

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

| | | |
|--------------------------------------|---|--|
| R.C., Deceased, |) | |
| |) | Docket No.OSAH-DFCS-NH-1425490-61 |
| Petitioner, |) | Woodard |
| v. |) | |
| |) | |
| GEORGIA DEPARTMENT OF |) | Agency Reference No.:442105414 |
| HUMAN SERVICES, DIVISION OF |) | |
| FAMILY AND CHILDREN SERVICES, |) | |
| Respondent. |) | |
| _____ |) | |

INITIAL DECISION

Findings of Fact

The following Findings of Fact are based solely on a preponderance of the credible evidence produced at the hearing on February 19, 2014.

1.

Petitioner was admitted on several occasions to Gilmer County Nursing Home in Ellijay, Georgia. Petitioner passed away at the nursing home in August 2013.

2.

An application for Medicaid was filed on Petitioner's behalf on November 10, 2012. The local Department of Family and Children Services (DFCS) issued a Notice of Decision on October 15, 2013, which advised Petitioner's representatives that the application was denied for the months of October 2012 through January 2013. Although the Notice of Decision indicates that Petitioner's resources exceeded the limit during those four months, testimony at the hearing shows that DFCS imposed a transfer of resources penalty covering all four months.

3.

A posthumous appeal was filed by Petitioner's representatives on November 14, 2013.

4.

During the hearing, DFCS' representative testified that Medicaid denied the vendor payments for the four months at issue because Petitioner's representatives transferred funds from her bank accounts that did not appear to be for value received.

5.

Petitioner's grandson, Robby C., and granddaughter-in-law, G.C., were appointed as his Co-Conservators by Gilmer County Probate Court. The Co-Conservators filed Annual Returns with the Probate Court. At the conclusion of the hearing, the administrative law judge requested the most recent Annual Return be submitted as an after-acquired exhibit. Petitioner's representatives subsequently filed a copy of the Annual Return for the reporting period October 2012 through September 2013 which showed Petitioner received total income of \$16,327.96, and that expenditures of \$15,980.97 were made on her behalf.

6.

The Co-Conservators argue that when the Probate Court judge accepted the report on February 10, 2014, a judicial order was put into place that proves the Co-Conservators spent funds solely for Petitioner's use and benefit. Therefore, no transfer of resources penalty should be imposed as Petitioner received fair market value for the funds transferred from her account or accounts. The Co-Conservators acknowledge that \$75.00 was expended from Petitioner's bank accounts to purchase gifts for his grandchildren, and that Petitioner did not receive any intrinsic value in return for this transfer.

Conclusions of Law

1.

Respondent has the burden to establish that the action undertaken by Respondent is proper under a preponderance of the evidence presented. OSAH Rules 616-1-2-.21(4) and 616-1-2-.07(1)(d). Once Respondent presents sufficient evidence to raise a presumption that Petitioner transferred a resource for less than its market value for the sole purpose to qualify for Medicaid, Petitioner then has the burden to rebut the presumption with convincing evidence to show a transfer for some other reason. 20 C.F.R. 416.1246 (e); 42 U.S.C.S. § 1382b (c); *Johnson v. Llewellyn*, 194 Ga. App. 186 (1990); *Johnson v. Ellis*, 174 Ga. App. 861 (1) (1985) (*emphasis added*).

2.

Under the Georgia Aged, Blind and Disabled Medicaid Manual 3480 ("*Manual*"), § 2141, Nursing Home Medicaid is a class of assistance ("COA") that provides benefits to eligible individuals residing in a Medicaid-participating nursing home. An applicant or recipient ("A/R") is eligible for such benefits only when the A/R is "Aged, Blind, or Disabled;" requires the level of care provided by an intermediate care nursing facility; and meets the income and resources

criteria. *Id.*

3.

When an A/R gives away or sells a resource for less than its current market value (“CMV”)² during the look-back period, the A/R may be subject to a transfer of resource penalty. *Manual* § 2342. (*emphasis added*). This penalty only applies to a non-family Medicaid COA, such as nursing home benefits. *Id.* Under the Deficit Reduction Act of 2005 (“DRA 2005”, effective February 8, 2006), the look back period is 60 months. *Manual* § 2342-1.

4.

A transfer of resource penalty does not apply if an A/R can provide satisfactory showing that he/she intended to dispose of the asset for fair market value, or for other valuable consideration. *Manual* § 2342-2.

5.

In this case, DFCS concluded that the expenditures made by Petitioner’s Co-Conservators were uncompensated transfers of Petitioner’s resources. Petitioner’s representatives content that all payments made on Petitioner’s behalf by the Co-Conservators were for his direct use and benefit, less one \$75.00 gift they admit was not for value received.

6.

O.C.G.A. 29-5-23(a) enumerates the powers granted to a conservator, which include the ability to expend funds for the support, care, education, health, and welfare of a ward. A conservator is required by O.C.G.A. 29-5-60 to file an annual return within 60 days of the date of the conservator’s qualification. The return must be verified and include a statement of receipts and expenses of the conservatorship for the preceding year. O.C.G.A. 29-5-20(c) requires the Probate Court to “carefully examine” the annual return, and the court can require the conservator to produce the original documents that support the return. If no objection is filed by an interested party or on the court’s own motion, the annual return is recorded. The “recorded return shall be prima-facie evidence of its correctness.”

7.

The Gilmer County Probate Court accepted the annual return filed by the Co-Conservators for the period October 2012 through September 2013. This return covers the months of October

2012 through January 2013, the months DFCS' denied a Medicaid vendor payment based on a transfer penalty. The credible evidence produced at the hearing is that the Co-Conservators expended no funds, including the \$75.00 gift to Petitioner's grandchildren, without the express authority granted by the Probate Court.

8.

The undersigned Administrative Law Judge has no authority under the Administrative Procedures Act or the Rules of the Office of State Administrative Hearings to reverse, amend, or modify the approval of the annual returns by Gilmer County Probate Court. Therefore, the Order of the Probate Court to accept the Co-Conservators' annual return must be accepted as proof that the Co-Conservators expended funds solely for the Petitioner's use and benefit, and that no transfer penalty can be assessed.

Decision

It is the Initial Decision of the Administrative Law Judge that DFCS' imposition of a transfer penalty for the months October 2012 through January 2013 based on the expenditures made on Petitioner's behalf by his Co-Conservators is REVERSED.

Pursuant to *Manual* Section 2555, Petitioner is now entitled to seek Incurred Medical Expenses coverage, and is authorized to submit IME forms which, if approved, would result in a reduction of the patient liability amount for those covered months prior to this death, with Medicaid paying the balance of the nursing home bill.

SO ORDERED, this _____ day of March, 2014.

M. PATRICK WOODARD, JR.
Administrative Law Judge