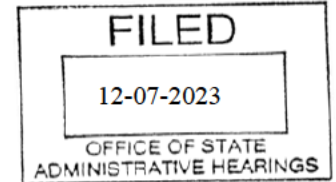


**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

IN RE A [REDACTED] P [REDACTED]
Petitioner.

*Petition for Direct Appeal to the Georgia
Office of State Administrative Hearings*

Docket No.: 2410831
2410831-OSAH-DIRECT APPEAL-
PET_M-148-Boggs



FINAL ORDER

I. INTRODUCTION AND PROCEDURAL HISTORY

On September 29, 2023, an administrator with Baptist Village Retirement Communities (“Baptist Village”) used an OSAH Form 2 to file a Petition for Direct Appeal (“Petition”) with the Office of State Administrative Hearings (“OSAH” or “Court”). The Petition was filed on behalf of A [REDACTED] P [REDACTED] and Baptist Village has identified itself as Ms. P [REDACTED]’s authorized representative. The Petition itself, however, was submitted to OSAH via email by Tiara Turner-Hudson, a legal assistant at Hall Booth Smith, P.C. Also copied on the email was Anna Stallings, Esq., with Hall Booth Smith. Attorney Stallings has identified herself as counsel for Baptist Village.

On October 3, 2023, the undersigned Administrative Law Judge ordered the Department of Human Services, Division of Family and Children Services (“DFCS”) to respond to the Petition within ten (10) business days. On October 20, 2023, DFCS filed a Motion to Dismiss the Petition for Direct Appeal (“Motion”). On October 22, 2023, Attorney Stallings filed a response to the Motion (“Response”).

II. PURPOSE OF PETITIONS FOR DIRECT APPEAL

An OSAH Form 2 is used to submit what is known as a “Petition for Direct Appeal.”

These petitions may be filed with this Court when the following occurs:

- (1) A party wants a hearing before this Court to challenge an adverse action taken by a state agency;
- (2) The party has submitted a request for a hearing to that agency; AND
- (3) after at least thirty (30) days (or a shorter period allowed by law), that agency does not send the hearing request to this Court for docketing and scheduling.

O.C.G.A. § 50-13-41(a); Ga. Comp. R. & Regs. 616-1-2-.03(2). In essence, a Petition for Direct Appeal is a party’s way of asking this Court to proceed with scheduling an administrative hearing, even if the agency delays sending the original hearing request to the Court.

The granting of a Petition for Direct Appeal shall be within the OSAH Judge’s discretion. Ga. Comp. R. & Regs. 616-1-2-.03(2)(d). Nevertheless, even if all three requirements listed above are met, an OSAH Judge can preside over a hearing only if she has authority to do so under the law. Pursuant to the Administrative Procedure Act, O.C.G.A. § 50-13-1 *et seq.*, OSAH’s jurisdiction is limited to “contested cases.” O.C.G.A. §§ 50-13-2(2), 50-13-41(a)(1). A contested case, in turn, is defined as “a proceeding . . . in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing.” *Id.* § 50-13-2(2). Furthermore, OSAH’s determination on a petition for direct appeal shall not be based on the merits of the purported contested case. Ga. Comp. R. & Regs. 616-1-2-.03(2)(d).

III. SUMMARIES OF PETITION AND MOTION TO DISMISS

In the Petition for Direct Appeal, Baptist Village alleges that a written request for a hearing was submitted on Ms. P█████’s behalf on August 3, 2023, and that DFCS has yet to transmit her request to this Court. The adverse action in question relates to Medicaid,

specifically that DFCS imposed a transfer penalty and denied an undue-hardship waiver. Baptist Village contends it was appointed as Ms. P█████'s authorized representative by Ms. P█████'s daughter, C█████ A█████. A written statement dated August 6, 2023, and signed by Ms. A█████ accompanied the Petition and states as follows:

I, C█████ A█████, POA [i.e., power of attorney] for my mother, give authorization for Baptist Village to represent my mother in the appeal process for the denial for Medicaid for the months of September, October and November 2022 due to a transfer penalty.

