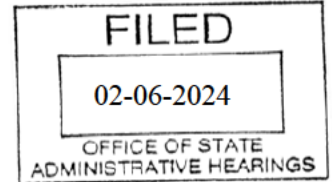


**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

IN RE H [REDACTED] H [REDACTED],
Petitioner.

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

Docket No.: [REDACTED]
[REDACTED]-OSAH-DIRECT APPEAL-
PET_M-25-Boggs



FINAL ORDER

I. INTRODUCTION

Cortney Gonzalez, an applicant support specialist with Eldercare Resource Planning, LLC, has used an OSAH Form 2 to file a Petition for Direct Appeal, which the Office of State Administrative Hearings (“OSAH”) received on January 22, 2024. **A copy of the OSAH Form 2 and its attachments has been included with this Order.**

In this Petition for Direct Appeal, Ms. Gonzalez requests permission to file a hearing request directly with OSAH, pursuant to O.C.G.A. § 50-13-41(a)(1) and Ga. Comp. R. & Regs. 616-1-2-.03. Ms. Hill submits this request on behalf of H [REDACTED] H [REDACTED], a former resident of a skilled-nursing facility whose Medicaid application had been denied by the Department of Human Services, Division of Family and Children Services (“DFCS”). Ms. Gonzalez provides the following timeline of relevant events:

- In November 2021, Ms. H [REDACTED]’s daughter, H [REDACTED] H. W [REDACTED], was appointed her mother’s conservator by the Probate Court of Chatham County, Georgia.
- In May 2023, Ms. W [REDACTED], in her role as conservator, authorized Ms. Gonzalez to serve as Ms. H [REDACTED]’s authorized representative in Medicaid matters.
- On September 4, 2023, a Medicaid application was submitted to DFCS on Ms. H [REDACTED]’s behalf.
- On September 9, 2023, Ms. H [REDACTED] was admitted to [REDACTED], a skilled-nursing facility.

- On October 9, 2023, Ms. H [REDACTED] passed away.
- In a notice dated December 27, 2023, DFCS stated it was denying Ms. H [REDACTED]'s Medicaid application.
- On or around January 18, 2024, Ms. Gonzalez submitted a hearing request to DFCS to challenge the Medicaid denial in Ms. H [REDACTED]'s case.¹
- On January 22, 2024, Ms. Gonzalez filed the instant Petition for Direct Appeal.

II. ANALYSIS

The Petition for Direct Appeal filed by Ms. Gonzalez cannot prevail for two reasons. First, the petition is not ripe for adjudication. Petitions for direct appeal may be filed when the following occurs:

- (1) a party has already submitted a hearing request to a State agency that took an adverse action against the party;
- (2) **AND** after at least thirty (30) days (or a shorter period allowed by law), that agency does not send the hearing request to OSAH for docketing and scheduling.

O.C.G.A. § 50-13-41(a)(1); Ga. Comp. R. & Regs. 616-1-2-.03(2)(a). Direct appeal is a party's way of asking OSAH to proceed with scheduling a hearing, even if the other agency delays sending the original hearing request to OSAH. *Id.* But here, 30 days have not yet elapsed since the hearing request in question was submitted to DFCS.

Second, even if the Petition for Direct Appeal had been ripe for adjudication, Ms Gonzalez lacks standing to bring such an action on behalf of the deceased Ms. H [REDACTED]. Under the Administrative Procedure Act, O.C.G.A. § 50-13-1, *et seq.*, petitions for direct appeal must be filed by "the party requesting the hearing." O.C.G.A. § 50-13-41(a)(1). "Party," in turn, is defined as a person or agency who is "named or admitted as a party or properly seeking and entitled as of

¹ The OSAH Form 2 states the hearing request was submitted on January 18, 2024. The hearing request itself, which accompanied the OSAH Form 2, is dated January 15, 2024.

right to be admitted as a party.” Id. § 50-13-13(2) (emphasis added). In this matter, the “party” is Ms. H■■■■■, who is “entitled as of right” to appeal DFCS’s adverse decision affecting Medicaid. See 42 C.F.R. § 431.220 (addressing right to hearing in Medicaid matters).

Ms. Gonzalez contends that she can file this Petition for Direct Appeal in Ms. H■■■■■’s stead because she has been appointed the authorized representative for Medicaid purposes. Neither the controlling federal regulation, 42 C.F.R. § 435.923,² nor Georgia’s Medicaid Manual³ expressly addresses whether an authorized representative’s powers survive the Medicaid applicant/beneficiary’s death.⁴ That said, an analogy can be drawn from the endurance of powers held by an attorney-in-fact and a legal guardian, both of whom can serve as Medicaid authorized representatives in the State of Georgia. See 42 C.F.R. § 435.923(a)(2); Medicaid Manual, App’x B, p. 2. Under Georgia law, a power of attorney terminates upon the death of the principal, and a legal guardianship terminates upon the death of the adult ward. See O.C.G.A. §§ 10-6B-10(a)(1), 29-4-42(e). The authority to act on the former principal/ward’s behalf would then transfer to the decedent’s estate. See O.C.G.A. § 53-7-1 et seq. (addressing powers and duties in administration of estates); Myers v. Myers, 297 Ga. 490, 494 (2015) (stating that administrator or executor has

² Section 435.923 requires the state agency managing Medicaid to “permit applicants and beneficiaries to designate an individual or organization to act responsibly on their behalf in assisting with the individual’s application and renewal of eligibility and other ongoing communications with the agency.” 42 C.F.R. § 435.923(a).

