

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

H [REDACTED] H [REDACTED],
Petitioner,

v.

**DHS, DIVISION OF FAMILY AND
CHILDREN SERVICES,
Respondent.**

Docket No.: [REDACTED]
[REDACTED]-OSAH-DFCS-M-NH-60-Teate

Agency Reference No.: [REDACTED]



INITIAL DECISION

I. Introduction

Petitioner H [REDACTED] H [REDACTED], by and through the Hurley Elder Law Care firm, his legal counsel, appealed the decision of the Department of Human Services, Division of Family and Children Services (hereinafter “Respondent” or “DFCS”) to impose a transfer of assets penalty on his Medicaid case. At an evidentiary hearing on June 15, 2023, Jennifer Ghorley, Esq. and Danielle Humphrey, Esq. represented Petitioner. Jeanie Ware, Esq. represented Respondent. The hearing record remained open through July 17, 2023, to allow post-hearing submissions. For the reasons indicated below, DFCS’s decision to impose a transfer of assets penalty is **AFFIRMED**.

II. Findings of Fact

1. Mr. H [REDACTED] has lived at [REDACTED] since December 3, 2021. (Exhibit P-1).
2. Mr. H [REDACTED] applied for Medicaid through Gateway on February 11, 2022. (Exhibit P-2).
3. Mr. H [REDACTED] received a Notice of Decision dated March 14, 2022, indicating that he was approved for Medicaid. (Exhibit P-3).
4. The Medicaid start date was February 1, 2022, which was properly indicated on the Notice of Decision dated March 14, 2022. (Exhibit P-3).

5. There was an initial 2-month penalty period (1 month full, 1 month partial) due to a transfer of funds, which was properly indicated on the Notice of Decision dated March 14, 2022. (Exhibit P-3).
6. The real property located at [REDACTED] (hereinafter “the real property”) was the only real property owned by Mr. H [REDACTED] at the time of the initial Medicaid application. (Exhibit P-2).
7. The real property was excluded as the homeplace property pursuant to Medicaid policy at the time of the initial Medicaid application. (Exhibit P-10). At application, Petitioner was given homeplace deduction for this property. He concurrently reported rental income for the property and DFCS added the income to the budget. (Respondent’s response to Petitioner Statement of Fact #7; Testimony of Shameka Battle, Caseworker).
8. Mr. H [REDACTED] rented the real property. (Exhibit P-4). The reported income was added to the budget. (Respondent’s response to Petitioner Statement of Fact #8; Testimony of Shameka Battle, Caseworker).
9. The net rental income generated by the real property was reported as income on the initial Medicaid application. (Exhibit P-2).
10. Per an affidavit on December 20, 2022, Mr. H [REDACTED] stated that he no longer intended to return to his homeplace located at the real property. (Exhibit P-5). Petitioner submitted a copy of this affidavit to Respondent on January 20, 2023. (Exhibit R-8, Response to Petitioner’s Statement of Fact #10; Testimony of Shameka Battle, Caseworker).
11. On December 20, 2022, Mr. H [REDACTED] listed the real property for sale on Craigslist, a classified advertisements website. (Exhibit P-6). The real property was valued at \$192,300.00 in 2022, as reported on a website for the Newton County Tax Assessor’s office. (Exhibit R-9). There

is no indication that it was listed with a realtor, that a for sale sign was placed on the property, or that there was an advertisement in a newspaper. (Exhibit R-7; Testimony of Dauphine Dean, DFCS Program Consultant; Testimony of Shameka Battle, caseworker).

12. On December 27, 2022, Mr. H [REDACTED]'s daughter, N [REDACTED] S [REDACTED], made an offer of \$128,300.00 for the real property. (Exhibit P-7). This offer of \$128,300.00 represents two-thirds of the 2022 Fair Market Value of \$192,300. (Exhibits P-11, R-9, and R-10).

