

STATE OF NORTH CAROLINA  
COUNTY OF MOORE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
13DHR09729

MYRA EVANS, Petitioner,  v.  MOORE COUNTY DEPARTMENT OF SOCIAL SERVICES, Respondent.	<b>FINAL DECISION</b>
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THIS MATTER came before Beecher R. Gray, Administrative Law Judge, presiding, on September 24, 2013, in High Point, North Carolina.

**APPEARANCES**

For Petitioner: Myra Evans, Appearing Pro Se  
835 West Wisconsin Ave.  
Southern Pines, NC 28387

For Respondent: R. Ward Medlin  
Associate County Attorney  
County of Moore  
P.O. Box 905  
Carthage, NC 28327

**WITNESSES**

The following witnesses appeared and testified on behalf of Petitioner:

1. Paul Evans

The following witnesses appeared and testified on behalf of Respondent:

1. Regina Alsobrook, Income Maintenance Worker, Moore County DSS
2. Lisa Smith, Income Maintenance Worker, Moore County DSS
3. Rodneyann Wittmer, Program Integrity Investigator, Moore County DSS

### **EXHIBITS:**

The following exhibits were admitted into evidence on behalf of Respondent:

1. June 26, 2006 Medical Assistance Application as completed by Regina Alsobrook, IMW, MCDSS, and signed by Myra Evans, Petitioner
2. October 11, 2006 Recertification Application for Medical Assistance as completed by Lisa Smith, IMW, MCDSS, and signed by Myra Evans, Petitioner
3. Verification/Eligibility Determination for Medical Assistance Applications Adult Categories, as completed by Regina Alsobrook, IMW, MCDSS, and signed by Myra Evans, Petitioner
4. Medicaid Recipient Profile as prepared by the Division of Medical Assistance as to the Petitioner Myra Evans, dated November 9, 2006
5. Notice of Overpayment for Medical Assistance prepared by the NC Department of Health and Human Services Division of Medical Assistance dated 12/20/2006
6. Notification of North Carolina Income Tax Refund Intercept dated 2/20/2013
8. Lisa Smith letter dated 10/12/2006 verifying unearned income
9. Lisa Smith Fraud referral letter dated 10/16/2006

### **ISSUE**

The issue in this case is whether Petitioner's North Carolina Income Tax Refund lawfully was intercepted to reimburse the State of North Carolina for Medicaid payments made by Respondent for the benefit of Petitioner.

The following Findings of Fact are made after careful consideration of the sworn testimony, whether visual and/or audio, of the witnesses presented at the hearing, and the entire record in this proceeding. In making the Findings of Fact, the Undersigned has weighed all the evidence, or the lack thereof, 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 the witness testified; whether the testimony of the witness is reasonable; and whether the testimony is consistent with all other believable evidence in the case. From the sworn testimony and the admitted evidence, or the lack thereof, the Undersigned makes the following:

## **FINDINGS OF FACT**

1. The parties acknowledged proper notice of the date, time, and place of the hearing and so stipulated on the record.
2. Petitioner filed a Petition in the Office of Administrative Hearings on March 18, 2013, contesting the intercept of her State tax refund for the repayment of an Overpayment For Medical Assistance debt.
3. Petitioner made application for Medical Assistance through the Moore County Department of Social Services and completed her original application with Income Maintenance Worker (IMW) Regina Alsobrook on June 26, 2006.
4. During the original application process, Petitioner represented that the only household income was that of her husband Paul Evans.
5. Based upon the original application submitted, Petitioner was determined eligible for Medicaid Assistance and was certified for a time period of six (6) months.
6. Petitioner completed the recertification application for Medical Assistance through the Moore County Department of Social Services and completed her recertification application with IMW Lisa Smith on October 11, 2006.
7. During the recertification application process, Petitioner disclosed the receipt of unearned income from a private disability insurance payment which she failed to disclose during the initial application process.
8. Petitioner was receiving the private disability insurance payment at the time she originally made application for the Medicaid Assistance in June 26, 2006, and received the benefit from May 30, 2006 through September 25, 2006.
9. The private disability insurance payment added \$986.59 per month to the household income, and resulted in Petitioner being ineligible for Medicaid Assistance, as originally determined, and subject to a deductible of \$9,634.32.
10. The debt for Overpayment For Medical Assistance in the amount of \$3,010.28 was established by the Moore County Department of Social for unreported or inaccurately reported income information. That debt was owed for benefits received from June 1, 2006 through October 31, 2006, and during a time in which Petitioner was not eligible for assistance.
11. Respondent Moore County Department of Social Services made multiple attempts to establish a repayment plan with Petitioner to recover the benefits advanced, for which Petitioner was ineligible, without success.

