

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12 DHR 02657

Respondent.

**ORDER GRANTING RESPONDENTS
MOTION OF SUMMARY JUDGMENT**

FINDINGS OF FACT

1. Petitioner, Annamae R. Smith, is the Personal Representative of the Estate of Marie E. Hisgen.
2. Respondent, the North Carolina Department of Health and Human Services, Division of Medical Assistance (the “Department”), is the state agency responsible for administering the Medicaid program in the State of North Carolina.
3. John Feeney is the nephew of Marie E. Hisgen and the individual for whom Petitioner has requested an undue hardship waiver of the Department’s estate recovery claim.
4. Marie E. Hisgen was a Medicaid recipient prior to her death on December 18, 2010.

5. As a Medicaid recipient, Marie E. Hisgen 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.

6. The Department expended a total of \$112,471.17 for recoverable medical services provided to Marie E. Hisgen under the North Carolina Medicaid Program.

7. Following the death of Marie E. Hisgen, the Department filed an estate claim against the Estate of Marie E. Hisgen, as required by N.C.G.S. § 108A-70.5 and federal Medicaid law.

8. The only property in the Estate of Marie E. Hisgen is approximately \$14,000 in cash, which is primarily from proceeds of life insurance policies.

9. The funds in the Estate of Marie E. Hisgen were properly paid by the life insurance policies into the estate following the death of Marie E. Hisgen.

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

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

(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).

12. The Department applies these rules as updated by the North Carolina State Plan for Medical Assistance ("NC Medicaid State Plan"), 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 undue hardship must be a surviving heir of the decedent AND must either: (1) have income less than 200 percent of the poverty level AND the property of the estate is the surviving heir's sole source of income, OR (2) have lived in a residence on the

real property of the estate for 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.

13. Petitioner, on behalf of John Feeney, requested a waiver of the Department's estate recovery claim based on undue hardship and submitted documentation to the Department to substantiate this claim of undue hardship.

14. The Department informed Petitioner by letter dated March 14, 2012 that her request for an undue hardship waiver on behalf of John Feeney was denied.

15. Petitioner filed a Petition for a Contested Case Hearing with the North Carolina Office of Administrative Hearings on April 25, 2012 to contest the Department's denial of her request for an undue hardship waiver on behalf of John Feeney.

16. On August 22, 2012, the Department filed a Motion for Summary Judgment with the Office of Administrative Hearings on the ground that there is no genuine issue as to any material fact and the Department is entitled to summary judgment as a matter of law.

17. According to the terms of Marie E. Hisgen's Last Will and Testament, John Feeney is not an heir of the Estate of Marie E. Hisgen because Marie E. Hisgen's Last Will and Testament created a trust on behalf of John Feeney and devised all of her property to the Trustee of the John Feeney Trust.

18. The property of the Estate of Marie E. Hisgen is not the sole source of income for John Feeney.

19. The Estate of Marie E. Hisgen contained no real property and no residence.

20. There is no issue as to any material fact in this case.

21. John Feeney does not meet the requirements for an undue hardship waiver of the Department's Medicaid estate recovery claim.

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.G.S. § 150B-23 *et seq.*, and there is no question as to misjoinder or nonjoinder. The parties received proper notice of the hearing in this matter.

2. Summary judgment is properly granted when the pleadings, depositions, answers to interrogatories, admission, and affidavits show no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law. N.C. R. Civ. P. 56.

3. A movant may show that summary judgment is warranted by "(1) proving that an

essential element of the plaintiff's case is non-existent, (2) showing through discovery that the plaintiff cannot produce the evidence to support an essential element of his or her claim, or (3) showing that the plaintiff cannot surmount an affirmative defense.” Losing v. Food Lion, LLC, 648 S.E.2d 261, 263 (N.C. App. Ct. 2007) (quoting Draughon v. Harnett Cty. Bd. Of Educ., 158 N.C. App. 705, 708, 582 S.E.2d 343 345 (2003)).

4. In response to a motion for summary judgment, the “opposing party has no duty to come forward until the movant has met its burden; if the internal inconsistencies in the movant’s evidence reveal a genuine issue of material fact, summary judgment should be denied.” Beaver v. Hancock, 72 N.C. App. 306, 310, 324, S.E.2d 294, 298 (1985). “Once the movant has presented a sufficient showing, however, the non-movant cannot rest on conclusory allegations. [citation omitted] Rather, it must come forward with specific facts showing a genuine issue for trial.” Id.

5. The issue before the Office of Administrative Hearings is whether the agency, in denying Petitioner’s request on behalf of John Feeney for an undue hardship waiver of the Department’s estate recovery claim, substantially prejudiced petitioner’s rights, and in doing so: 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.

6. 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.

7. The Estate of Marie E. Hisgen is properly subject to the Department’s estate claim.

8. There is no issue as to any material fact in this matter that would necessitate a hearing on the merits.

9. Based on all of the information presented to the Court, John Feeney 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 Medicaid State Plan.

10. In denying Petitioner’s request on behalf of John Feeney for an undue hardship waiver of the Department’s estate recovery claim, the Department did not substantially prejudiced 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.

11. The Department properly denied Petitioner request on behalf of John Feeney for an undue hardship waiver of the Department’s estate recovery claim.

BASED UPON the foregoing Findings of Fact and Conclusion of Law, the undersigned makes the following Decision and Order:

DECISION

Having review the documents of record, the undersigned Administrative Law Judge finds and so holds that there is no genuine issue as to any material fact and Respondent is entitled to judgment as a matter of law. Respondent's Motion for Summary Judgment should be and is GRANTED.

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 ____ day of _____ 2012.

Joe L. Webster
Administrative Law Judge