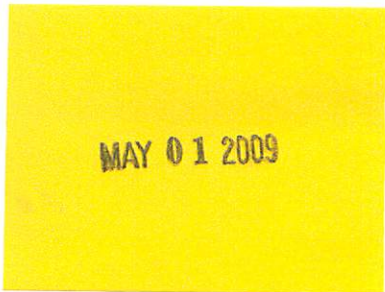


RE: IRENE S BOSSEN, Petitioner

Docket No.: OSAH-DFCS-NH-0922489-60-Malihi

MAIL TO:



IRENE S BOSSEN  
GOLDEN LIVING NURSING HOME  
470 MERIDIAN MARKS RD NE  
ATLANTA, GA 30342

GREGG BOSSEN  
1904 MONROE DRIVE SUITE 260  
ATLANTA, GA 30324

RUTHANN P. LACEY  
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3541 E HABERSHAM  
AT NORTHLAKE  
TUCKER, GA 30084

FULTON COUNTY DFCS OFFICE  
SMITH, CARYN W, CASEWORKER  
FULTON COUNTY DFCS  
75 MARIETTA STREET  
ATLANTA, GA 30303

DEPARTMENT OF COMMUNITY HEALTH  
LEGAL SERVICES UNIT, ATTN: APPEALS REVIEWER  
2 PEACHTREE STREET, 40<sup>TH</sup> FLOOR  
ATLANTA GA 30303

(DECISION ONLY)

STATE OFFICE  
LONG TERM CARE UNIT  
2 PEACHTREE STREET, 39<sup>TH</sup> FLOOR  
PO BOX 38420  
ATLANTA GA 30303

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA

IRENE S BOSS,	:	
Petitioner,	:	Docket No.: OSAH-DFCS-NH-0922489-60-Malihi
	:	
v.	:	Agency Reference No.: 222344516
	:	
DEPARTMENT OF HUMAN RESOURCES, DIVISION	:	
OF FAMILY AND CHILDREN SERVICES,	:	
Respondent.	:	

**NOTICE OF INITIAL DECISION**

This is the Initial Decision of the Administrative Law Judge (Judge) in the case. This decision is reviewable by the Referring Agency. If a party disagrees with this decision, the party may file a motion for reconsideration, a motion for rehearing, or a motion to vacate or modify a default order with the OSAH Judge. A party may also seek agency review of this decision.

**FILING A MOTION WITH THE JUDGE AT OSAH**

The Motion must be filed in writing within ten (10) days of the entry, i.e., the issuance date, of this decision. **The filing of such a motion may or may not toll the time for filing a request for agency review.** See OSAH Rules 616-1-2-.28 and .30 in conjunction with O.C.G.A. § 49-4-153. Motions must include the case docket number, be served simultaneously upon all parties of record, either by personal delivery or first class mail, with proper postage affixed, and be filed with the OSAH clerk at:

Clerk  
Office of State Administrative Hearings  
Attn.: Valerie Ruff, vruff@osah.ga.gov  
230 Peachtree Street, NW, Suite 850  
Atlanta, Georgia 30303-1534

**REQUEST FOR AGENCY REVIEW**

A request for Agency Review must be filed within thirty (30) days after service of this Initial Decision. O.C.G.A. § 49-4-153(b)(1). A copy of the application for agency review must be simultaneously served upon all parties of record and filed with the OSAH clerk. The application for Agency Review should be filed with:

Department of Community Health  
Legal Services Unit, Attn: Appeals Reviewer  
2 Peachtree Street, 40<sup>th</sup> Floor  
Atlanta, Georgia 30303

This Initial Decision will become the Final Decision of the agency if neither party makes a timely application for agency review. O.C.G.A. § 49-4-153(b)(1) and (c). When a decision becomes Final, an application for judicial review must be filed within thirty (30) days in the Superior Court of Fulton County or the county of residence of the appealing party. If the appealing party is a corporation, the action may be brought in the Superior Court of Fulton County or the superior court of the county where the party maintains its principal place of doing business in this state. O.C.G.A. § 49-4-153(c).

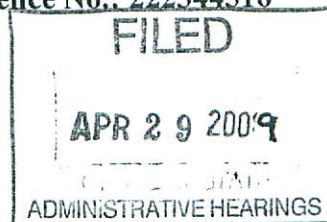
OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA

IRENE S BOSSEN,  
Petitioner,

v.

