



OKLAHOMA DEPARTMENT OF HUMAN SERVICES

Appeals Unit  
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Oklahoma City, OK 73125-0352

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APRIL 27, 2016



Mr. Richard Winblad  
Attorney at Law  
102 East Thatcher  
Edmond, OK 74034

Dear Mr. Winblad

RE: FAIR HEARING DECISION

██████████ CLARA  
██████████

An Administrative Fair Hearing was held on December 1, 2015, for your client's appeal on the decision of the Tulsa 72B County Department of Human Services. The hearing was reconvened on April 13, 2016.

### Issue

The issue(s) for this appeal is found in the DHS official notification forms dated September 22, 2015 and October 6, 2015 which notified Ms. ██████████ of the denial of your application for medical assistance for nursing facility (NF) care due to a transfer of assets without fair market return.

DHS reported transfers of \$60,570.00 which resulted in transfer penalty of 422 days starting September 14, 2015 through November 8, 2016.

In addition, there were questions concerning the payment of burial expenses.

On April 23, 2016, DHS amended the issue indicating the issue concerning the burial expenses has been resolved and the only issue left is a transfer of assets totaling \$106,311.78 resulting in a penalty period beginning May 13, 2015. DHS was instructed to produce an official notice concerning the amended transfer penalty.

### The Facts

- Based on testimony and evidence presented by DHS, DHS' position is as follows:
- On 04-25-14, Ms. ██████████ was admitted to the NF as a private pay patient.
- On 02-17-15, an application was for NF care with DHS.
- On 04-21-15, the application was denied by DHS for failure to provide requested information.
- On 08-21-15, a new application was submitted.
- On 09-09-15, an interview was held with Her grandson

- During the application process, DHS reviewed bank statements provided which revealed numerous checks in varying amounts written to various individuals including 5 family members – 2 daughter and 3 grandchildren.
  - The family notified DHS the checks were issued as payment for care rendered to Clara and her husband [REDACTED]. Discussions concerning medical necessity were held but there was "no clear cut answer" to issue of medical necessity.
  - DHS was advised Clara had a lot of medical issues and then DHS was told the individuals providing the care only sat with the couple to provide supervision to keep them from falling.
  - Medical documentation to determine Mr. and Mrs. [REDACTED]'s medical condition was not requested.
  - DHS was aware of [REDACTED]'s desire to be care for at home instead of a nursing facility as per a signed statement on 03-16-99.
  - The family agreed to pay various family members \$10.00 an hour and non-family members \$12.00 an hour to care for both Clara and [REDACTED] for a period of time starting in 2011 through her admission to the NF. However, the payment records show payment rates from \$7.25 to \$21.44 an hour.
  - DHS did not contest the payments made to non-family members.
  - DHS agreed the couple needed some form of care, but without medical documentation, it is not possible to determine if the care they received was fair market return.
  - DHS believes the payment of services to family members was a transfer of assets due to no written agreement or contract; no set schedule, no qualification of caregivers was provided; and no evidence to show the caregivers filed taxes on payments received.
  - DHS believes a total of \$106,311.78, which is the total of care payments to family members and utility payments on the trailer, was transferred without fair market return. Therefore a transfer penalty should be imposed resulting in the denial of the application.
- 
- Based on testimony of grandson and other evidence presented, your position is:
  - On 03-16-99, husband [REDACTED] signed a statement concerning his desire to not enter a nursing home for care.
  - Due to age and health, the [REDACTED]'s sold their home and moved into a double-wide trailer which was purchased by their daughter [REDACTED] Ms. [REDACTED] paid \$18,000.00 for the trailer and the trailer was placed on her land.
  - Based on a family agreement, The applicant's assets were used to provide personal care to Clara and [REDACTED] in order to keep them from entering a care facility. It was agreed to pay family members \$10.00 an hour and non-family members \$12.00 an hour.
  - Due to husband [REDACTED]'s behaviors the caregivers were family members and close friends of the family.
  - Each care giver would note their hours worked on a note pad which was monitored by the daughter, Ms. [REDACTED]. Any payment was issued after care had been provided. Taxes were not withheld from the payments to the caregivers.
  - You believe the [REDACTED]'s received fair market value for the care rendered to them.
  - In August 2013, husband [REDACTED] passed away. Clara continued to reside in the trailer until her admission to the NF in April 2014. Ms. [REDACTED], Clara's daughter, passed away in April 2014.



- Adult Protective Services have conducted 2 investigations which revealed no concerns with the [REDACTED]'s financial affairs.
- DHS has misapplied the use of the Social Security Program Operations Manual System (POMS) and that such POMS are applicable in this case.
- You conclude, indicating the [REDACTED]s used their assets to provide care in their home instead of entering a nursing home. They did not transfer assets in order to qualify for NF care.

## 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.

## Analysis

The Appeals Committee finds the couple did require care during the period in question. DHS did not make a request to the family to provide medical documentation to determine the level of care required during the time the individuals were being paid.

DHS did not contest the care provided by non-family members or payments made to non-family members.

Unrefuted testimony revealed the couple suffered from medical conditions including dementia, Alzheimer's, gall bladder and hip surgery. In addition they had fallen in the home. Home health nurses came to home to monitor the health needs of the couple. The care duties of family members included supervision, cooking, cleaning, bathroom assistance, ambulation assistance, transportation, shopping and medication reminders.

The Appeals Committee finds the testimony and or other evidence establishes care was needed and provided to the couple. According to DHS figures, during the period of 2011-2012, 48% of the hours provided were paid at a rate less than \$10.00 and 50% of the hours were paid at a rate between \$10.00 and \$12.72.

Testimony revealed the [REDACTED]'s expenses have been examined in District Court during guardianship proceedings and during two APS investigations. No negative findings were found during such reviews.

Based on the duties described above, the care payments appear to be reasonable and would be considered fair market return for Ms. [REDACTED].

Concerning the issue of the transfer of assets to pay housing expenses involving utility payment, the Appeals Committee concurs with DHS that a transfer penalty would be in accordance with agency regulations.

Ms. [REDACTED] was not the owner of the property and testimony presented by the agency suggested the NF records did not confirm the weekend visits.

Therefore the \$1983.92 would be considered a transfer of assets without fair market return. A transfer penalty of 13 days (\$1983.92 ÷ \$143.70) would be imposed according to the above policy starting May 13, 2015. At the conclusion of the penalty, Ms. [REDACTED] may be approved for NF care effective May 27, 2015.

## Conclusion

The Appeals Committee finds the testimony and evidence presented establishes Ms. [REDACTED]'s application for medical assistance for NF care may be approved effective May 27, 2015.

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



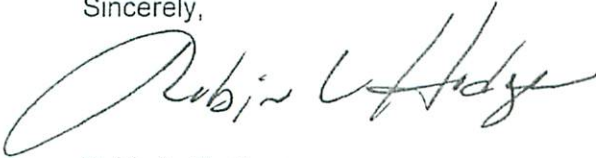
request for review must be received by OKDHS within thirty days of the date on this decision. The thirty days to appeal begins on the day after the date at the top of this letter, **not** on the day you receive this letter. Your request for review should say why you disagree with this decision.

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 Tulsa 72B County Department of Human Services office, in Tulsa, Oklahoma.

Sincerely,

A handwritten signature in black ink, appearing to read "Robin L. Hodges". The signature is fluid and cursive, with a large loop at the beginning and a long, sweeping tail.

Robin L. Hodges  
Administrative Hearing Officer II  
Appeals Unit

C: Tulsa Co. 72B (13-05)  
SO Legal - John Dewey  
File