

STATE OF NORTH CAROLINA
COUNTY OF LEE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13DHR17909

Estate Of Earlene W Alston, Lewis E Alston
Petitioner

v.

NCDHHS DMA
Respondent

**FINAL DECISION DISMISSING
RESPONDENT'S CLAIM
FOR ESTATE RECOVERY**

This matter is before the undersigned on Respondent's Motion, served on Petitioner on March 26, 2014, for Summary Judgment, per N.C. Gen. Stat. §§1A-1, Rule 56 and 150B-33(b)(3A), and Rules .0101 and .0115 of the Rules the Office of Administrative Hearings, on the grounds that Petitioner failed to timely request a hardship waiver of Respondent's claim for \$205,688.10 against Petitioner Estate pursuant to the "Medicaid Estate Recovery Plan" statute, N.C. Gen. Stat. 108A-70.5, and the regulations promulgated pursuant to Subsection (d) of that statute, 10A NCAC 21D.0100, *et seq.* The Administrator values the primary asset of the Estate -- a house -- at something less than \$22,500.00 (*see* Respondent's Motion, Ex. H); and references debts of \$1,000.00 to an attorney and \$6,514.00 for his Decedent's funeral expenses (R. Mtn, Ex. E).

The Motion describes the criteria, set out in 10A NCAC 21D.0502, for a survivor to obtain a hardship waiver of the Medicaid recovery claim, and the efforts of Mr. Lewis E. Alston, the Decedent's son and sole heir, to apply for it. It is not entirely clear whether he meets the hardship criteria, and it appears that he has struggled to organize information pertinent to the particular requirements of the regulations. In response to this Motion, Mr. Alston submitted a copy of a Social Security decision, dated March 18, 2014, finding him disabled and entitled to Social Security disability insurance payments. Regardless, the grounds cited for denying Petitioner relief -- by Medicaid, and in support of this Motion -- is the failure to make a "claim of undue hardship... within 60 days from the date of notice of the Medicaid estate recovery claim by the Department of Health and Human Services, Division of Medical Assistance (Medicaid)." (*See* R. Mtn, Ex. B)

However, for Respondent to have a valid claim on the subject Estate in the first instance, the procedure for seeking a Medicaid estate recovery is likewise mandatory. 10A NCAC 21D.0401(a) provides:

Within 60 days after the date of a recipient's death, the Division of Medical Assistance or its fiscal agent shall produce a claim document summarizing all

Medicaid payments subject to recovery as stated in Rules .0301 and .0302 of this Subchapter.

It is clear that the agency created its “statement of charges” on February 4, 2007, some three months (89 days) after death of the Medicaid recipient, Mrs. Alston, on November 7, 2006. (*See* R. Mtn, Ex. A, p. 2) It was mailed to Mr. Alston on March 13, 2007. Thus, it is established that Respondent has no right to the assets of Petitioner estate pursuant to the “Medicaid Estate Recovery Plan” statute, N.C. Gen. Stat. 108A-70.5.

N.C. Gen. Stat. §§1A-1, Rule 56 provides that, “Summary judgment, when appropriate, may be rendered against the moving party.” There being no genuine issue as to any material fact, and Petitioner is entitled to judgment as a matter of law.

WHEREFORE, the Respondent’s claim on assets of Petitioner Estate must be, and hereby is, DISMISSED.

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 the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **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 8th day of April, 2014.

J. Randolph Ward
Administrative Law Judge