

GEORGIA DEPARTMENT OF COMMUNITY HEALTH
OFFICE OF THE COMMISSIONER
AGENCY APPEAL REVIEW

Betty Bryant
Petitioner,

v.

Department of Human Resources,
Division of Family and Children
Services

Respondent.

*
* OSAH-DFCS-NH-0930797-155-Miller
*
* Agency Reference No.: 456071412
*
*
*
*

NOTICE OF FINAL DECISION AFTER RECONSIDERATION
MODIFYING INITIAL DECISION
RIGHT OF APPEAL

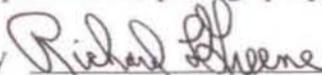
PLEASE READ CAREFULLY:

Enclosed is the Final Administrative Decision of the Commissioner of the Georgia Department of Community Health ("DCH") pursuant to the authority granted in O.C.G.A. § 49-4-153 (b)(1). The Commissioner, pursuant to the authority conferred on her and through the undersigned as her designated representative, and after RECONSIDERATION of the Final Decision issued on August 21, 2009, has both AFFIRMED and MODIFIED portions of the Initial Decision of the Administrative Law Judge ("ALJ") in a manner that does not affirm all of the findings of fact or the conclusions of law of the ALJ, all as is indicated in the attached FINAL ADMINISTRATIVE DECISION AFTER RECONSIDERATION.

If you desire to contest this Final Decision, you may do so only by filing a timely petition for judicial review in accordance with the provisions of O.C.G.A. § 49-4-153 and O.C.G.A. § 50-13-19. When a decision becomes a Final Decision, a petition for judicial review must be filed in the Superior Court of Fulton County or the county of residence of the appealing party within thirty (30) days of service of the Department's Final Decision. A copy of such a petition shall be served upon the Commissioner and all parties of record. Additional requirements related to the filing of such a petition are found in the two statutes referenced above. You are directed to review and comply with each and every requirement found therein.

This Notice and enclosed copy of the Final Administrative Decision is hereby:
Issued and mailed with adequate USPS postage properly affixed or hand delivered.

This September 17, 2009 by



Richard L. Greene
Agency Review Officer
Georgia Department of Community Health
Designated Representative of
Commissioner Rhonda M. Medows, M.D.

cc: Honorable Kristin L. Miller, Administrative Law Judge, OSAH
Mr. John Rasheed, Clerk, OSAH

**GEORGIA DEPARTMENT OF COMMUNITY HEALTH
OFFICE OF THE COMMISSIONER
AGENCY APPEAL REVIEW**

Betty Bryant	*
Petitioner,	* OSAH-DFCS-NH-0930797-155-Miller
v.	*
	* Agency Reference No.: 456071412
Department of Human Resources,	*
Division of Family and Children	*
Services	*
Respondent.	*

FINAL ADMINISTRATIVE DECISION AFTER RECONSIDERATION

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. INTRODUCTION

1. The Commissioner of the Department of Community Health (“DCH”) has designated the undersigned as the Commissioner’s representative to review the Petitioner’s and the Respondent’s “Request for Agency Review of Initial Decision” issued by the Office of State Administrative Hearings (“OSAH”) Administrative Law Judge (“ALJ”) Kristin L. Miller. An OSAH hearing was conducted on June 17, 2009. The Initial Decision was issued on June 29, 2009. The Petitioner’s Motion for Reconsideration of the OSAH Initial Decision was denied on July 16, 2009. The ALJ affirmed the Respondent’s decision in part and reversed that decision in part.

2. Both parties timely sought agency review of the ALJ’s decision. The Respondent’s request for agency review was received on July 7, 2009, prior to the denial of Petitioner’s Motion for Reconsideration. The Petitioner’s request for review was received on July 22, 2009. By agreement of both parties, the timeframe for reviewing this case began on July 22, 2009. The entire record has been reviewed and all issues have been considered by the undersigned Agency Appeals Reviewer. The record reviewed included, but was not limited to, Petitioner’s Request for Agency Review (which included the equivalent of a letter brief supporting the Petitioner’s view), the Petitioner’s Motion for Reconsideration of the Initial Decision (inclusive of legal arguments), a recording of the June 17, 2009 hearing, all other documents and exhibits submitted by both parties, the ALJ’s Decision, the letter brief in support of the Petitioner’s request for review from Petitioner’s counsel dated August 5, 2009, the Petitioner’s Motion for Reconsideration of the DCH Final Decision (inclusive of legal arguments), as well as the relevant state and federal statutes, cases, rules, regulations, guidelines and policy manuals. On September 16, 2009, the Petitioner filed a Motion for Reconsideration of the Final Administration Decision dated August 21, 2009. Petitioner’s Motion is granted on the limited basis as set out below.