³ The manual is available at <https://odis.dhs.ga.gov/General>, under “Manuals and Policies / Division of Family and Children Services.” (Last accessed Feb. 5, 2024.)

⁴ Subsection (c) of Section 435.923 does address when an authorized representative’s powers end, but primarily in the context of the applicant/beneficiary being alive (emphasis added):

The power to act as an authorized representative is valid until the applicant or beneficiary *modifies* the authorization or *notifies* the agency that the representative is no longer authorized to act on his or her behalf, or the authorized representative informs the agency that he or she no longer is acting in such capacity, or there is a change in the legal authority upon which the individual or organization’s authority was based. Such notice must be in accordance with paragraph (f) of this section and *should include the applicant* or authorized representative’s signature as appropriate.

general duty to settle the estate “with as little sacrifice of value as is reasonable”). In essence, authorized representatives “derive their authority . . . through the [Medicaid applicant/beneficiary’s] personal assignment of these powers.” Carespring Healthcare Mgmt., LLC v. Dungey, No. 1:16-cv-1051, 2018 U.S. Dist. LEXIS 34460, at *37 (S.D. Ohio Mar. 2, 2018). “When a [Medicaid applicant/beneficiary] dies, the authority to act on that [applicant/beneficiary’s] behalf no longer can come from that individual’s assignment, but must instead come from his or her estate.” Id. See also Hillspring Health Care Ctr., LLC, v. Dungey, No. 1:17-cv-35, 2018 U.S. Dist. LEXIS 1337, at *16-18 (S.D. Ohio Mar. 2, 2018) (analyzing series of cases where attorney-in-fact or representative was deemed to have lost power over Medicaid appeals upon applicant/beneficiary’s death); cf. Diversicare v. Glisson, No. 16-141-HRW, 2017 U.S. Dist. LEXIS 178392, at *11 (E.D. Ky. Oct. 27, 2017) (concluding that nursing home serving as the Medicaid authorized representative could not represent resident in federal suit after the resident’s death, because “only an administrator of her estate could bring a federal claim on her behalf”).

Here, it was the conservator, rather than Ms. H [REDACTED] herself, who signed the form authorizing Ms. Gonzalez to act as the authorized representative. Yet even assuming—without deciding—that the conservatorship order gave Ms. W [REDACTED] the appropriate authority to appoint an authorized representative for her mother,⁵ that conservatorship ended as a matter of law upon

⁵ Georgia law makes clear that, “unless inconsistent with the terms of any court order relating to the conservatorship,” a conservator has authority to “[b]ring, defend, or participate in legal, equitable, or administrative proceedings . . . as are appropriate for the support, care, education, health, or welfare of the ward in the name of or on behalf of the ward.” O.C.G.A. § 29-5-23(a)(6) (emphasis added). Furthermore, Georgia law specifies that, unless otherwise ordered, a conservatorship removes from the ward the authority to “[b]ring or defend any action at law or equity.” Id. § 29-5-21(a)(5) (emphasis added). Based on these provisions, a conservator’s authority in the State of Georgia could encompass serving as an authorized representative in the context of a Medicaid appeal. See 42 C.F.R. § 435.923(a)(2) (requiring states to recognize authorized representatives who are granted authority “to act on behalf of an applicant or beneficiary *accorded under state law*”). That said, the OSAH Form 1 only included a copy of the “Letters of Conservatorship,” rather than the actual court order granting the conservatorship. And without a copy of that order, the undersigned cannot determine whether the issuing court has enacted any terms “inconsistent” with the

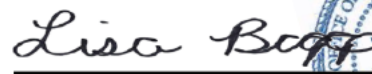
Ms. H [REDACTED]'s death. See O.C.G.A. § 29-5-72(e).⁶ And upon the termination of that conservatorship, the basis for Ms. Gonzalez's designation as authorized representative also ended. See 42 C.F.R. § 435.923(c) (stating that power to act as an authorized representative is valid until "there is a change in the legal authority upon which the individual or organization's authority was based"); see also L.M. v. Div. of Med. Assistance & Health Servs., No. A-6014-17T1, 2020 N.J. Super. Unpub. LEXIS 791, at *9 (N.J. Super. App. Div. Apr. 30, 2020) (concluding that nursing home appointed as authorized representative by resident's attorney-in-fact could no longer represent resident after her death, because the power of attorney had ended at her death).

In summary, Ms. Gonzalez no longer had authority to pursue Ms. H [REDACTED]'s Medicaid claims as of October 9, 2023, the date of Ms. H [REDACTED]'s death. Instead, that authority now rests with Ms. H [REDACTED]'s estate. See Dungey, 2018 U.S. Dist. LEXIS 1337, at *16-18.

III. CONCLUSION

Because (i) this matter is not ripe for consideration; and (ii) Ms. Gonzalez lacks standing to bring this action, the Petition for Direct Appeal is hereby **DISMISSED**. However, this dismissal shall be **WITHOUT PREJUDICE**, to the extent that Ms. H [REDACTED]'s estate or another properly authorized entity remains free to file a new OSAH Form 2 after 30 days or more have elapsed from the submission of the hearing request in question.

SO ORDERED, this 6th day of February, 2024.



Lisa Boggs
Administrative Law Judge



conservatorship powers described by Georgia statute.

⁶ This section states as follows: "The death of the ward automatically terminates the conservatorship except for purposes of the final settlement of the petition for letters of discharge, as provided in Code Section 29-5-81." The cited section, 29-5-81, refers to the conservator participating in the final settlement of accounts with the decedent's personal representative.