

STATE OF NORTH CAROLINA  
COUNTY OF WASHINGTON

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
11 DHR 13616

Verdell Haughton, )  
)  
Petitioner, )  
)  
v. )  
)  
North Carolina Department of Health and )  
Human Services, Division of Medical )  
Assistance, )  
)  
Respondent. )  
\_\_\_\_\_ )

**DECISION**

This matter came on to be heard before the undersigned on May 29, 2012 in Martin County, North Carolina. Petitioner, Verdell Haughton, appeared *pro se*. Respondent, North Carolina Department of Health and Human Services, Division of Medical Assistance, appeared represented by Brian D. Rabinovitz, Assistant Attorney General. Having considered the evidence presented by the parties, including documentation and testimony, and having reviewed all other matters of record appearing in this action, this Court makes the following:

**FINDINGS OF FACT**

1. Petitioner, Verdell Haughton, is an heir of the Estate of Delzora Rhodes and has requested an undue hardship waiver of Respondent's estate claim against the Estate of Delzora Rhodes.
2. Respondent, North Carolina Department of Health and Human Services, Division of Medical Assistance (the "Department"), is an official state agency of the State of North Carolina and the agency responsible for the administration of the Medicaid program in the State of North Carolina.
3. Delzora Rhodes was a Medicaid recipient prior to her death on March, 10, 2008.
4. As a Medicaid recipient, Delzora Rhodes received medical services paid for by the Department that subjected her estate to the North Carolina Medicaid Estate Recovery Plan, pursuant to N.C.G.S. § 108A-70.5. The estate recovery plan requires the Department, under certain circumstances, to recover expenses paid for medical assistance on behalf of Medicaid recipients from the estates of these recipients.

5. Delzora Rhodes died on March, 10, 2008 leaving an estate containing assets, including real property, subject to claims from creditors.

6. Pursuant to N.C.G.S. § 108A-70.5(c), the Department is a sixth-class creditor, as prescribed in N.C.G.S. § 28A-19-6, for purposes of determining the order of claims against an estate.

7. Delzora Rhodes's Estate qualified for estate recovery and the Department made a claim against her estate.

8. The primary asset of Delzora Rhodes's Estate is a piece of real property.

9. There are circumstances when the Department waives estate recovery, including when the sale of the estate's real property would result in undue hardship to a surviving heir.

10. Undue hardship is defined by the North Carolina Administrative Code, 10A NCAC 21D .0502, as follows:

(b) Undue or substantial hardship shall include the following:

(1) Real or personal property included in the estate is the sole source of income for a survivor and the net income derived is below 75 percent of the federal poverty level for the dependents of the survivor(s) claiming hardship, or

(2) Recovery would result in forced sale of the residence of a survivor who lived in the residence for at least 12 months immediately prior to and on the date of the decedent's death and who would be unable to obtain an alternate residence because the net income available to the survivor and her spouse is below 75 percent of the federal poverty level and assets in which the survivor or her spouse have an interest are valued below twelve thousand dollars (\$12,000).

11. The Department applies these rules as updated by the North Carolina State Plan for Medical Assistance, which increases the income level to 200 percent of the federal poverty level. Accordingly, in order to qualify under the definition of undue hardship, the individual claiming hardship must either: (1) have income less than 200 percent of the poverty level AND the real property is the sole source of income, OR (2) have lived in the residence for the 12 months immediately prior to the death of the Medicaid recipient, have income less than 200 percent of the poverty level, AND have assets valued less than \$12,000. See North Carolina State Plan for Medical Assistance, Attachment 4.17-A.

12. Petitioner requested a waiver of estate recovery based on undue hardship and submitted documentation to the Department to substantiate her claim of undue hardship. See Respondent's Exhibit 2, Documentation Submitted by Petitioner.

13. The Department reviewed the information provided by Petitioner and informed her by letter dated June 20, 2011 that her request for an undue hardship waiver was denied. See Respondent's Exhibit 1, Document Constituting Agency Action.

14. In requesting an undue hardship waiver of estate recovery, Petitioner does not claim that the real property of the estate is her sole source of income.

15. Accordingly, the only issue in this case is whether Petitioner satisfies the residency, income, and asset criteria for an undue hardship waiver.