Also attached to the Petition is a copy of a "Durable Power of Attorney" document in which Ms. ██████ designates Ms. A█████ as her attorney-in-fact ("POA Document"). The document gives Ms. A█████ several powers, including the following:

- The authority to "*utilize all lawful means and methods* to . . . qualify [Ms. P█████ for such Government Benefits and claim such benefits on [her] behalf." Per the POA Document, "Government Benefits" expressly includes Medicaid.
- The authority "*to exercise any and all rights*" that Ms. ██████ may have "under any benefit program administered by the federal government or any of its subordinate agencies, including but not limited to . . . any other program, whether federal, state or private in which [Ms. ██████ has] any interest or under which [she] may be entitled to any benefits."
- The authority to "institute, supervise, prosecute, defend, intervene in, abandon, compromise, arbitrate, settle, dismiss, and appeal from any and all . . . *administrative hearings*" or other actions or proceedings involving her in any way.
- The authority to "*sign*" or "*endorse*" any agreements, options, conveyances, "or such other instruments in writing of whatsoever kind and nature as may be necessary or proper in the exercise of the rights and powers granted herein [i.e., in the POA Document]."
- Incidental powers that are "necessary, appropriate, incident or convenient" when exercising the enumerated powers. These incidental powers expressly include the power "to *sign*, execute, endorse, seal, acknowledge, deliver and file

or record *instruments and documents*, including but not limited to ... *consents.*”

The POA instrument states it is to be governed by the laws of the state of Florida. Ms. [REDACTED] signed the document on March 4, 2021; the signature was notarized and witnessed.

IV. CONCLUSIONS OF LAW

A. Brief Medicaid Overview

Medicaid is a joint federal-state program that provides comprehensive medical care for certain classes of eligible recipients whose income and resources are determined to be insufficient to meet the costs of necessary medical care and services. 42 U.S.C. § 1396 *et seq.*; *Moore v. Reese*, 637 F.3d 1220, 1232 (11th Cir. 2011). Participation is voluntary, “but once a state opts to participate it must comply with federal statutory and regulatory requirements.” *Moore*, 637 F.3d at 1232. All states have opted to participate and, thus, each must designate a single state agency to administer its Medicaid plan. *Id.*; *see also* 42 C.F.R § 431.10(a), (b)(1). Georgia has designated the Department of Community Health (“DCH”) as the “single state agency for the administration” of Medicaid. O.C.G.A. §§ 49-2-11(f), 49-4-142. However, individuals in Georgia apply for Medicaid through DFCS, which publishes guidelines for Medicaid eligibility in its *Medicaid Manual*. Dep’t of Human Servs., *Medicaid Manual*, available at <https://odis.dhs.ga.gov/General> (last accessed Dec. 6, 2023) (hereinafter “*Medicaid Manual*”).

It is undisputed that this Court has authority to adjudicate appeals of adverse actions pertaining to Medicaid eligibility. *See* O.C.G.A. §§ 49-4-13(a), 50-13-41(a); *see also Medicaid Manual*, App’x B-14. The question here is whether Baptist Village is authorized to request such an adjudication on Ms. P [REDACTED]’s behalf.

B. Review of Authorized Representative Authority

Under federal law, Medicaid applicants and beneficiaries are allowed to designate an individual or organization to act on their behalf. 42 C.F.R. § 435.923(a)(1), (b). Only the applicant/beneficiary or her “authorized representative” may submit a request for a fair

hearing in a Medicaid matter. *Id.* § 431.221(a)(1). Designation of this authorized representative requires the “applicant’s signature,” which can be electronic, telephonically recorded, or handwritten. *Id.* § 435.923(a)(1), (f). However, an alternative exists to signatory authorization:

Authority for an individual or entity to act on behalf of an applicant or beneficiary accorded under state law, including but not limited to, a court order establishing legal guardianship or a power of attorney, must be treated as a written designation by the applicant or beneficiary of authorized representation.