3. Based upon the entire record and in accord with *Greene v. DCH*, 293 Ga. App. 201, the undersigned, on behalf of the Commissioner, REVERSES the conclusions of those portions of the ALJ's Initial Decision and those of the August 21, 2009 Final Decision that hold the August 14, 2008 transfer of \$100,016.96 is subject to the imposition of a transfer of assets penalty. Those portions of the two decisions that held the January, 2009 transfers totaling \$148,139.59 are not subject to the imposition of a transfer of assets penalty are AFFRIMED. The holdings in this case are limited to the facts and circumstances of this case only. The facts and circumstances of this case are unusual and unique. For the sake of judicial efficiency and because it is not necessary to restate all of them, numerous facts and circumstances are not articulated in this decision.

II. BACKGROUND and FINDINGS OF FACT

4. The Petitioner, Ms. Betty Bryant, is an applicant for Medicaid benefits under the nursing home class of assistance. After receiving her application in early February, 2009, the Respondent evaluated her eligibility for nursing home Medicaid for the months of February, 2009 and ongoing as requested by the Petitioner.

5. Prior to submitting her Medicaid application, the Petitioner transferred certain of her assets to her adult son, Mr. Gary Bryant, as follows: August 14, 2008 the amount of \$100,016.96; January 28, 2009 the amount of \$10,000.00; January 28, 2009 the amount of \$38,139.59; and January 30, 2009 the amount of \$100,000.00. For convenience of discussion, the transfers will be divided into two categories, first as the "August 2008 transfer" in the amount of \$100,016.96 and second, the "January 2009 transfer" in the amount of \$148,139.59.

6. Upon the filing of her application, the Petitioner, through counsel, asserted in a letter dated February 10, 2009 that the transfers were permissible without penalty because the transfers were "exclusively for a purpose other than to qualify for Medicaid".

7. Mr. Bryant was diagnosed with Amyotrophic Lateral Sclerosis ("ALS" or commonly referred to as "Lou Gehrig's Disease") in January 2008. Although Mr. Bryant was experiencing disease symptoms, initially he was able to function independently and continue limited work at his jewelry store. The symptoms became progressively worst until in January 2009, Mr. Bryant, through his wife, applied for a disability designation. Mr. Bryant was 61 years old at that time. In late January, the Social Security Administration ("SSA") determined that he was disabled and eligible for Retirement, Survivors and Disability Insurance ("RSDI") benefits as of January 2009. The letter releasing the determination to Mr. Bryant was dated February 2, 2009. He was approved for benefit payments to begin in June 2009. Mr. Bryant died in April 2009.

8. Mr. Bryant continued to “work” at his jewelry store up until just prior to his death. The evidence was that during the later stages of his disease progression, his “work” was not functional; rather it was part of his treatment to keep up his spirits during the final weeks of his life. During the earliest stages of the disease, Mr. Bryant was able to contribute in some limited fashion to the operation of the jewelry store.

9. The Respondent determined that the Petitioner was eligible for Nursing Home Medicaid benefits effective February 2009 and ongoing. The Respondent treated both the August 2008 transfer and the January 2009 transfer to Mr. Bryant as a transfer of assets for less than fair market value. Therefore, the Respondent imposed a transfer of assets penalty denying nursing home vendor payment covering both transfers.

III. Conclusions of Law

10. Because this matter involves an application for Medicaid benefits, the Petitioner bears the burden of proof. The standard of proof is a preponderance of the evidence. Petitioner met the burden of proof.

11. The Respondent’s policy at Section 2342-1 of the *Economic Support Services Policy Manual* (ESSM), states an applicant for Medicaid benefits may be subject to a transfer of assets penalty. However, this policy is permissive as there are several stated exceptions as delineated by said policy.