12. The efforts by Respondent Moore County Department of Social Services included personal home visits to discuss the overpayment and multiple attempts to establish a repayment plan.
13. Respondent Moore County Department of Social Services presented to Petitioner a proposed repayment plan requesting that Petitioner repay the overpayment at the rate of \$25.00 monthly, and thereafter presented monthly statements requesting payment by Petitioner, commencing December 2006 and continuing to the present.
14. Petitioner has failed to make a single payment toward repayment of the Medicaid Medical Assistance Payments for which she was not eligible.
15. On December 20, 2006, the North Carolina Department of Health and Human Services, Division of Medical Assistance, forwarded to Petitioner a Notice of Overpayment For Medical Assistance, informing her that she owed the sum of \$3,010.28.
16. The December 20, 2006 Notice informed Petitioner of her Hearing Rights, and specifically advised that she must request a hearing, if at all, on or before February 18, 2007.
17. Petitioner never appealed the Notice of Overpayment For Medical Assistance and the time for appeal has expired.
18. On February 20, 2013, the State of North Carolina Department of Health and Human Services notified Petitioner that her North Carolina Income Tax Refund had been intercepted to reimburse the State of North Carolina for Medical Assistance Payments paid on behalf of Petitioner, for which she was ineligible.
19. The tax intercept was in the amount of \$1,135.00 and less than the \$3,010.28 in benefits paid on behalf of Petitioner.
20. Petitioner self-reported the unearned income during the recertification application process.
21. Petitioner did not fraudulently secure the Medical Assistance Payments, but secured the payments through failure to accurately disclose all household income. Upon inquiry following disclosure by Petitioner as to the private disability insurance payment, Petitioner informed the Moore County Department of Social Services that she had not considered the private disability insurance payments as income.
22. After applying the tax intercept in the amount of \$1,135.00, there remains unpaid the sum of \$1875.28 for Medical Benefits paid on behalf of Petitioner, and for which Petitioner was not eligible.
23. Petitioner was given the opportunity to contest the determination of ineligibility by notice provided to Petitioner on December 20, 2006 but did not appeal or request a hearing.

## CONCLUSIONS OF LAW

1. The parties properly are before the Office of Administrative Hearings.
2. The time to appeal establishment of the debt and submission to an impartial officer of the Moore County Department of Social Services, and if dissatisfied with that decision, appeal for subsequent contested case hearing, has passed.
3. After providing Petitioner ample opportunity to be heard on the underlying issues of the establishment of the debt and how it was to be collected, the Department of Health and Human Services correctly followed the procedures outlined by N.C. Gen. Stat. 105A *et seq.*
4. In this case, a preponderance of the evidence showed that Respondent complied with the procedural requirements related to assessing and determining the eligibility for Medicaid Medical Assistance, including the recertification process.
5. In this case, a preponderance of the evidence showed that Respondent complied with the procedural requirements related to Notification as to establishment of debt.
6. The intercept of Petitioner's North Carolina Income Tax Refund, in the amount of \$1,135.00, was proper and lawful.

## FINAL DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned finds that Respondent's Intercept of Petitioner's North Carolina Income Tax Refund for reimbursement of Medical Assistance Benefits paid on behalf of Petitioner, for which Petitioner was not eligible, was lawful and proper under N.C.G.S. § 105A *et. Seq.* Respondent's decision to intercept Petitioner's North Carolina Income Tax Refund is supported by the evidence and is **AFFIRMED**.

## 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 03.0102, 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 24th day of October, 2013.

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Beecher R. Gray  
Administrative Law Judge