Id. § 435.923(a)(2). DFCS’s *Medicaid Manual* also addresses the role of “authorized representatives” in submitting fair-hearing requests for Medicaid applicants or recipients. *Medicaid Manual*, App’x B-1. The manual states that authorized representatives “must have written designation that includes the applicant’s signature.” *Medicaid Manual*, App’x B-1. However, “[c]ourt orders establishing legal guardianship or a valid power of attorney is [*sic*] to be treated as written designations.” *Id.*

The controlling federal regulation addresses the role of an authorized representative, as follows, in relevant part:

- (b) Applicants and beneficiaries may authorize their representatives to—
 - (1) Sign an application on the applicant’s behalf;
 - (2) Complete and submit a renewal form;
 - (3) Receive copies of the applicant or beneficiary’s notices and other communications from the agency;
 - (4) Act on behalf of the applicant or beneficiary in all other matters with the agency.

...

- (d) The authorized representative—

- (1) Is responsible for fulfilling all responsibilities encompassed within the scope of the authorized representation, as described in paragraph (b)(2) of this section, to the same extent as the individual he or she represents;
 - (2) Must agree to maintain, or be legally bound to maintain, the confidentiality of any information regarding the applicant or beneficiary provided by the agency.
- (e) The agency must require that, as a condition of serving as an authorized representative, a provider or staff member or volunteer of an organization must affirm that he or she will adhere to the regulations in part 431, subpart F of this chapter¹ [addressing safeguarding information on applicants and beneficiaries] and at 45 C.F.R. § 155.260(f) (relating to confidentiality of information), § 447.10 of this chapter (relating to the prohibition against reassignment of provider claims as appropriate for a facility or an organization acting on the facility's behalf), as well as other relevant State and Federal laws concerning conflicts of interest and confidentiality of information.

42 C.F.R. § 435.923.

C. Analysis

In its Motion to Dismiss, DFCS contends it did not receive a fair hearing request for Ms. ██████ from a duly authorized representative. Baptist Village did fax DFCS a hearing request for Ms. P█████ drafted by one of its administrators, on August 3, 2023. However, the request did not include any proof that Baptist Village serves as Ms. P█████'s authorized representative. Moreover, DFCS contends that Ms. A█████'s signed statement authorizing Baptist Village to represent her mother in the Medicaid appeal process does not meet the requirements for authorized representatives as laid out in federal law and DFCS's policies. The specific arguments are addressed below.

¹ References to "this chapter" in this cited subsection refers to Chapter IV of Title 42 of the U.S. Code.

Argument 1: Ms. [REDACTED] herself has not signed any document naming Baptist Village as her representative.

In this matter, Ms. A [REDACTED] herself would have clear authority to act as Ms. P [REDACTED]'s authorized representative, in that she has been appointed as her mother's attorney-in-fact. *See* 42 C.F.R. § 435.923(a)(2). What is less clear is whether Ms. A [REDACTED], as attorney-in-fact, can designate a third party to serve as her mother's authorized representative for purposes of filing a Medicaid hearing request. Neither federal authority nor the *Medicaid Manual* expressly addresses this specific circumstance.

That said, upon review the Court agrees with Baptist Village that it has been properly designated as Ms. P [REDACTED]'s authorized representative. The POA's provisions clearly allow Ms. A [REDACTED] "*to exercise any and all rights*" that Ms. [REDACTED] herself may exercise under the Medicaid program. One such right is the opportunity to designate an authorized representative. *See* 42 C.F.R. § 435.923(a)(1) (stating that agencies "must permit" applicants/beneficiaries to designate an authorized representative). Ms. A [REDACTED] also has broad authority to "*sign . . . instruments and documents*" on her mother's behalf, should the signatory power be "*necessary, appropriate, incident or convenient*" to exercise her other POA powers. Those powers, in turn, include the ability to "institute" and "prosecute" administrative hearings. Accordingly, Ms. P [REDACTED]'s clear intent, in executing this POA, was for Ms. A [REDACTED] to make all Medicaid-related decisions on her behalf.