16. Petitioner provided documentation to the Department showing that she is an heir of the Estate of Delzora Rhodes, that her household income was below 200% of the poverty level for the calendar years of 2007 and 2008, and that her household assets are below \$12,000. See Respondent's Exhibit 2, Documentation Submitted by Petitioner.

17. Petitioner did not live in the real property of the estate at least 12 months prior to the death of Delzora Rhodes. Testimony of Delzora Rhodes; see also Respondent's Exhibit 2, Documentation Submitted by Petitioner, p. 16.

18. Petitioner, as well as other family members, has a significant sentimental and emotional tie to the real property owned by Delzora Rhodes at the time of her death. The real property owned by Delzora Rhodes was part of a larger "family" tract. Petitioner, Ms. Delzora's daughter, had lived in a house on the tract of land which had been owned by her grandparents, but that house had burned. She realized very little from the insurance proceeds. Two of Petitioner's uncles, Ms. Delzora's brothers, also lived on the tract until their deaths. Petitioner had been born in the house in which her mother lived.

19. Because Petitioner did not live in the real property of the estate at least 12 months prior to the death of Delzora Rhodes, Petitioner does not qualify for an undue hardship waiver of estate recovery.

20. The Department acted properly in denying Petitioner's request for an undue hardship waiver of estate recovery.

### CONCLUSIONS OF LAW

1. The North Carolina Office of Administrative Hearings has jurisdiction over the parties and subject matter of this contested case pursuant to N.C. Gen. Stat. § 150B-23 *et seq.* All necessary parties have been joined. The parties received proper notice of the hearing in this matter.

2. Pursuant to N.C.G.S. § 108A-70.5, the Department is required, in applicable circumstances, to recover from the estates of Medicaid recipients the cost paid for the recipient's medical assistance.

3. Petitioner has the burden of proof to show that the Department has substantially prejudiced Petitioner's rights and has exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule.

4. The Department's evidence shows that its decision to deny Petitioner's undue hardship request was based on full consideration of the information available to it and that Petitioner did not sufficiently demonstrate that she met the criteria for an undue hardship waiver.

5. Petitioner did not contest that the information used by the Department in denying undue hardship was accurate information.

6. Petitioner did not present evidence that the Department substantially prejudiced Petitioner's rights and exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule.

7. Petitioner did not meet her burden in showing that the Department substantially prejudiced Petitioner's rights and exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule.

8. Based on all of the information presented to the Court, Petitioner does not meet the criteria for an undue hardship waiver of estate recovery as defined in the North Carolina Administrative Code and in the North Carolina State Plan for Medical Assistance.

9. The Department acted properly in denying Petitioner's request for an undue hardship waiver of estate recovery and did not substantially prejudice Petitioner's rights, exceed its authority or jurisdiction, act erroneously, fail to use proper procedure, act arbitrarily or capriciously, or fail to act as required by law or rule in denying Petitioner's request.

10. Petitioner may obtain an appraisal of the property at her own expense and in a timely manner to try to decrease the amount of the obligation for repayment. Petitioner is of limited means.

### DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby **UPHOLDS** the agency's denial of Petitioner's undue hardship waiver request.

### NOTICE

The Agency that will make the final decision in this contested case is the North Carolina Department of Health and Human Services, Division of Medical Assistance.

The Agency is required to give each party an opportunity to file exceptions to the recommended decision and to present written arguments to those in the Agency who will make

the final decision. N.C. Gen. Stat. §150B-36(a). The Agency is required by N.C. Gen. Stat. §150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

In accordance with N.C. Gen. Stat. §150B-36 the Agency shall adopt each finding of fact contained in the Administrative Law Judge's decision unless the finding is clearly contrary to the preponderance of the admissible evidence. For each finding of fact not adopted by the Agency, the Agency shall set forth separately and in detail the reasons for not adopting the finding of fact and the evidence in the record relied upon by the Agency in not adopting the finding of fact. For each new finding of fact made by the Agency that is not contained in the Administrative Law Judge's decision, the agency shall set forth separately and in detail the evidence in the record relied upon by the agency in making the finding of fact.

This the 5<sup>th</sup> day of July, 2012.

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Donald W. Overby  
Administrative Law Judge