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Docket No.: 2101585-OSAH-DFCS-M-NH-8-Woodard

[REDACTED]

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NOTICE OF FINAL DECISION

Attached is the Final Decision of the administrative law judge. The Final Decision is not subject to review by the referring agency. O.C.G.A. § 50-13-41. A party who disagrees with the Final Decision may file a motion with the administrative law judge and/or a petition for judicial review in the appropriate court.

Filing a Motion with the Administrative Law Judge

A party who wishes to file a motion to vacate a default, a motion for reconsideration, or a motion for rehearing must do so within 10 days of the entry of the Final Decision. Ga. Comp. R. & Regs. 616-1-2-.28, -.30(4). All motions must be made in writing and filed with the judge's assistant, with copies served simultaneously upon all parties of record. Ga. Comp. R. & Regs. 616-1-2-.04, -.11, -.16. The judge's assistant is Rachel Braddock - 404-657-2813; Email: rbraddock@osah.ga.gov; Fax: ; 225 Peachtree Street NE, Suite 400, South Tower, Atlanta, Georgia 30303.

Filing a Petition for Judicial Review

A party who seeks judicial review must file a petition in the appropriate court within 30 days after service of the Final Decision. O.C.G.A. §§ 50-13-19(b), -20.1. Copies of the petition for judicial review must be served simultaneously upon the referring agency and all parties of record. O.C.G.A. § 50-13-19(b). A copy of the petition must also be filed with the OSAH Clerk at 225 Peachtree Street NE, Suite 400, South Tower, Atlanta, Georgia 30303. Ga. Comp. R. & Regs. 616-1-2-.39.

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

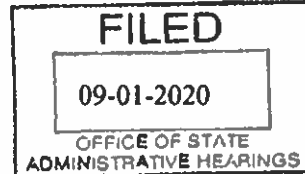
██████████
Petitioner,

v.

**DHS, DIVISION OF FAMILY AND
CHILDREN SERVICES,
Respondent.**

**Docket No.: 2101585
2101585-OSAH-DFCS-M-NH-8-Woodard**

Agency Reference No.: 121947968



FINAL DECISION

I. Introduction

Petitioner ██████████ requested a hearing after the Department of Human Services, Division of Family and Children Services (“Respondent” or “DFCS”) determined that her patient liability/cost share amount for the month of April 2020 was \$6,370 due to a transfer of assets penalty. An evidentiary hearing was held before the undersigned administrative law judge (“ALJ”) via telephone on August 18, 2020.¹ Ms. Shannon Pawley, Esq., and Ms. Victoria Collier, Esq., represented Petitioner at the hearing. Respondent was represented by Jason Reeves, Esq., Office of the General Counsel, Department of Community Health.

Based on the evidentiary record and the arguments of the parties, DFCS’s action is **REVERSED**.

II. Stipulations of Fact

Prior to the evidentiary hearing on August 18, 2020, the parties held a prehearing conference during which they agreed to the following stipulations of fact:

1. Petitioner filed a Medicaid application for institutionalized nursing home care. On June

¹ After the presentation of Respondent’s case, and prior to the presentation of its own case, Petitioner orally moved for involuntary dismissal, which was denied. It is memorialized here.

4, 2020, Respondent issued a Notice of Decision in which it determined that Petitioner had committed a transfer of assets in violation of Medicaid rules. As a result, Respondent assessed a transfer of assets penalty against her for April 2020. Subsequently, on June 9 and June 11, 2020, Respondent revised the amount assessed pursuant to the transfer of assets penalty. April 2020 is the only month in question for which there is a dispute regarding what patient liability should be. Petitioner does not dispute that she is subject to the transfer of assets penalty. (Respondent's Exhibit 2, 4, 5; OSAH Form 1 and attachments).