13. Subsequently, on January 11, 2023, the real property was sold to Ms. S [REDACTED] and L [REDACTED] S [REDACTED], as evidenced by the settlement statement dated the same. (Exhibits P-8; R-9). The settlement statement was submitted to DFCS on January 19, 2023. (Exhibit P-12).

14. The net proceeds to Mr. H [REDACTED] were \$127,035.09 as evidenced by the settlement statement dated January 11, 2023. (Exhibit P-8).

15. These funds were utilized as follows:

- A \$7,000.00 reimbursement to N [REDACTED] S [REDACTED] for payment to Hurley Elder Care Law. (Exhibits P-14, P-15).
- A \$55,244.66 "gift" to N [REDACTED] S [REDACTED]. (Exhibit P-14).
- A \$64,380.24 loan to N [REDACTED] S [REDACTED]. (Exhibit P-14).¹
- \$410.19 to remain in checking for Mr. H [REDACTED]. (Exhibit P-16).

16. Mr. H [REDACTED] again applied for Medicaid through Gateway on January 18, 2023. (Exhibits P-9; R-6). The transactions indicated in Finding of Fact #15 were also reported to DFCS via Gateway on January 18, 2023. (Exhibit P-9). Additional documents were uploaded on January 19, 2023. (Exhibit P-12).

17. Mr. H [REDACTED], through Hurley Elder Care Law, requested a hearing on January 30, 2023, on the basis that DFCS decision was beyond the standard of promptness for changes reported on January 19, 2023. He requested that DFCS review and adjust the patient liability and issue a

¹ There is no promissory note included as an exhibit for the \$64,380.24 loan.

at 1232. All states have opted to participate and, thus, each must designate a single state agency to administer its Medicaid plan. Id.; 42 C.F.R. § 431.10(a), (b)(1). In Georgia, applicants may apply for Medicaid through Respondent, which issues guidelines on Medicaid eligibility in Section 3480 of its Economic Support Services Manual (hereinafter Medicaid Manual).³

Real Property

2. Policy Number 2316 of the Medicaid Manual describes homeplace property as it pertains to ABD Medicaid. Living arrangements (LA) are identified as either LA-A, LA-B, LA-C or LA-D. LA-D includes persons institutionalized in nursing homes. Medicaid Manual §§ 2316, 2340. The homeplace of an individual residing in LA-D is a countable resource effective the first full month that he or she resides in the LA-D. Medicaid Manual § 2316. However, the value of the homeplace may not be counted in the resource determination, as long as the individual remains in LA-D, retains ownership interest, and has equity value at or less than the excess home equity limit. Id.

3. The equity value of non-homeplace real property is a countable resource. Medicaid Manual § 2329. It is countable as of the first moment of the first day of the month of verification. Medicaid Manual § 2303. The equity value is the current market value less the following encumbrances: the amount of principal owed; any prepayment penalty; and any other debts (liens, loans, etc.). Id. The current market value of a resource is the going price for which it can reasonably be expected to sell on the open market in the particular geographic area involved. Id. For real property located in Georgia, the current market value is the assessed tax value multiplied by 2.5 unless this value is rebutted. Id.

³ The Medicaid Manual is available to the public at <http://odis.dhs.ga.gov/ChooseCategory.aspx?cid=1037>.

4. The value of non-homeplace real property is excluded from the calculation of the individual's countable resources while he or she is making bona fide efforts to sell it. Medicaid Manual §§ 2304, 2329. A bona-fide or good faith effort to sell is defined as follows: actual sale attempt at a price not more than current market value and a listing with a realtor or appropriate advertising such as in newspapers, radio, etc. and acceptance of any reasonable offer. Medicaid Manual § 2329. Evidence of a bona fide effort to sell includes any of the following: listing of the property with a realtor, a for sale sign on the property, advertisement in a newspaper, and has not refused a reasonable offer (two-thirds of current market value). A bona fide effort to sell is also defined in the Medicaid Manual. Medicaid Manual § 2304, p. 2304-2.