To decide otherwise would contradict the very purpose of a POA. In this case, as indicated in the POA Document and pursuant to Georgia law,² the POA is to be interpreted under Florida law. And Florida law, in turn, defines a POA as "a writing that grants authority to an agent to act in place of the principal." FLA. STAT. § 709.2102(9). *See also Parisi v. Maria Isabel Quadri de Kingston*, 357 So. 3d 1254, 1258 (Fla. Ct. App. 2023) (stating that a POA "is an

² *See* O.C.G.A. § 10-6B-2 ("The meaning and effect of a power of attorney shall be determined by the law of the jurisdiction indicated in the power of attorney" *See also* FLA. STAT. § 709.2107(2).

important document because it allows one person to legally act for another, and it benefits and binds the principal as if the principal had done the act himself or herself”) (citation omitted). Hence, Ms. A■■■■’s designation of Baptist Village as her mother’s authorized representative should be treated as if Ms. ■■■■ had made the designation herself.

DFCS asserts here that the plain language in both 42 C.F.R. § 435.923 and the *Medicaid Manual* does not allow an attorney-in-fact’s signature to substitute for the applicant/beneficiary’s signature. This argument, however, fails for two reasons. First, 42 C.F.R. § 435.923 does not limit the substitutes for applicant/beneficiary signatures solely to guardianship orders or valid POAs as mentioned in the *Medicaid Manual*. Rather, the regulation refers to “[a]uthority for an individual to act on behalf of an applicant or beneficiary accorded under state law, *including but not limited to*” the mentioned court orders. *See* 42 C.F.R. § 435.923(a)(2) (emphasis added). *Cf. Crittenden v. White*, 346 Ga. App. 179, 184 (2018) (holding that departmental manual is not due the same deference as a statute, rule, or regulation). Given this phrasing, the types of “authority under state law” are not exclusive to guardianship orders or POAs. And as discussed *supra*, Ms. A■■■■’s signature, as attorney-in-fact, serves for all intents and purposes as the “applicant’s signature” under the controlling POA law. Second, the authors of 42 C.F.R. § 435.923³ intended for the types of “authority under state law” to be expansive rather than limited. In response to a public comment on the proposed regulation, the authors noted that “states may not limit authorized representatives” to individuals identified in legal documents, “or otherwise impose requirements other than those listed in § 435.923.” 78 Fed. Reg. 42160, 42174 (Jul. 15, 2013). Though not controlling, the Court finds the authors’ perspective persuasive as to the provision’s intent. Hence, the *Medicaid Manual* shall not be construed as limiting how authorized representatives can be designated.

³ The regulation was promulgated by the Department of Human Services’ Centers for Medicare and Medicaid. *See* 78 Fed. Reg. 42160 (Jul. 15, 2013). *See also* 42 U.S.C. § 1302(a).

In summary, 42 C.F.R. § 435.923 is not intended to create additional barriers Medicaid applicants or beneficiaries designating representatives to act on their behalf. Accordingly, the fact that the authorization came from Ms. A [REDACTED] as attorney-in-fact, does not prevent Baptist Village from proceeding as the designated representative for Ms. P [REDACTED]

Argument 2: The designation signed by Ms. A [REDACTED] is fatally flawed because it only gives Baptist Village limited authority over Medicaid matters.

