

STATE OF NORTH CAROLINA  
COUNTY OF DAVIDSON

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
14 DHR 05078

<p>MARIUSZ LEONARD POPPE PETITIONER,</p> <p>V.</p> <p>NC DEPT OF HEALTH SERVICES, DIVISION OF MEDICAL ASSISTANCE, MEDICAID ESTATE RECOVERY, MS. GLANA M SURLESRESPONDENT. RESPONDENT.</p>	<p><b>FINAL DECISION</b></p>
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THIS MATTER came on for hearing before Administrative Law Judge, J. Randall May, on November 18, 2015 but was continued until November 20, 2015 in High Point, North Carolina.

**APPEARANCES**

**For Respondent:** Kimberly S. Murrell  
Assistant Attorney General  
N.C. Department of Justice  
Raleigh, North Carolina

**Petitioner:** Mariusz Leonard Poppe, *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 – 12 were admitted. The Administrative Law Judge took judicial notice of N.C. Gen. Stat. § 108A-70.5 and 10A N.C.A.C. 21D .0500 *et seq.* and the Federal Poverty Guidelines.

For Petitioner: Exhibits P1 – P4 were admitted.

## WITNESSES

**Respondent:**

Glana Surles (Estate Recovery Case Manager, Division of Medical Assistance)

**Petitioner:**

Mariusz Leonard Poppe (Petitioner)

George Poppe (Heir to the Estate of Irene Poppe)

Glana Surles (Estate Recovery Case Manager, Division of Medical Assistance)

## 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 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, 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 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, Mariusz Leonard Poppe, is an heir of the Estate of Irene Poppe and has requested an undue hardship waiver of Respondent's estate claim against the Estate of Irene Poppe.
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. Irene Poppe was a Medicaid recipient prior to her death on November 29, 2013.
4. As a Medicaid recipient, Irene Poppe 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. Irene Poppe died on November 29, 2013 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 Irene Poppe.

7. Irene Poppe's Estate qualified for estate recovery and the Department made a claim against her estate.

8. The primary asset of Irene Poppe's Estate is her interest in real property located at 303 Wood Street, Thomasville, NC, which Ms. Irene Poppe held at the time of her death.

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," Irene Poppe'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 his spouse is below 75 percent of the federal poverty level and assets in which the survivor or his 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 gross household income less than 200 percent of the federal 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 gross household income less than 200 percent of the federal

poverty level; AND have household assets valued less than \$12,000. See Respondent's Exhibit 5, 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 his request. See Respondent's Exhibits 2 and 3, Documentation Submitted by Petitioner.

14. The Department reviewed the information provided by Petitioner and informed him by letter dated May 16, 2014 that his 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 his 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 he is an heir of the Estate of Irene Poppe; that he lived in the real property of the estate at least 12 months prior to and continually since the death of Irene Poppe; and that his assets are valued below \$12,000.00. See Respondent's Exhibit 2, Documentation Submitted by Petitioner.

18. Petitioner submitted documentation to the Department showing estate accounting, funeral expenses, and itemized statements of monetary support provided to his mother by the heirs. See Respondent's Exhibit 3 and Petitioner's Exhibits P2 and P3.

19. George Poppe, Petitioner's brother, testified that he is one of the heirs to the Estate of Irene Poppe. He also testified that all of decedent's children provided monetary support to her and maintained the repairs and upkeep of her home over her lifetime, which allowed her to remain in the home. Petitioner also testified to the monetary support provided to the decedent as well as the repairs he made to his mother's home. See Respondent's Exhibit 3 and Petitioner's Exhibits P2 and P3.

20. Glana Surles, Estate Recovery Case Manager for the Division of Medical Assistance, opined that the estate accounting documentation and any expenditures by the heirs were not relevant to the review of undue hardship claims.

21. Petitioner provided income documentation to the Department, including bank statements, W-2 Wage and Tax statements, and federal tax documentation, showing his income for several years, including 2013, the year of Irene Poppe's death. Petitioner also included: a letter with documentation indicating that he had a change in his household income, his most recent 2014 federal tax documentation, his February 2015 Commission Report as well as his *estimated* 2015 Social Security benefits. See Respondent's Exhibits 2 and 3, Documentation Submitted by Petitioner.

