

RE: KATHLEAN ROGERS, Petitioner

Docket No.: OSAH-DFCS-NH-1705294-155-Langston

MAIL TO:

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

KATHLEAN ROGERS, Petitioner,	:	Docket No.: OSAH-DFCS-NH-1705294-155-Langston
	:	
v.	:	Agency Reference No.: 14553517
	:	
DHS, FAMILY & 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.: Victoria Hightower, vhightower@osah.ga.gov
225 Peachtree Street, NE, South Tower, Suite 400
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, 40th 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).

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

KATHLEEN ROGERS,
Petitioner,

v.

DHS, FAMILY & CHILDREN SERVS.,
Respondent

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: Docket No. OSAH-DFCS-NH-1705295-155-
: Langston
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**ORDER GRANTING PETITIONER'S
MOTION FOR SUMMARY DETERMINATION**

Victoria Hightower

Victoria Hightower, Executive Assistant

I. INTRODUCTION

Petitioner appeals the Department of Human Services' (Respondent's) eligibility determination in this case. Specifically, Petitioner contends that if a transfer of resources penalty is imposed, then it must be imposed as of May 1, 2016. Petitioner filed a 89 page Motion for Summary Determination on October 17, 2016 (including brief and exhibits), and served a copy on Respondent by mail. Respondent failed to file a response to the motion. The record was held open for both parties to submit a proposed order. Petitioner submitted a Proposed Order on November 9, 2016, and Respondent has not submitted a proposed order. Upon reviewing all of the documentary evidence received, and for the reasons stated herein, Petitioner's Motion for Summary Determination is **HEREBY GRANTED**.

II. STANDARD OF REVIEW

To prevail at Summary Judgment, the moving party must demonstrate that there is no genuine issue of material fact and that the undisputed facts, viewed in the light most favorable to the nonmoving party, warrant judgment as a matter of law. Lau's Corp. v. Haskins, 261 Ga. 491 (1991); Rule 15 of the Rules of the Office of State Administrative Hearings. Respondent has failed to respond to the Motion for Summary Determination. Therefore, the record does not contain disputed material facts. Accordingly, Petitioner is entitled to Summary Determination on the record.

III. STATEMENT OF UNDISPUTED MATERIAL FACTS

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Petitioner is a 90 year old white female. She was admitted to Regency Park, a nursing home in Dalton, Georgia, in April, 2016. Petitioner applied for nursing home Medicaid

on or around June 24, 2016, seeking a determination that she was otherwise eligible for Medicaid as of May 1, 2016.

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Prior to April 30, 2016, Petitioner spent down her excess resources. She also made a gift in the amount of \$8,000 to her son, who has not been determined to be disabled, but who has terminal cancer. Petitioner's gift to her dying son, while understandable, results in a 1.3 month transfer of resources penalty.

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Section 2342-12 of the Georgia ABD Manual includes a chart breaking down how a transfer penalty should be calculated. An \$8,000 transfer would be treated as follows under that chart:

Step 1 Subtract the compensation received from the FMV of the transferred resource.

a.	\$8,000.00	FMV of transferred asset
b.	- \$0.00	Compensation received
c.	= <u>8,000</u>	Uncompensated value

Step 2 Divide the uncompensated value by the NH Private Pay Billing Rate (NH PP BR)*.

a.	8,000	(1.c)
	Divided by	
b.	\$6,175.00	(NH PP BR)
c.	= 1.30	Months of penalty including partial months**

Step 3. Multiply the NH PP BR by the number of FULL months' penalty found in 2. c.

a.	\$6,175.00	(NH PP BR)
b.	X 01	(2.c) # of FULL months' penalty
		without the fraction
c.	= <u>\$ 6,175.00</u>	Dollar value of full months' penalty

Step 4. Subtract the value of the full months' penalty from the uncompensated value of the Transferred asset.

a.	<u>8,000</u>	(1.c) uncompensated value of the transferred asset
b.	- <u>\$ 6,175.00</u>	(3.c) value of full month's penalty
c.	= <u>1,825.00</u>	Partial month penalty amount

Step 5. Include the partial month penalty amount (4.c) as unearned income in the AU for the benefit month in which the partial month penalty falls.

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When a transfer of resources penalty is imposed, the penalty beginning date is the later of the first day of the month in which the resources were transferred, or the date on which the individual is eligible for medical assistance under the State Plan and is receiving institutional level care that, were it not for the imposition of the penalty period, would be covered by Medicaid. Supplement 9(b) to Attachment 2.6-A of Georgia's Medicaid State Plan.

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It is undisputed that Petitioner was receiving institutional level care during May, 2016.

-6-

Petitioner provided sufficient documentation to show that her countable resources were below the \$2,000 asset limit before the first moment of May, 2016. In point of fact, Petitioner was the victim of bank fraud. A copy of the police report showing that she was robbed was attached to her Motion for Summary Judgment, along with affidavits from two bankers showing that her accounts were frozen by April 29, 2016. Accordingly, because the accounts were frozen in April, on the first moment of the first day of May, Petitioner had no access to her accounts and she was otherwise eligible.

