

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

S [REDACTED] C [REDACTED])
Petitioner,)
v.) Docket No.:)
) OSAH-DFCS-NH-[REDACTED]-60-Malihi)
) Agency Reference No.: [REDACTED])

DHS, FAMILY & CHILDREN SERVICES,)
Respondent.)



**FILED
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JAN 10 2017

INITIAL DECISION

Kasey Salter, Legal Assistant

I. OVERVIEW

Petitioner appeals Respondent's adverse actions imposing a transfer of assets penalty with respect to his receipt of benefits under the Medicaid program. A hearing was conducted on December 21, 2016 before the undersigned administrative law judge after a continuance of the original hearing on November 16, 2016. The Petitioner was represented by Jeremy A. Striegel, Esq. Respondent was represented by Jeree Johnson, Long Term Care Supervisor for the Division of Family and Children Services.

After consideration of the facts and the parties' legal arguments, and for the reasons set forth below, the Respondent's action is **REVERSED**.

II. FINDINGS OF FACT

1. Petitioner S [REDACTED] C [REDACTED] is a 61 year old Fulton County resident who is disabled and receives Social Security benefits of \$1,070 per month. Petitioner does not receive any other income. Testimony of C [REDACTED] C [REDACTED].
2. In September 2015, Petitioner's son and Power of Attorney agent, C [REDACTED] C [REDACTED], with the assistance of a licensed realtor, Sheila Frocione, listed Petitioner's non-

homeplace property located at [REDACTED] [REDACTED] (“the Property”) for sale at an initial listing price of \$104,000. See Petitioner’s Exhibit B.

3. At the time of the listing, Petitioner was residing in a personal care home and paying a monthly private pay rate. Testimony of C [REDACTED] C [REDACTED].
4. On October 10, 2015, C [REDACTED] C [REDACTED] and the realtor received a purchase offer from prospective buyers for \$80,000. See Petitioner’s Exhibit C.
5. This offer was reduced to \$65,000 after the prospective buyers and their agent inspected the property and identified up to \$31,300 in necessary repairs and upgrades. The offer was then rejected by C [REDACTED] C [REDACTED]. See Petitioner’s Exhibit D and the Testimony of C [REDACTED] C [REDACTED].
6. On November 19, 2015, the list price of the Property was reduced to \$89,900 as a result of its condition and the lack of offers for purchase. See Petitioner’s Exhibit G and Testimony of C [REDACTED] C [REDACTED].
7. On November 25, 2015, C [REDACTED] C [REDACTED] and the realtor received a purchase offer from prospective buyers for \$69,200, which was rejected as being too low. See Petitioner’s Exhibit E and Testimony of C [REDACTED] C [REDACTED].
8. On December 18, 2016, the Property was sold for \$74,000, with \$65,005.49 going to pay off the existing mortgage, \$4,510.40 going to the Petitioner, and remaining sales proceeds allocated to closing costs. See Petitioner’s Exhibit F.
9. The proceeds of the sale of the Property were used to pay for Petitioner’s personal care home expenses and other outstanding bills. Testimony of C [REDACTED] C [REDACTED].

10. On July 1, 2016, Petitioner was admitted to Roswell Nursing and Rehabilitation Center after suffering a stroke. Testimony of C [REDACTED] C [REDACTED]. On July 5, 2016, Petitioner applied for Nursing Home Medicaid benefits. Testimony of Jeree Johnson.
11. On September 1, 2016, Respondent issued a Notice of Decision denying Nursing Home Medicaid benefits for five months beginning July 2016 alleging, "You gave resources to someone in order to get assistance." See Petitioner's Exhibit A.
12. Respondent denied Petitioner for five months of Nursing Home Medicaid benefits because the Property was allegedly sold for less than its fair market value, which Respondent calculated to be \$105,200. Testimony of Jeree Johnson.
13. Petitioner, through his Power of Attorney agent, C [REDACTED] C [REDACTED], filed a timely appeal on September 8, 2016 in response to the September 1, 2016 denial of Nursing Home Medicaid benefits. See Petitioner's Exhibit A. Petitioner's attorney of record then filed an Amended Fair Hearing Request on November 16, 2016.
14. On September 12, 2016, C [REDACTED] C [REDACTED] obtained a Retroactive Broker's Price Opinion on the Property, which listed the probable sales price as of December 2015 to be \$84,000. See Petitioner's Exhibit H.
15. On December 20, 2016, Ms. Frocione, C [REDACTED] C [REDACTED]'s realtor, submitted an affidavit stating: (1) she had been a licensed agent and broker for over twenty-five (25) years; (2) she was the listed realtor for the Property; (3) there were several problems with the property including, but not limited to, rat and pest infestation, electrical issues, and a malfunctioning septic system; (4) no offers for purchase were received that came close to the original listing price of \$104,000; and (5) the final selling price of \$74,000 was the accurate fair market value of the Property.

