

STATE OF NORTH CAROLINA
COUNTY OF ROWAN

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12DHR04260

Estate of Mary P Lipe Medicaid ID#901463645S Alvena C Heggins, Petitioner, v. N. C. Department of Health & Human Services, Division of Medical Assistance {DHHS Medicaid} Respondent.	FINAL DECISION
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THIS MATTER came on for hearing before Administrative Law Judge, J. Randall May, on November 1, 2012 in Rowan County, North Carolina.

APPEARANCES

For Respondent: Brian D. Rabinovitz
Assistant Attorney General
N.C. Department of Justice
Raleigh, North Carolina

Petitioner: Alvena C. Heggins, *pro se*

ISSUE

Whether Respondent 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 when it denied Petitioner's request for an undue hardship waiver of Medicaid estate recovery under the rules of 10A NCAC 21D .0500 *et seq.* and the North Carolina State Plan for Medical Assistance.

EXHIBITS

For Respondent: Exhibits 1 – 10 were admitted.

For Petitioner: Exhibits A – J were admitted.

WITNESSES

Glana Surles (Estate Recovery Case Manager, Division of Medical Assistance)
Alvena C. Heggins (Petitioner)
Isaac J. Heggins (Petitioner's husband)
Richard D. Locklear (attorney)

APPLICABLE STATUTES, RULES, REGULATIONS AND POLICIES

N.C. Gen. Stat. § 108A-70.5
42 U.S.C. § 1396p
10A N.C.A.C. 21D .0500 *et seq.*
North Carolina State Plan for Medical Assistance

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, along with documents and exhibits received and admitted in evidence, or lack thereof, and the entire record in this proceeding, the Undersigned makes the following Findings of Fact. In making the Findings of Fact, the Undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know, or remember the facts or occurrences about which each witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case.

FINDINGS OF FACT

1. Petitioner, Alvena Heggins, is an heir of the Estate of Mary P. Lipe and has requested an undue hardship waiver of Respondent's estate claim against the Estate of Mary P. Lipe.
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 administration of the Medicaid program in North Carolina.
3. Mary P. Lipe was a Medicaid recipient prior to her death on October 23, 2011.
4. As a Medicaid recipient, Mary P. Lipe 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. As required by federal law, the North Carolina Estate Recovery Plan directs the Department to recover expenses paid for certain medical services on behalf of Medicaid recipients from the estates of these recipients.
5. Mary P. Lipe died on October 23, 2011 leaving an estate containing assets, including real property, subject to claims from creditors.

6. Pursuant to N.C.G.S. § 108A-70.5, the Department holds a statutory estate claim and is a sixth-class creditor, as prescribed in N.C.G.S. § 28A-19-6, for purposes of determining the order of claims against the Estate of Mary P. Lipe.

7. Mary P. Lipe's Estate qualified for estate recovery and the Department made a claim against her estate.

8. The primary asset of Mary P. Lipe's Estate is her interest in real property located at 1210 Old West Innes Street, Salisbury, North Carolina, which Ms. Lipe held at the time of her death as tenancy in common with Petitioner and Petitioner's husband. See Respondent's Exhibit 7, General Warranty Deed.

9. Pursuant to N.C.G.S. § 28A-15-1, which states that "[a]ll of the real and personal property, both legal and equitable, of a decedent shall be assets available for the discharge of debts and other claims against the decedent's estate," Mary P. Lipe's interest in the real property described above became an asset of her estate upon her death and is available to pay claims against her estate.

10. 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.

11. 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).

12. The Department applies these rules as updated by the North Carolina State Plan for Medical Assistance, which increases the qualifying 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 a household income less than 200 percent of the poverty level AND the real property is the sole source of household income; OR (2) have lived in the residence for at least 12 months immediately prior to and continuously since the death of the Medicaid recipient, have household income less than 200 percent of the poverty

level, AND have household assets valued less than \$12,000. See Respondent's Exhibit 3, North Carolina State Plan for Medical Assistance, Attachment 4.17-A, Page 2.

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

14. The Department reviewed the information provided by Petitioner and informed her by letter dated March 29, 2012 that her request for an undue hardship waiver was denied. See Respondent's Exhibit 1, Document Constituting Agency Action.

15. 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.

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

17. Petitioner provided documentation to the Department showing that she is an heir of the Estate of Mary P. Lipe and that she lived in the real property of the estate at least 12 months prior to and continually since the death of Mary P. Lipe. See Respondent's Exhibit 2, Documentation Submitted by Petitioner.

18. Petitioner also provided income documentation to the Department, including W-2 Wage and Tax Statements and federal and state income tax filings, showing her household's income for 2009 and 2010, the two years prior to the death of Mary P. Lipe. See Respondent's Exhibit 2, Documentation Submitted by Petitioner.

19. The income documentation provided to the Department by the Petitioner shows that the adjusted gross income for her household for 2010 was \$125,568.00 and for 2009 was \$130,033.00. See Respondent's Exhibit 2, Documentation Submitted by Petitioner, pp. 10 and 33.

20. The 2012 federal poverty level for a family of seven is \$34,930.00 and 200% of this guideline is \$69,860.00. See Respondent's Exhibit 1, Document Constituting Agency Action.

21. Petitioner's household income exceeds 200% of the poverty level.

22. The Petitioner and her husband own another parcel of real property located at 1002 West Monroe Street, Salisbury, North Carolina that is valued at \$89,093.00 according to publically accessible records of the Rowan County Government Tax Administration Authority. See Respondent's Exhibit 6, Rowan County Government Tax Administration Records.

23. Petitioner owns assets valued greater than \$12,000.00.

BASED ON the foregoing facts, the Undersigned makes the following:

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.* All necessary parties have been joined. The parties received proper notice of the hearing in this matter.

2. To the extent that the findings of facts contain conclusions of law, or that the conclusions of law are findings of fact, they should be so considered without regard to the given labels. *Bonnie Ann F. v. Callahan Indep. Sch. Bd.*, 835 F. Supp. 340 (S. D. Tx. 1993).

3. Pursuant to 42 U.S.C. § 1396p(b) and 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.

4. The Estate of Mary P. Lipe qualified for the North Carolina Medicaid Estate Recovery Plan under N.C.G.S. § 108A-70.5, Chapter 21D of the North Carolina Administrative Code, and the North Carolina State Plan for Medical Assistance.

5. The procedure for requesting and sole criteria for qualifying for a waiver of the Department's Medicaid estate recovery claim based on undue hardship are contained in 10A N.C.A.C. 21D .0500 *et seq.* and the North Carolina State Plan for Medical Assistance.

6. The only issue in this contested case is whether 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 when it determined that Petitioner did not meet the criteria for an undue hardship waiver of the Department's estate recovery claim and denied her request for a waiver.

7. 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.

8. 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.

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

10. 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.

11. 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.

12. 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.

13. 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.

ACKNOWLEDGMENT

It is acknowledged that whenever, in this document, reference is made to the Undersigned, the undersigned Judge, or the Court, reference is being made to the undersigned Administrative Law Judge with the Office of Administrative Hearings.

FINAL 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

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 Wake County or in the Superior Court of the county in which the party resides. **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 03.012, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on 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.

This the 10th day of May, 2013.

J. Randall May
Administrative Law Judge

On this date mailed to:

Alvena C. Heggins
1210 Old West Innes Street
Salisbury NC 28144
PETITIONER

Brian D. Rabinovitz
Assistant Attorney General
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ATTORNEY FOR RESPONDENT

This the 10th day of May, 2013.

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