

STATE OF NORTH CAROLINA  
COUNTY OF BEAUFORT

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
21 DHR 03872

Donald McCloud Petitioner,  v.  NC Department of Health and Human Services Respondent.	<b>FINAL DECISION GRANTING SUMMARY JUDGMENT FOR RESPONDENT</b>
---	--

THIS MATTER is before the Undersigned upon the North Carolina Department of Health and Human Services' ("Respondent") Motion for Summary Judgment ("Motion") filed on October 18, 2022. Without response from Petitioner, this matter is now ripe for adjudication. Having carefully considered the Motion and attachments, and all matters of record appropriate for consideration, the Undersigned GRANTS said Motion as follows.

**APPEARANCES**

Petitioner:	No Response
Respondent:	Maria Elizabeth Bruner Assistant Attorney General North Carolina Office of the Attorney General PO Box 629 Raleigh, NC 27602 Attorney For Respondent

**ISSUE**

Whether Respondent violated the Administrative Procedure Act ("APA") by denying Petitioner's request for an undue hardship waiver of Medicaid estate recovery under North Carolina's Medicaid State Plan ("State Plan").

## **FINDINGS OF FACT**

1. The entry of findings of fact is not necessary when an Administrative Law Judge (“ALJ”) grants a motion for summary judgment. *Hyde Ins. Agency, Inc. v. Dixie Leading Corp.*, 26 N.C. App. 138, 142, 215 S.E.2d 162, 165 (1975); N.C. Gen. Stat. § 150B-34(e). However, to provide context for the below Decision, the Undersigned relies on the Petition, Prehearing Statements and averments contained in the Motion for Summary Judgment, which have not been disputed by Petitioner.

2. Petitioner submitted an application for an undue hardship waiver or deferral on April 21, 2021, after being notified by Respondent that Medicaid was a creditor and had a claim against the Estate of Gloria Holloway, Petitioner’s mother, in the amount of \$29,095.62.

3. Respondent notified Petitioner on or about July 8, 2021 that his request for an undue hardship waiver was denied because there was not sufficient documentation supplied to substantiate all of Petitioner’s yearly income for 2019 and 2020.

4. Petitioner filed this contested case contesting the denial.

## **CONCLUSIONS OF LAW**

1. Summary judgment is proper where, as here, "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." N.C.G.S. § 1A-1, Rule 56(c).

2. All evidence must be viewed in the light most favorable to the opposing party, taking its asserted facts as true, and drawing all reasonable inferences in its favor. *Kennedy v. Guilford Tech. Community College*, 115 N.C. App. 581, 583, 448 S.E.2d 280, 281 (1994). The party

seeking summary judgment bears the initial burden of demonstrating the absence of any genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

3. Respondent is responsible for North Carolina's ("the State") Medicaid program. N.C. Gen. Stat. § 108A-54 (authorizing Respondent to establish a Medicaid Program and administer it in accordance with, among other things, the State Plan). This includes administering the State's Medicaid Estate Recovery Plan.

4. Mandated by federal law, the Medicaid Estate Recovery Plan requires the State "to recover from the estates of recipients of medical assistance an equitable amount of the State and federal shares of the cost paid for the recipient." N.C. Gen. Stat. § 108A-70.5(a) While recovery is mandated by federal law, individual states are allowed to develop its own hardship provisions and the procedures for implementation. 42 U.S.C.S. § 1396p(b)(3).

5. The State's "undue hardship" provisions are contained in the State Plan. By law, the State Plan "has the force and effect of rules adopted" pursuant to the APA. N.C. Gen. Stat. § 108A-54.1B(d). North Carolina courts have noted that "[w]here an agency has the authority to act, its rules and regulations have the binding effect of statutes [.]” *In re Declaratory Ruling by N. Carolina Com'r of Ins. Regarding 11 N.C.A.C. 12.0319*, 134 N.C. App. 22, 30, 517 S.E.2d 134, 140 (1999).

6. Per the State Plan, an "undue hardship waiver may be a full or partial waiver of the State's estate recovery claim or a time-limited waiver, also known as a deferral. In order for a claim of undue hardship to be granted, the qualified undue hardship applicant must meet **all** of the requirements for at least one of the three undue hardship definitions.

7. There is no genuine issue that: (i) the Estate is subject to estate recovery; and that (ii) Petitioner does not meet *all* of the requirements for at least one of the State Plan's undue hardship definitions.

8. Given the above, the burden shifts to Petitioner to produce facts, as opposed to mere allegations, to defeat the Motion. "The purpose of Rule 56 is to prevent unnecessary trials when there are no genuine issues of fact and to identify and separate such issues if they are present." *Kidd*, 289 N.C. at 352, 222 S.E.2d at 410.

9. Petitioner has not established any facts which would controvert the facts set forth by Respondent.

10. Accordingly, the Undersigned concludes that the Respondent did not violate the APA when it denied Petitioner's request for an undue hardship waiver of Medicaid estate recovery under the State Plan. As a result, the Respondent's Motion for Summary Judgment should be GRANTED.

### **FINAL DECISION**

IT IS THEREFORE ORDERED that the Motion for Summary Judgment is hereby GRANTED. Denial of Petitioner's request for an undue hardship waiver of Medicaid estate recovery is affirmed and Petitioner's contested case is hereby dismissed.

### **NOTICE OF APPEAL**

**This is a Final Decision** issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative

Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties as indicated by the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

**IT IS SO ORDERED.**

This the 29th day of November, 2022.



Samuel K Morris  
Administrative Law Judge

### **CERTIFICATE OF SERVICE**

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service.

Donald McCloud  
PO Box 11  
Belhaven NC 27810  
Petitioner

Maria Elizabeth Bruner  
North Carolina Office of the Attorney General  
[mbruner@ncdoj.gov](mailto:mbruner@ncdoj.gov) (served electronically on November 29, 2022)  
Attorney For Respondent

This the 30<sup>th</sup> day of November, 2022.



Lisa J Garner  
North Carolina Certified Paralegal  
N. C. Office of Administrative Hearings  
1711 New Hope Church Road  
Raleigh, NC 27609-6285  
Phone: 984-236-1850