III. CONCLUSIONS OF LAW

1

Because this matter involves the proposed suspension of Medicaid benefits, the Respondent bears the burden of proof. Ga. Comp. R. & Regs. 616-1-2-.07(1)(d). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

2.

When a contested case is referred to the Office of State Administrative Hearings, the administrative law judge assigned to the case has “all powers of the referring agency...” O.C.G.A. § 50-13-41(b). The evidentiary hearing is *de novo*, and the administrative law judge “shall make an independent determination on the basis of the competent evidence presented at the hearing.” Ga. Comp. R. & Regs. 616-1-2-.21(1). To the extent an issue involves the interpretation of a federal statute, “it is a question of law which is reviewed *de novo*.” Draper v. Atlanta Indep. Sch. Sys., 517 F.3d 1275, 1284 (11th Cir. 2008).

Statutory Framework of Medicaid Program

3.

The Medicaid program is a cooperative venture between the federal and state governments through which medical care is offered to the needy. Wilder v. Virginia Hosp. Ass’n, 496 U.S. 498, 502 (1990). Although participation in the program is voluntary, a state that chooses to participate must comply with the program requirements found in federal law. Id. at 502.

Provisions of Medicaid Manual

4.

A recipient of Medicaid assistance is subject to a transfer of assets penalty if the recipient gives away or sells resources for less than current market value. 42 U.S.C. § 1396p(c)(1); Economic Support Services Manual of the Georgia Department of Human Resources (“ESSM”) § 2342. A transfer of assets penalty does not apply if the transfer was for fair market value. Medicaid Manual (Volume II, MAN 3480) § 2342-2.

5.

Fair market value is an estimate of the value of an asset, if sold at the prevailing price at the time it was actually transferred. For an asset to be considered transferred for fair market value, the compensation received for the asset must be in a tangible form with intrinsic value. Medicaid Manual § 2342-1

6.

For real property in Georgia, the market value is the assessed tax value multiplied by 2.5 *unless* the Petitioner successfully rebuts this value. Medicaid Manual § 2303-1. Rebuttal of the tax digest’s current market value requires two estimates from “knowledgeable sources.” Medicaid Manual § 2303-3.

Analysis

7.

In this case, the facts as stated are undisputed. The evidence is also undisputed that the Petitioner is elderly, vulnerable, and suffers from dementia. The Petitioner was residing in a personal care home at the time of sale and was not then receiving Medicaid benefits. The

Petitioner applied for Nursing Home Medicaid only after he was admitted to the Roswell Nursing and Rehabilitation Center in July 2016 after suffering a stroke.

8.

Respondent asserts that the fair market value of the Property is the assessed tax value multiplied by 2.5, which in this case is \$105,200. Petitioner asserts that Respondent's fair market value has been successfully rebutted by the documentary evidence provided and the testimony given. Thus, the question presented is whether the Respondent correctly calculated the fair market value for the Property.

9.

The Court finds that the exhibits and testimony provided rebut Respondent's fair market value calculation. The Property's sales price of \$74,000 was commensurate with its fair market value and no transfer of assets penalty is authorized.

DECISION

In accordance with the foregoing Findings of Fact and Conclusions of Law, Respondent's decision to impose a transfer of assets penalty for five months beginning in July 2016 with respect to the Petitioner's receipt of nursing home Medicaid benefits is hereby **REVERSED** and Respondent is **ORDERED** to pay nursing home Medicaid benefits on Petitioner's behalf for those months during which a transfer of assets penalty was previously imposed.

SO ORDERED this 10th day of January, 2017.



Michael Malihi
Chief Administrative Law Judge

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

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 motion may or may not toll the time for filing an application for agency review.** See O. C.G.A. §§ 50-13-19 and 50-13-20.1.

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.: Kasey Salter, ksalter@osah.ga.gov
225 Peachtree Street, NE, South Tower, Suite 400
Atlanta, Georgia 30303-1534

APPLICATION FOR AGENCY REVIEW

An application for Agency Review must be filed within thirty (30) days after service of this Initial Decision. O.C.G.A. §§ 50-13-17 and 50-13-41. 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:

Legal Services Unit, Attn: Appeals Reviewer
Department of Human Services
2 Peachtree Street, 29th 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. §§ 50-13-17 and 50-13-41. In certain cases, an Initial Decision may become Final and therefore not subject to review either by agency provision or the provisions of O.C.G.A. § 50-13-17(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. § 50-13-19(b).

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).