5. As applied, Petitioner opines that he met the requirements for a bona fide sale of non-homeplace property based on: an affidavit on December 20, 2022, from Petitioner notifying DFCS that he did not intend to return to the homeplace; a listing on Craigslist also on December 20, 2022; an offer from his daughter on December 27, 2022 for \$128,300.00 representing two-thirds of the current market value of the real property (\$192,300.00); and a subsequent closing on January 11, 2023, yielding net proceeds of \$127,036.09.

Transfer of Assets Penalty

6. An institutionalized individual who is found eligible for Nursing Home Medicaid is subject to a transfer of assets penalty if he or she “disposes of assets for less than fair market value on or after the look-back date,” which begins five years prior to the date of application. 42 U.S.C. § 1396p(c)(1); see also Medicaid Manual § 2342. “Assets” include “*all income and resources* of the individual and of the individual’s spouse.” 42 U.S.C. § 1396p(h)(1) (emphasis added). When a transfer penalty is imposed, Medicaid will not make vendor payments for an institutionalized individual’s long-term care services, including nursing home care, for the duration of the penalty.

However, the individual will continue to be otherwise covered by Medicaid. 42 U.S.C. § 1396p(c)(1)(A), (C)(i); Medicaid Manual § 2342.

7. In the present case, the undersigned concludes that the transaction at issue amounted to the sale of non-homeplace property, for which Respondent was required to calculate a transfer of assets penalty. While it is true that the applicable policy shelters the bona fide sale of real property from the resource calculation for purposes of determining eligibility, it does not require Respondent to discount the value of the property from the calculation of the transfer of assets penalty. See Medicaid Manual §§ 2304, 2329.

8. According to Petitioner's interpretation of the bona fide sale policy, Respondent should apply the transfer of assets penalty based solely on the gift to N■■ S■■. However, this would require that Respondent contravene the mandate to calculate the penalty based on the uncompensated value of the asset. *See* 42 U.S.C. § 1396p(c)(1)(D).

9. The number of months for which the transfer of assets penalty must be applied is determined by dividing the total uncompensated value of the assets. This results in a transfer of assets penalty period of fifteen months beginning March 1, 2023, and ending on May 31, 2024. Medicaid Manual § 2342-12.

Untimely notification

10. In addition to its argument regarding the amount of the transfer penalty imposed, Petitioner opines that because DFCS did not take action within ten (10) days of the receipt of the Petitioner's change in circumstances. Medicaid Manual § 2708. Such a requirement is directive in nature and there is no indication of harm to the Petitioner by any failure to do so. See Hardison v. Fayssoux, 168 Ga. App. 398, 400 (1983) (“[A] statute which directs that some act be done within a given

time period, but prescribes no penalty for not doing it within that time, is not mandatory but directory.”).

Burden of Proof

11. Because this matter concerns the proposed reduction or suspension of Petitioner’s Medicaid benefits, Respondent bears the initial burden of proof. Ga. Comp. R. & Regs. 616-1-2-.07(e). Petitioner bears the initial burden of proof regarding any affirmative defense. Id. The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4). Respondent has met its prima facie burden establishing a basis for imposition of the transfer resource penalty. ⁴

IV. Decision

Accordingly, DFCS’s decision to impose a transfer of assets penalty is **AFFIRMED** per notice issued on March 6, 2023.

SO ORDERED, this 4th day of August, 2023.



Steven W. Teate
Administrative Law Judge



⁴ A legal presumption exists that a resource is given away or sold for less than fair market value was transferred for the purpose of establishing Medicaid eligibility. 42 U.S.C. § 1396p(c); 20 C.F.R. § 416.1246(e); Johnson v. Llewellyn, 194 Ga. App. 186, 186 (1990); Johnson v. Ellis, 174 Ga. App. 861, 862 (1985). The Petitioner bears the burden of rebutting this presumption with “convincing evidence that the resource was transferred exclusively for some other reason.” 20 C.F.R. § 416.1246(e); see 42 U.S.C. § 1396p(c)(2)(C).