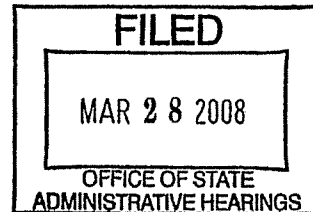


OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA



[Redacted]
Petitioner,

v.

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

Docket No.: OSAH-DFCS-NH-0817602-18-
Walker

Agency Reference No.: 553504016

INITIAL DECISION

I. Introduction

Petitioner, [Redacted] seeks review of Respondent's application of a transfer of resources penalty. The parties presented sworn testimony and evidence at an administrative hearing. [Redacted] appeared for Petitioner, and presented [Redacted], as a witness. Caseworker [Redacted] was a witness for the Respondent. For the reasons indicated, Respondent's action applying a transfer of resources penalty is REVERSED.

II. Findings of Fact

1.

On July 28, 2006 Petitioner moved into a Nursing Home and applied for Medicaid benefits. Respondent determined Petitioner was eligible for Medicaid and began making payments to the Nursing Home. During a review conducted in October 2007, Respondent informed Petitioner that it would impose a transfer of resources penalty in her case. Respondent indicated it would not pay for Petitioner's care beginning in January of 2008 and continuing for forty one months. *Testimony of* [Redacted]

2.

In 2002, Petitioner's daughter, [Redacted] moved into her mother's home located at [Redacted] Road, Griffin, Georgia, in order to provide care for her mother. In 2003, Petitioner became bedridden after back surgery. [Redacted] continued to provide care to her mother on a full-time basis. [Redacted] also paid for Petitioner's prescriptions, the home's utilities, and the costs of maintaining the home. *Testimony of* [Redacted]; *Testimony of* [Redacted]

3.

On December 25, 2004, Petitioner gave [Redacted] the property located at [Redacted] Road in consideration for the care [Redacted] was providing to her. On December 25, 2004, Petitioner made a written notation of the gift in a notebook, and also made a separate notation to call her attorney, [Redacted] regarding the gift. *Testimony of* [Redacted]; *Petitioner's Exhibits 1 and 2.*

4.

Petitioner and [redacted] approached [redacted] regarding the property, told him about the gift, and asked him to prepare a Warranty Deed. [redacted] prepared a Warranty Deed, and on April 10, 2006, Petitioner conveyed the property as a gift to her daughter. *Testimony of [redacted]; Testimony of [redacted]; Petitioner's Exhibit 4.*

5.

As part of the Medicaid review process, Petitioner submitted this Warranty Deed to Respondent. Prior to February 8, 2006, Respondent had permitted a transfer of resources without penalty as compensation for the care a child gave to his or her parent. However, Respondent informed Petitioner that due to a change of policy beginning on February 8, 2006, it would apply a transfer penalty for the conveyance. *Testimony of [redacted]*

6.

Subsequently, on February 6, 2007, Petitioner filed a Deed of Correction, prepared by [redacted] changing the date of the conveyance to December 25, 2004. The Deed of Correction states that the original conveyance date of April 6, 2006 is erroneous "when in truth and fact, the transfer was accomplished between the parties hereto on December 25, 2004...." [redacted] testified that he did not realize there would be any legal significance attached to the original date of conveyance, and he prepared the Deed of Correction to accurately reflect the date on which the property was transferred. [redacted] acknowledged that the December 25, 2004, transfer date would permit the transfer of the property without a transfer penalty. *Testimony of [redacted]; Testimony of [redacted]; Petitioner's Exhibit 3.*

III. Conclusions of Law

1.

The burden of proof falls upon Respondent because it approved Petitioner's Medicaid application but applied a transfer of resources penalty. OSAH Rule 7(1)(d). The evidentiary standard is preponderance of the evidence. OSAH Rule 21(4).

2.

Medicaid was established in 1965 as Title XIX of the Social Security Act, 42 U.S.C. § 1396, as a cooperative federal state program designed to provide health care to needy individuals. In Georgia, the Medicaid program is administered by the Department of Community Health. See O.C.G.A. § 49-4-142(a). Although a state is not required to participate in the Medicaid program, once it chooses to do so it must develop a plan that complies with the Medicaid statute and regulations. Fla. Ass'n. of Rehab Facilities, Inc., v. Fla. Dep't of Health & Rehab. Servs., 225 F.3d 1208, 1216 n.5 (11th Cir. 2000). Moreover in administering its Medicaid program, a state must set reasonable standards for assessing an individual's income and resources in determining eligibility for, and the extent of, medical assistance under the program. 42 U.S.C. § 1396a(a)(17).

3.

Nursing Home Medicaid is a class of assistance that provides benefits to eligible individuals residing in a Medicaid-participating nursing home. An applicant or recipient is eligible for such

benefits when basic and financial eligibility criteria regarding income and resources are met. *Medicaid Manual § 2141.*

4.

Pursuant to Respondent's regulations, it must evaluate Petitioner's resources in order to determine whether or not she qualifies for the Medicaid program. When an individual gives away or sells a resource for less than its current market value there exists a presumption that the resource was transferred to establish Medicaid eligibility, unless the individual furnishes convincing evidence that the resource was transferred exclusively for some other reason. *See 20 C.F.R. § 416.1246(e).*

5.

The Omnibus Budget Reconciliation Act of 1993 governs the transfer of resource penalties for assets transferred on or after August 11, 1993, but prior to February 8, 2006. Under the Omnibus Reconciliation Act, an exception to the transfer penalty is provided if the transfer was in exchange for compensation for care. However, the Deficit Reduction Act of 2005 governs transfer of resource penalties for assets transferred after February 8, 2006. The Deficit Reduction Act eliminates the exception to the transfer penalty. *Medicaid Manual §§ 2342-1; 2342-3.*

6.

At the hearing, the undersigned had the opportunity to evaluate and observe the witnesses who testified on behalf of Petitioner, and concludes that those witnesses were credible. Petitioner's daughter furnished convincing evidence that Petitioner transferred the property to her daughter in compensation for the care provided to her on December 25, 2004. Not only did Petitioner present written notations that she gave her daughter the property as a Christmas gift in 2004, the Deed of Correction is a legal document prepared by an attorney indicating that this was the date of transfer.¹ Accordingly, since the transfer preceded the enactment of the Deficit Reduction Act of 2005, the exception for compensation for care would apply to the transfer of resources penalty.

¹ Moreover, regardless of the Deed of Correction, O.C.G.A. § 23-2-132 provides that one may acquire a gift of land without a writing if an owner proves: 1) an oral gift of land, 2) his or her possession of land, 3) meritorious consideration, and 4) valuable improvements to the land made in reliance on the gift. In the instant case, Petitioner presented proof that there was an oral gift of land, that [REDACTED] lived there immediately following the gift, that the gift was made in compensation for the care rendered by [REDACTED], and that [REDACTED] maintained the property following the transfer. *Sharp v. Sumner*, 272 Ga. 338 (2000) (affirming finding of oral grant of land where individual took possession and made valuable improvements); *See also Milton v. Milton*, 192 Ga. 778 (1941) (husband's affection for his son constituted adequate consideration); *Medicaid Manual § 2342-5* (may prove transfer of ownership through collateral means).

IV. Decision

For the reasons stated, Respondent's action imposing a transfer or resources penalty is **REVERSED**.

SO ORDERED this 25th day of March, 2008



RONIT WALKER
Administrative Law Judge