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Petitioner showed that her income was less than the income cap.

IV. STATEMENT OF ISSUE

Petitioner's Motion for Summary Determination sets forth the following issues to be decided: If a 1.3 month transfer of resources penalty is imposed, then it should be imposed beginning in May 2016, ending in June, 2016, consistent with the formula in ABD Manual Section 2342-12.

V. CONCLUSIONS OF LAW

1. As the applicant for Medicaid benefits, Petitioner has the burden of proof in this matter. However, both Petitioner and Respondent bear the burden of proof as to any fact asserted, if proof of said fact is essential to their case or affirmative defenses raised by them. OSAH Rule 07(1)(e).
2. This proceeding is de novo in nature and the standard of proof is by preponderance of the evidence. OSAH Rule 21(4).
3. A party may move, based on supporting affidavits or other probative evidence, for summary determination in its favor on any of the issues being adjudicated on the basis that there is no genuine issue of material fact for determination. OSAH Rule 616-1-2-.15(1).
4. When a Motion for Summary Determination is supported as provided in this Rule, a party opposing the motion may not rest upon mere allegations or denials, but must

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show, by affidavit or other probative evidence, that there is a genuine issue of material fact for determination. OSAH Rule 616-1-2.15(3). In this matter, Respondent has failed to submit affidavits or other probative evidence to establish that there is a genuine issue for determination. Therefore, summary determination is appropriate in this case since there is no genuine issue as to any material fact.


5. The resource limit for an individual in a nursing home to be eligible for Medicaid is \$2,000. The value of an A/R's countable resources cannot exceed the appropriate resource limit in order for the A/R to be eligible for Medicaid. Appendix A.1, ABD Financial Limits; Medicaid Manual Volume II/MA, MT 50-05/16, Section 2300-2. Further, said value is established as of the first moment of the first day of the month of verification. ABD Manual 2303-1.
6. In this matter, Petitioner has met her burden of showing that her countable resources were less than \$2,000 as of the first moment of May 1, 2016. Petitioner has met her burden of showing her countable resources were below the resource limit by providing affidavits and a police report showing that her accounts were frozen and, therefore, beyond her access or control due to bank fraud.
7. Petitioner's income during May, 2016 was less than the income cap. Accordingly, Petitioner met her burden of establishing income eligibility.
8. The Centers for Medicare and Medicaid Services (CMS) issued a series of letters to State Medicaid Directors after passage of the Deficit Reduction Act of 2005 (DRA). One of those letters, SMDL # 06-018, issued July 27, 2006, indicates that any transfer of resources penalty is imposed on the date the applicant is otherwise eligible for Medicaid. Further, once a penalty is imposed, it is not tolled. See also 42 U.S.C. § 1396p(c)(1)(D)(ii). Here, Petitioner established that she was otherwise eligible for Medicaid as of May 1, 2016.
9. The State of Georgia's State Medicaid Plan also addresses when a transfer of resources penalty is imposed. Supplement 9(b) to Attachment 2.6-A provides that the penalty beginning date is the later of the first day of the month in which the assets were transferred, or the date on which the individual is eligible for medical assistance under the State Plan and is receiving institutional level care services that, were it not for imposition of the penalty period, would be covered by Medicaid.
10. To determine in which month a transfer of resources penalty should begin, Section 2342-8 of the ABD Manual provides "For applicants, begin the penalty when the A/R is in LA-D beginning with the later of the month when the resource was transferred, or the month that the A/R/ is otherwise Medicaid eligible." See Fox v. DHS, Family & Children Services, OSAH-DFCS-QI1-1444758-64-Walker-Russell (June 30, 2014), at page 6.
11. The resource was transferred in April, 2016. Petitioner has demonstrated that she was otherwise eligible for Medicaid in May, 2016. The later month is May, 2016.

Therefore, Respondent is directed to calculate the transfer of resources penalty beginning in May, 2016. The transfer of resources penalty should expire in June, 2016 consistent with the formula at ABD Manual 2342-12.

VI. DECISION

Based upon the foregoing, it is concluded that Petitioner meets the nursing home Medicaid eligibility requirements for May, 2016. In addition, a 1.3 month transfer of resources penalty should be imposed beginning in May, 2016. The result is that no vendor payment will be made for May, 2016, and Petitioner's patient liability cost-share is increased during June, 2016, consistent with ABD Manual Section 2342 to account for a partial month penalty. Accordingly, Petitioner's uncontested Motion for Summary Determination is **HEREBY GRANTED**. This matter is **REMANDED** to Respondent for immediate action in approving Petitioner's application for nursing home Medicaid and assessment of a transfer of assets penalty consistent with this decision.

SO ORDERED this 5th day of December, 2016.



DAVID C. LANGSTON,
Administrative Law Judge