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

:  
: Docket No.: OSAH-DFCS-NH-0922489-  
: 60-Malihi  
:  
: Agency Reference No.: 222344516



FINAL DECISION

Petitioner requested a hearing challenging the decision of Respondent to impose a five month transfer of assets penalty. The hearing record closed on April 28, 2009.

Based on the following findings of fact and conclusions of law, Respondent's decision to impose a five month transfer of assets penalty is **AFFIRMED**.

I. FINDINGS OF FACT

1.

Petitioner was admitted to Golden Living Nursing Home in October 2008 for temporary care.

2.

In December 2008, it was determined that Petitioner required continued nursing home care.

3.

At the time, Petitioner had available to her approximately \$36,332.00 in resources. Shortly before she applied for Medicaid benefits, Petitioner entered into an agreement with Catherine S. Hailey under which Petitioner paid \$23,000.00 to Ms. Hailey in exchange for personal care services at the nursing home. Ms. Hailey is expected to provide full-time care, in addition to the care provided by the nursing home, to Petitioner for as long as Petitioner lives. At her age, Petitioner is expected to live for ten more years. Should Petitioner live only for another 10 years as expected, Ms. Hailey would receive approximately \$0.87 per hour under the contract calculated as follows:

(2000 hours per year X 10 years = 20,000 hours) (\$23,000 ÷ 20,000 = 0.87 per hour).<sup>1</sup> The contract has no termination, enforcement or cancellation clause. Ms. Hailey has already spent nearly 30% of the full contract amount since January 2009. She expects that the "Life Time Care Management Agreement" that she signed would be renegotiated once she spends all of the \$23,000.00.

<sup>1</sup> The federal minimum wage is currently \$6.55 per hour. On May 25 2007, President Bush signed a spending bill that, among other things, amended the Fair Labor Standards Act (FLSA) to increase the federal minimum wage. Effective July 24, 2009, the federal minimum wage increases to \$7.25 per hour.

A few days after Petitioner signed the agreement and transferred the money to Ms. Hailey, Petitioner filed an application for Medicaid. Respondent imposed a transfer of resources penalty on Petitioner based on the transfer of \$23,000.00 to Ms. Hailey. Petitioner appealed.

## II. CONCLUSIONS OF LAW

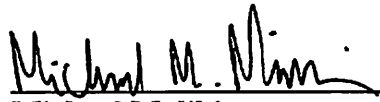
The Medicaid program provides assistance to needy individuals "whose income and resources are insufficient to meet the costs of necessary care and services." Atkins v. Rivera, 477 U.S. 154, 156(1986). The federal government shares the cost of the Medicaid program with participating states, which must comply with federal Medicaid requirements and regulations. Id. Those requirements include restrictions on asset disposition by nursing home patients seeking Medicaid coverage. Thus, if an individual or the spouse of an individual disposes of resources for less than fair market value during the 36 months prior to submitting a Medicaid application (the "look-back period"), the individual is ineligible for Medicaid during the ineligibility period.<sup>2</sup> See 42 USCS § 1396p(c)(1); see also 42 U.S.C. § 1382b (c)(1)(A). However, an individual shall not be ineligible for medical assistance to the extent that a satisfactory showing is made that the individual intended to dispose of the assets either at fair market value or for other valuable consideration or the assets were transferred exclusively for a purpose other than to qualify for medical assistance. 42 U.S.C. § 1396p(c)(2)(C); see also 42 USCS § 1382b(c)(1)(C)(iii).

Here, the Court concludes that given the disparity between the contractual terms and the federal minimum wage, Petitioner's transfer to Ms. Hailey under the contract was not a fair market transfer, that valuable consideration was not given under such contractual terms, and that the assets were transferred exclusively for the purpose of qualifying for medical assistance. Therefore, the Court concludes that the Respondent correctly determined that Petitioner was ineligible for assistance. Accordingly,

## III. CONCLUSION

The decision of Respondent to deny Petitioner's Medicaid application and impose a five month transfer of assets penalty is **AFFIRMED**.

29<sup>th</sup> day of April, 2009.

  
 \_\_\_\_\_  
 Michael Malihi  
 Administrative Law Judge

<sup>2</sup> The look-back period was lengthened to 60 months by the Deficit Reduction Act of 2005, which was enacted on February 8, 2006.