2. The parties agree that the new DFCS COVID-19 policy does not apply to this case.

3. The Nursing Home where Petitioner lives is Maple Ridge Health Care Center ("Maple Ridge") in Cartersville, Georgia. The Medicaid pay rate for Maple Ridge was \$212.36 per day, or \$6,370 per month during a 30-day-month such as April. The Medicaid pay rate is based off the agreed upon Medicaid daily rates for that particular facility and the State of Georgia.² In contrast, the Maple Ridge private pay rate was \$200 per day, or \$6,000 for the month of April. (Respondent's Exhibits 6 and 7; Petitioner's Exhibit A; testimony of Stacey Whited).

4. The Notice of Decision provided that, based upon the Medicaid pay rate, the patient liability/cost share for April 2020 was \$6,370. Petitioner paid \$6,000 under the private pay billing rate. Only the \$370 difference, caused by using the Medicaid pay rate rather than the private pay rate, is in dispute. (Respondent's Exhibits 6 and 7; Petitioner's Exhibit A).

5. Petitioner requested a hearing on or about July 16, 2020. (OSAH Form 1 and attachments).

² The rate of \$212.36 was the daily rate for Medicaid in January 2020. By April 2020, the Medicaid daily rate had increased to \$220.81. Regardless, Respondent applied the January 2020 rate to this case and is not attempting to charge the higher April 2020 rate. (Testimony of Ms. Whited).

III. Conclusions of Law

Based on the above stipulations of fact, the undersigned makes the following conclusions of law:

1. Medicaid is a joint federal-state program that provides comprehensive medical care for certain classes of eligible recipients whose income and resources are determined to be insufficient to meet the costs of necessary medical care and services. 42 U.S.C. §§ 1396 et seq.; Moore v. Reese, 637 F.3d 1220, 1232 (11th Cir. 2011). Participation is voluntary, “but once a state opts to participate it must comply with federal statutory and regulatory requirements.” Moore, 637 F.3d at 1232; see also United Cerebral Palsy of Georgia v. Ga. Dep’t of Behavioral Health and Dev. Disabilities, 331 Ga. App. 616 (2015). All states have opted to participate and, thus, each must designate a single state agency to administer its Medicaid plan. Id.; 42 C.F.R. § 431.10(a), (b)(1). Individuals may apply for Medicaid through Respondent, which publishes guidelines for Medicaid eligibility in its “Medicaid Manual.” Dep’t of Human Servs., Medicaid Manual, available at <http://odis.dhs.ga.gov/> [hereinafter Medicaid Manual].
2. To qualify for Medicaid benefits, which are categorized into “classes of assistance,” applicants must meet income and resource level criteria, which vary depending on the class of assistance. See Medicaid Manual §§ 2101, 2300, 2401. In 2018 and 2019, the resource limit for nursing home Medicaid was \$2,000. Medicaid Manual, App’x A1; See Ga. Dep’t of Cmty. Health, 2019 Financial Limits, available at <https://medicaid.georgia.gov/basic-eligibility>.
3. If an applicant or recipient for Medicaid, anyone acting legally on their behalf, anyone holding an asset in common with them, or their spouse, gives away or sells assets for less than current market value during the look-back period, the applicant or recipient may be subject to a transfer of assets penalty. Medicaid Manual § 2342. Here, it is not in dispute that Petitioner

was properly assessed a transfer of assets penalty. Rather, the only issue for adjudication is what the proper amount of the transfer of assets penalty for April 2020 should be.