DFCS contends that Baptist Village’s designation as the authorized representative fails to meet the requirements of 42 C.F.R. § 435.923, in that the designation limits Baptist Village’s authority to the Medicaid appeal. This argument proves unavailing. First subsection (b) states that an applicant/beneficiary “*may*” authorize their representative to do four listed certain actions, including signing applications, completing renewals, receiving agency communications, and the catch-all of handling “all other matters” with the Medicaid agency. The word “may” is permissive, thus indicating that the applicant/beneficiary is not required to delegate authority for all four listed actions, but instead could delegate authority for specific actions. Second, the regulation and the *Medicaid Manual* never expressly require the authorized representative’s specific powers to be memorialized in writing. The only definite requirement is that the written designation include the applicant/beneficiary’s signature. *See* 42 C.F.R. § 435.923(a), (f); *Medicaid Manual*, App’x B-1.⁴ Third, though not controlling, the Court finds persuasive the perspective of the authors when drafting 42 C.F.R. § 435.923. Before the regulation was finalized, a public commenter had asked for clarification “on whether the scope of the authorization is defined by the beneficiary or applicant, or whether, once invoked, the representative assumes all the duties named in the regulations, including ‘all other matters’ with either agency.” 78 Fed. Reg. at 42175. The authors responded as follows: “We clarify that the scope of the authorization is *defined by the Medicaid applicant*

⁴ In contrast, the designation of an “appointed representative” to assist in Medicare matters does require “a written explanation of the purpose and scope of the representation” to be valid. 42 C.F.R. § 405.910(c).

or beneficiary.” *Id.* (emphasis added). Accordingly, the Court finds no fatal error with Baptist Village’s limited authority to solely handle the Medicaid appeal.

Argument 3: The designation is fatally flawed because Baptist Village has not yet agreed to comply with confidentiality standards.

DFCS argues that the authorized-representative delegation should not be recognized by this Court because it fails to acknowledge Baptist Village’s “duty of confidentiality.” Subsections (d)(2) of 42 C.F.R. § 435.923 does require all authorized representatives to “agree to maintain, or be legally bound to maintain,” confidential information about their principals provided by the agency. However, the regulation does not require this agreement to be memorialized in writing. As noted *supra*, the regulation only requires the signature of the applicant/beneficiary, as opposed to also requiring the representative’s signature. And lastly, as noted in the Petitioner’s Reply, Baptist Village is a health care provider and thus already “legally bound” to comply with confidentiality provisions in the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). *See* 45 C.F.R. § 160.103.

That said, pursuant to subsection (e) of 42 C.F.R. § 435.923, a state Medicaid agency “must require” a provider or organization serving as an authorized representative to “affirm” that it will adhere to certain confidentiality and conflict-of-interest restrictions. By all accounts, Baptist Village has not made such an affirmance to DFCS. Nevertheless, the Court is not convinced that this omission invalidates the delegation on its face. First, the regulation is silent as to what form this affirmance must take, or whether it must be submitted contemporaneously with the applicant/beneficiary’s signed delegation. Again, the only express requirement for delegating an authorized representative to act is the applicant/beneficiary’s signature.⁵ Second, in the instant matter, the only action Baptist

⁵ In contrast, a written authorization for an “appointed representative” in a Medicare matter must include the representative’s signature as well as authorization for the adjudicator to release identifiable health information.

Village has taken thus far on Ms. Payette's behalf is submitting a hearing request—a minimal, unilateral action that does not yet called for the sharing of confidential information. Third, such a defect can be quickly cured, by having Baptist Village provide the required affirmance pursuant to subsection (e) before DFCS releases any confidential information regarding Ms. P [REDACTED]⁶

V. CONCLUSION

For the foregoing reasons, DFCS's Motion to Dismiss the Petition for Direct Appeal is hereby **DENIED**. The Petition for Direct Appeal is **GRANTED**, with the condition that, in the forthcoming adjudication before this Court, DFCS reserves the right to challenge Baptist Village's adherence to subsection (e) of 42 C.F.R. § 435.923, in the event Baptist Village does not proffer the required affirmance prior to the hearing date. This matter shall be referred to the Clerk's Office for docketing as a contested case **with a new docket number**.

SO ORDERED, this 7th day of December, 2023.

Lisa Boggs

Lisa Boggs
Administrative Law Judge



⁶ DFCS does not provide a standardized form for authorized-representative designations. Nor does the *Medicaid Manual* mention the need for a provider or organization to affirm its adherence to confidentiality and conflict-of-interest laws.