



OKLAHOMA DEPARTMENT OF HUMAN SERVICES



Appeals Unit

P.O. Box 25352

Oklahoma City, OK 73125-0352

Telephone: (405) 521-3638 • Facsimile: (405) 522-6065

FEBRUARY 7, 2017

Mr. Richard Winblad  
Attorney at Law  
102 E Thatcher St  
Edmond, OK 73034

Dear Mr. Winblad

**RE: FAIR HEARING DECISION**

██████████, MARIAN  
A157232, H-60211

An Administrative Fair Hearing was held on Tuesday, January 31, 2017, for your appeal on the decision of the Oklahoma 55C County Department of Human Services (DHS).

### Issue

The issue(s) for this appeal is found in the DHS official notifications dated November 30, 2016, which notified Ms. ██████████ of the denial of her application for medical assistance for nursing facility (NF) care due to excess countable resources and a transfer of assets without fair market return.

### The Facts

- On 05-26-16, Ms. ██████████ entered the Bradford Village nursing facility for Medicare skilled nursing services.
- On 08-17-16, she was transferred to intermediate nursing care.
- On 09-30-16, the NF submitted forms to DHS requesting Medicaid services for Ms. ██████████.
- The request was denied as Ms. ██████████ failed to submit requested information to DHS.
- On 11-09-16, the NF submitted a second request for Medicaid services to begin 09-29-16.
- The application was eventually denied due to excess resources and transfer of assets involving the home on Brinkley Street in OKC, OK and contributions to a local church.
- DHS contends additional information has been provided by the representatives concerning the countable resources and income which confirm her eligibility date as of 01-26-17. However issues concerning the transfers would impose a transfer penalty of 287 days.
- As her legal representative you submitted evidence to indicate the property in question was sold for fair market value considering other sales in the area.

- The payment made by Ms. [REDACTED] to her sister concerning the sale of the home was based on an oral promise to split the proceeds at the sale of the home.
- The contributions to the church were tithes she gave to her church which she had attended since 1990 and had established a pattern of giving to the church.
- You contend DHS should not impose any transfer penalties and the application be approved 01-26-17.

## The Law

### **OAC 317:35-19-20. Determining financial eligibility of categorically needy individuals**

Revised 9-24-13

Financial eligibility for NF medical care is determined as follows:

**(6) Transfer of assets on or after February 8, 2006.** An institutionalized individual, an institutionalized individual's spouse, the guardian or legal representative of the individual or individual's spouse who disposes of assets on or after February 8, 2006 for less than fair market value on or after the look-back date specified in (A) of this paragraph subjects the individual to a penalty period for the disposal of such assets.

(A) For an institutionalized individual, the look-back date is 60 months before the first day the individual is both institutionalized and has applied for medical assistance. However, individuals that have purchased an Oklahoma Long-Term Care Partnership Program approved policy may be completely or partially exempted from this Section depending on the monetary extent of the insurance benefits paid.

(B) For purposes of this paragraph, an "institutionalized" individual is one who is residing in an NF.

(C) The penalty period will begin with the later of:

(i) the first day of a month during which assets have been transferred for less than fair market value; or

(ii) the date on which the individual is:

(I) eligible for medical assistance; and

(II) receiving institutional level of care services that, were it not for the imposition of the penalty period, would be covered by SoonerCare.

(D) The penalty period:

(i) cannot begin until the expiration of any existing period of ineligibility;

(ii) will not be interrupted or temporarily suspended once it is imposed;

(iii) When there have been multiple transfers, all transferred assets are added together to determine the penalty.

(E) The penalty period consists of a period of ineligibility determined by dividing the total uncompensated value of the asset by the average cost to a private patient in a nursing facility in Oklahoma shown on OKDHS Appendix C-1. In this calculation, the penalty must include a partial month disqualification based upon the relationship between that fractional amount and the average cost to a private patient in a nursing facility in Oklahoma. There is no limit to the length of the penalty period for these transfers. Uncompensated value is defined as the difference between the fair

market value at the time of transfer less encumbrances and the amount received for the resource.

(H) A penalty would not apply if:

(ii) the individual can show satisfactorily that the intent was to dispose of assets at fair market value or that the transfer was exclusively for a purpose other than eligibility. It is presumed that any transfer of assets made for less than fair market value was made in order to qualify the individual for SoonerCare. In order to rebut this presumption, the individual must present compelling evidence that a transfer was made for reasons other than to qualify for SoonerCare. It is not sufficient for an individual to claim that assets were transferred solely for the purposes of allowing another to have them with ostensibly no thought of SoonerCare if the individual qualifies for SoonerCare as a result of the transfer.

## Analysis

Testimony revealed Ms. [REDACTED] was given ½ of the property in question when her mother passed away. Her sister, Ms. [REDACTED] transferred her ½ of the property in 2009 to her detriment to allow Ms. [REDACTED] to qualify for some type of community rehab grant to repair the home.

Testimony also revealed once the home was repaired, Ms. [REDACTED] continued to reside in the home until 2012-2013 when her health required her to move in with her daughter. The home was rented and sustained damages.

## Conclusion

The Appeals Committee finds you have submitted sufficient evidence to establish Ms. [REDACTED]'s eligibility for NF care effective January 26, 2017.

Testimony and evidence established there should be no transfer penalties applied due to the sale of the home, payment made to Ms. [REDACTED] or the contributions provided to Ms. [REDACTED]'s church.

The appeal has been decided in Ms. [REDACTED]'s favor.

This decision is final unless you ask the Director of the Department of Human Services to review the decision. If you want the Director to review this decision, your written request for review must be received by OKDHS within thirty days of the date on this decision. The thirty days to appeal begins on the day after the date at the top of this letter, **not** on the day you receive this letter. Your request for review should say why you disagree with this decision.

Whether you appeal to the Director or not, OKDHS will implement this decision immediately. This means that if your benefits were supposed to end or be reduced, and were continued while the hearing proceedings were going on, OKDHS will end or reduce your benefits now. If this happens, you will get a notice that says your benefits will be ended or reduced. You do not have the right to appeal that notice.

If you ask for the Director to review your decision, you have the right to be represented by anyone you want, including a lawyer. However, OKDHS will not provide a lawyer or

non-lawyer representative for you. The director will not hold a new hearing, but will review the evidence from your hearing file, along with your request for review.

Should you have further question, it is suggested that you contact the Oklahoma 55C County Department of Human Services office, in Oklahoma City, Oklahoma.

Sincerely,

A handwritten signature in blue ink that reads "Robin L. Hodges". The signature is written in a cursive style with a large, sweeping initial "R".

Robin L. Hodges  
Administrative Hearing Officer II  
Appeals Unit

C: Okla. Co. 55C (35-04)  
Linda Cavitt – SO/AFS  
File