4. “An applicant for, or recipient of, a public assistance benefit shall bear the burden unless the case involves an agency action reducing, suspending, or terminating a benefit.” Ga. Comp. R. & Regs. 616-1-2-.07(1)(d). While the instant action broadly involves the suspension of services, the crux of the case is the amount of the transfer of assets penalty rather than the institution of the penalty itself. Accordingly, the undersigned places the burden of proof upon Petitioner. The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

5. Pursuant to the Medicaid Manual, in order to determine the number of months of a transfer of penalty, one should divide the total uncompensated value of the transferred resource by the “average Georgia private pay rate.” Medicaid Manual § 2342-8. If the transfer of assets penalty is assessed under the Deficit Reduction Act of 2005 (“DRA ’05”), as is the case here, the applicant/recipient is responsible for paying the “private pay rate” to the Nursing Home/Hospice Provider for the full months of the penalty. Medicaid Manual § 2342-9. In contrast, if the penalty is assessed under the Omnibus Budget Reconciliation Act of 1993 (“OBRA ’93”), the applicant/recipient is responsible for paying the “*Medicaid rate*” to the Nursing Home/Hospice provider. Medicaid Manual § 2342-6. Emphasis added.

6. Section 2342-10 of the Medicaid Manual provides a step by step formula for transfer of assets penalties under DRA 05. Specifically, it states that in order to determine the dollar value of the full month’s penalty, you must use the “Nursing Home private pay billing rate.” That same section defines the “Nursing Home private pay billing rate” as the average Georgia private pay rate. The formula for OBRA ’93 transfer of assets penalties provides the same definition

and does not reference the Medicaid billing rate despite using the term “Medicaid rate” in a related section. Medicaid Manual § 2342-12.

7. Section 2551-1 of the Medicaid Manual, regarding patient liability/cost share, states that “[t]he monthly [patient liability/cost share] for a [long-term care Medicaid recipient] should never exceed the monthly Medicaid billing rate for the facility. Medicaid Manual § 2551-1. This provision does not mention penalties for improper transfers of assets. *Id.*

8. As shown above, the Medicaid Manual uses the terms “average Georgia private pay rate,” “private pay rate,” “Nursing Home private pay billing rate,” and “Medicaid rate.” It appears that all four terms are used interchangeably in the Manual. Further, even though “Nursing Home private pay billing rate” is specifically defined, the definition does not resolve the issue at hand.

9. Petitioner argues that she reasonably understood the term “private pay rate” to mean the amount that a private person would pay for the month of April to stay at Maple Ridge. Further Petitioner argues that Section 2551-1 of the Medicaid Manual explicitly provides that patient liability/cost share should never exceed the monthly Medicaid billing rate for the facility.

10. In rebuttal, Respondent argues that it correctly assessed the amount of the transfer of assets penalty because its internal system, Gateway, uses the Medicaid daily rate and such rate was programmed into Gateway based upon Medicaid policy.

11. Georgia contract law is instructive in this case. The Georgia Supreme Court has held that “where there is ambiguity, the agreement will be construed against the drafter and in favor of the non-drafter.” Langley v. MP Spring Lake, LLC, 307 Ga. 321, 324 (2019). “However, in construing a provision against the drafter, it does not follow that the non-drafter’s interpretation automatically controls...[t]he interpretation put forward by the non-drafting party must be a


reasonable one.” Id.

12. Here, Petitioner has put forward a reasonable interpretation of an otherwise ambiguous term. Although the provision at issue is a policy manual, rather than a contract, the undersigned finds Georgia’s contract law regarding ambiguities persuasive. Further, although it makes no mention of penalties, Section 2551-1 of the Medicaid Manual explicitly prohibits patient liability/cost shares from exceeding the monthly Medicaid billing rate for the facility. Accordingly, Petitioner has proven by a preponderance of the evidence that Respondent improperly calculated her transfer of assets penalty using the Medicaid rate rather than the private pay rate at Maple Ridge. Petitioner shall be assessed a \$6,000 transfer of assets penalty, rather than the \$6,370 she had previously been assessed.

IV. Decision

In accordance with the foregoing Findings of Fact and Conclusions of Law, Respondent’s action is **REVERSED**. Respondent is directed to revise the amount of the transfer of assets penalty to \$6,000.

SO ORDERED, this 1st day of September, 2020.


M. Patrick Woodard
Administrative Law Judge