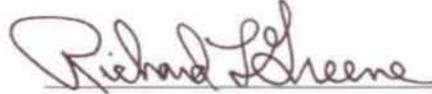
12. There was sufficient evidence to demonstrate that the Petitioner’s January 2009 transfer of her assets was not for the exclusive purpose of qualifying for Medicaid and fit within one of the policy exceptions. Mr. Bryant was formerly designated as disabled by the Social Security Administration by its letter dated February 2, 2009. See SSA’s Program Operation Manual System (“POMS”) at DI 23535.000.

13. The Petitioner offered evidence of Mr. Bryant’s clinical diagnosis of ALS in January 2008. The diagnosis of ALS was confirmed by various laboratory tests, medical tests and physical examinations. Evidence was also given explaining Mr. Bryant’s disability, including testimony of Mr. Bryant’s wife and the offering of an affidavit from his physician. ALS, a disease where the symptoms are progressive in nature, is always fatal. Mr. Bryant was disabled within the meaning of 42 U.S.C. § 1382c when he was diagnosed with ALS. It is the policy of the SSA “that anyone with ALS...will be found disabled”. POMS DI 23535.005 (A)(2)(17). “An allegation of ALS will warrant a finding of presumptive disability.” POMS DI 24580.020. Thus Petitioner’s contention that Mr. Bryant would be “deemed” disabled by SSA as of January 2008 is reasonable.

IV. DECISION

13. State and federal statutes and policies permit the transfer of certain assets by an applicant/recipient of nursing home benefits to an adult disabled child without the imposition of a transfer of assets penalty in limited circumstances.¹ The August 2008 transfer and the January 2009 transfers meet those requirements. The Conclusions of Law and Decision are strictly limited to the unique and unusual facts and circumstances of this particular case.

SO ORDERED, September 17, 2009.



Richard L. Greene
Agency Review Officer
Georgia Department of Community Health
Designated Representative of
Commissioner Rhonda M. Medows, M.D.

¹ It is very likely the factual situation of this particular case was not contemplated by Congress or SSA when the statute and regulations were enacted creating the exceptions to the imposition of a transfer of assets penalty. The imposition of the penalty by the county DFCS office was not improper. This is the type of fact driven case that should be heard by an administrative tribunal.

**GEORGIA DEPARTMENT OF COMMUNITY HEALTH
OFFICE OF THE COMMISSIONER
AGENCY APPEAL REVIEW**

Betty Bryant	*
Petitioner,	* OSAH-DFCS-NH-0930797-155-Miller
v.	*
	* Agency Reference No.: 456071412
Department of Human Resources,	*
Division of Family and Children	*
Services	*
Respondent.	*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a copy of the within and foregoing Final Administrative Decision After Reconsideration, Notice of Final Decision and Right of Appeal on all parties by depositing a copy of same in the United States Postal Service mail, First Class and/or Certified postage properly affixed to the addresses of the parties or by hand delivery if so noted, each as shown below:

FOR PETITIONER: (USPS mail First Class and Certified)

Mrs. Betty Bryant
Wood Dale Nursing Home
1102 Burleyson Road
Dalton, Georgia 30720

Mrs. Betty Bryant
C/O Mr. David McGuffey, Esquire
105 North Pentz Street
Dalton, GA 30720

FOR RESPONDENT: (USPS mail and Hand delivery)

Whitefield County DFCS Office
Attention: Ms. Carol Crow
P. O. Box 1203
Dalton, Georgia 30722-1203

Ms. Lynnette Rhodes, Esquire
DCH Legal Services Unit
Atlanta, GA 30303

September 17, 2009
Date


Richard L. Greene



GEORGIA DEPARTMENT OF
COMMUNITY HEALTH

2 Peachtree Street, NW
Atlanta, GA 30303-3159

Office of General Counsel
Phyllis Johnson

FCM 303 00:16 09/19/09



UNITED STATES POSTAGE
02 1M \$ 00.48²
0004285618 SEP 19 2009
MAILED FROM ZIP CODE 30303

Mrs. Betty Bryant
Wood Dale Nursing Home
1102 Burleyson Road
Dalton, Georgia 30720

IJEYG31

30720

