

STATE OF NORTH CAROLINA  
COUNTY OF DAVIDSON

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
13 DHR 12131

BETTY CRANSTON,  
Petitioner,  
  
v.  
  
N.C. DEPARTMENT OF HEALTH AND  
HUMAN SERVICES,  
Respondent.

**FINAL DECISION AND  
ORDER GRANTING  
SUMMARY JUDGMENT**

**THIS MATTER** comes before the undersigned on a Motion to Dismiss or in the Alternative Motion for Summary Judgment filed by the Department of Health and Human Services on 20 June 2013. Petitioner did not respond to the Department's Motion. Having reviewed the motion and the file, the undersigned makes the following:

**UNDISPUTED FINDINGS OF FACT**

1. A Medicaid overpayment of \$1,915.11 was established for the period 1 July 2007 through 31 May 2008 due to an inadvertent household error.
2. The debt for overpaid benefits was established by the Mecklenburg County Department of Social Services against Petitioner on 28 January 2010.
3. On 29 January 2010, a Notice of Overpayment for Medical Assistance ("Notice") was sent to Petitioner, notifying her that Mecklenburg County DSS had determined that Ms. Cranston or her household committed an Inadvertent Household Error resulting in an overpayment of Medicaid or NC Health Choice benefits in the amount of \$1,915.11.
4. Appeal rights for the establishment of overpayment were granted for sixty days in the Notice.
5. Petitioner did not exercise these appeal rights by requesting a hearing on the establishment of the overpayment of Medicaid or NC Health Choice benefits.
6. At the time of the tax intercept, the balance of Petitioner's debt was \$1,915.11.
7. As a result of Petitioner's indebtedness, Petitioner's North Carolina income tax refund in the amount of \$208.46 was intercepted on 10 April 2013, leaving a balance of \$1,706.65 outstanding on the claim.
8. Petitioner filed a petition in the Office of Administrative Hearings on 29 April 2013, contesting the interception of her North Carolina income tax refund.

9. Respondent filed a Motion to Dismiss or in the Alternative Motion for Summary Judgment on 20 June 2013 and attached the Affidavit of Angela Saddler.
10. Respondent's Affidavit of Angela Saddler shows continuous record of information concerning the underlying debt and shows that the Petitioner was given the right to appeal the establishment of the debt for tax intercept in the Notice and did not do so.
11. Petitioner did not file any motion, pleading or affidavit in response to Respondent's Motion.

### **CONCLUSIONS OF LAW**

1. The N.C. 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.*
2. To the extent that the findings of fact 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. Callahen Indep. Sch. Dist.*, 835 F. Supp. 340, 342, n.1 (S.D. Tex. 1993).
3. Because Petitioner had a remaining balance of \$1,706.65 on her Medicaid debt at the time the North Carolina tax refund of \$208.46 was intercepted on 10 April 2013, the interception was proper under the procedures detailed in N.C. Gen. Stat. § 105A *et seq.*

BASED UPON the foregoing Findings of Fact and Conclusions of Law, the undersigned enters the following Decision and Order:

### **FINAL DECISION**

NOW, THEREFORE, based on the foregoing Findings of Fact and Conclusions of Law, the Undersigned determines that there is no genuine issue of material fact with regard to the Respondent's interception of Petitioners' North Carolina income tax refund on 10 April 2013 in the amount of \$208.46 for the recovery of Medicaid or NC Health Choice benefits overpaid to Petitioner and that the Respondent is entitled to judgment as a matter of law pursuant to Rule 56 of the North Carolina Rules of Civil Procedure, Summary Judgment is hereby **GRANTED**.

### **NOTICE**

**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 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.

**IT IS SO ORDERED.**

This is the 19<sup>th</sup> day of August, 2013.

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Julian Mann III  
Chief Administrative Law Judge