture between the federal and state governments through which medical care is offered to the needy. Wilder v. Virginia Hosp. Ass'n, 496 U.S. 498, 502 (1990). Although participation in the program is voluntary, a state that chooses to participate must comply with the program requirements found in federal law. Id. at 502.

3.

A recipient of Medicaid assistance is subject to a transfer of assets penalty if the recipient gives away or sells resources for less than current market value. 42 U.S.C. § 1396p(c)(1); Economic Support Services Manual of the Georgia Department of Human Resources ("ESSM") § 2342.

4.

However, the Deficit Reduction Act of 2005 prohibits the imposition of a transfer of assets penalty upon a showing that "the assets were transferred exclusively for a purpose other than to qualify for medical assistance." 42 U.S.C. § 1396p(c)(2)(C). In addition, a state "may not provide for any period of ineligibility for an individual due to transfer of resources for less than fair market value except in accordance with this subsection." 42 U.S.C. § 1396p(c)(4).

5.

The Respondent's policy manual provides that no transfer of assets penalty will apply where:

An asset was transferred **exclusively** for a purpose other than to qualify for Medicaid. **NOTE:** This policy does not apply to transfer of homeplace property.

ESSM § 2342-2 (emphasis in original).

6.

Although the Respondent is authorized to implement federal law through the state Medicaid program, the implementation must be consistent with the parameters established by the federal statute. U.S. CONST. art. VI, cl. 8. Here, the Respondent's policy manual conflicts with the relevant federal statutory provision by providing that a transfer of homeplace property for less than fair market value will result in a penalty even if the transfer is made exclusively for a purpose other than to qualify for Medicaid. The Respondent's policy manual, then, "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," and the policy is preempted by the federal statute. Hines v. Davidowitz, 312 U.S. 52, 67 (1941). Therefore, this Court finds that the Respondent may not impose a transfer of assets penalty where homeplace property is transferred exclusively for a purpose other than to qualify for Medicaid.

7.

A legal presumption exists that a resource that is sold for less than fair market value was transferred for the purpose of establishing Medicaid eligibility. The Petitioner bears the burden of rebutting this presumption. 42 U.S.C. § 1396p(c); 20 C.F.R. § 416.1246(e); Johnson v. Llewellyn, 194 Ga. App. 186 (1990); Johnson v. Ellis, 174 Ga. App. 861 (1985).

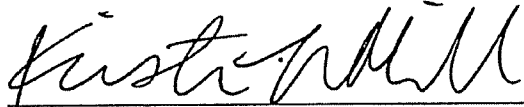
8.

In this case, the evidence is undisputed that the Petitioner is elderly, vulnerable, and suffers from dementia. The Petitioner's daughter, [REDACTED], took advantage of her mother in order to discharge a debt that she owned to [REDACTED] and the Petitioner is not even aware that she no longer holds title to her homeplace. Under these circumstances, the Court finds that the transfer of assets was made exclusively for a purpose other than to qualify for Medicaid, and no transfer of assets penalty is authorized.⁶

IV. Decision

In accordance with the foregoing Findings of Fact and Conclusions of Law, the decision of the Respondent to impose a transfer of assets penalty with respect to the Petitioner's receipt of benefits under the Medicaid program is hereby **REVERSED**.

SO ORDERED, this 29th day of April, 2008.



KRISTIN L. MILLER
Administrative Law Judge

⁶ Furthermore, even if a transfer of assets penalty were authorized, the Respondent should have granted an undue hardship waiver. The Respondent's policy manual provides, "An individual having transferred assets for less than the fair market value, or having transferred assets into a trust, will not be found ineligible for Medicaid nursing facility services or home or community based services where it is determined that such denial would create undue hardship to the A/R." ESSM § 2345-2. In this case, if the Petitioner is denied Medicaid assistance, she will suffer an undue hardship. The policy further requires that in order to apply the undue hardship provision, "the applicant or representative must have taken legal action and equitable remedies to recover the asset before undue hardship can be considered." ESSM § 2345-2. Inasmuch as the Petitioner is unable to take legal action on her own behalf, and [REDACTED] both fears for her life and lacks the financial resources to file a lawsuit on her aunt's behalf, the "legal action" and "equitable remedies" requirements were fulfilled when [REDACTED] secured the assistance of the Georgia Legal Services Program and [REDACTED] sought help from Adult Protective Services.