22. The income documentation provided to the Department by the Petitioner shows that the adjusted *gross* income for his household for 2012 was \$69,209.00, for 2013 was \$70,016.00, and for 2014 was \$64,608.00. See Respondent's Exhibits 2 and 3, Documentation Submitted by Petitioner. See also Respondent's Exhibit 4, Income Calculation Sheet Compared to Poverty Guidelines prepared by Glana Surles.

23. The 2015 federal poverty level for a family of one is \$11,770.00 and 200% of this guideline is \$23,540.00. See Respondent's Exhibit 1, Document Constituting Agency Action. See also Respondent's Exhibit 4 and 2015 Federal Poverty Guidelines.

24. Petitioner's *gross* household income exceeds 200% of the federal poverty level for a family of one by \$45,869.00 for 2012; \$46,676.00 for 2013; and \$41,068.00 for 2014. See Respondent's Exhibits 2 and 3, Documentation Submitted by Petitioner. See also Respondent's Exhibit 4.

25. Petitioner's *gross* household income exceeds 200% of the federal poverty level.

26. Petitioner submitted a letter to the Department, dated January 20, 2015, stating that he wished to retire on Social Security benefits and that he would receive future monthly *net* benefits of \$1,683.00 per month. Petitioner also included with the letter documentation from the Social Security Administration regarding Petitioner's *estimated* monthly Social Security benefits for 2015. See Respondent's Exhibit 3, pgs. 84, 111, Documentation Submitted by Petitioner.

27. Petitioner testified that the Department should consider his *net* income in evaluating his claim of undue hardship.

28. Glana Surles, Estate Recovery Case Manager for the Division of Medical Assistance, testified that the Department only considers an applicant's *gross* income when evaluating claims of undue hardship as required by the North Carolina State Plan for Medical Assistance. Ms. Surles also testified that *if* considering an applicant's *net* income in evaluating a claim of undue hardship, in accordance the North Carolina Administrative Code, the applicant's *net* income must be below 75% of the federal poverty level. The Department applies the updated rules included in North Carolina State Plan for Medical Assistance because these rules are more lenient, increasing the qualifying income level to 200 percent of the federal poverty level. See Respondent's Exhibit 5, North Carolina State Plan for Medical Assistance, Attachment 4.17-A, Page 2. See also 10A NCAC 21D .0502.

29. The 2015 federal poverty level for a family of one is \$11,770.00; 200% of this guideline is \$23,540.00, and 75% of this guideline is \$8,828.00. See Respondent's Exhibit 1, Document Constituting Agency Action. See also 2015 Federal Poverty Guidelines.

30. In accordance with the North Carolina State Plan for Medical Assistance, to qualify for an undue hardship waiver, an applicant's maximum *gross* income for tax year 2015 must be below \$23,540.00.

31. In accordance with the North Carolina Administrative Code, to qualify for an undue hardship waiver, an applicant's maximum *net* income for tax year 2015 must be below \$8,828.00.

32. Petitioner's *estimated* Social Security benefits for 2015 indicate that he would receive \$2,354.00 in *gross* benefits per month and \$1,687.00 in *net* benefits per month. See Respondent's Exhibit 3, p. 111, Documentation Submitted by Petitioner.

33. Glana Surles testified that based on a review of Petitioner's *estimated* Social Security benefits for 2015, Petitioner's *estimated gross* yearly income (\$28,248.00) would still exceed 200% of the federal poverty level for a family of one (\$23,540.00) by \$4,708.00. See Respondent's Exhibit 3, p. 111, Documentation Submitted by Petitioner. See also 2015 Federal Poverty Guidelines.

34. Ms. Surles testified that based on a review of Petitioner's *estimated* Social Security benefits for 2015, Petitioner's *estimated net* yearly income (\$20,244.00) would also still exceed 75% of the federal poverty level for a family of one (\$8,828.00) by \$11,416.00. See Respondent's Exhibit 3, p. 111, Documentation Submitted by Petitioner.

35. Petitioner's 2015 *estimated gross* income exceeds 200% of the federal poverty level.

36. Petitioner's 2015 *estimated net* income exceeds 75% of the federal poverty level.

37. Even after Petitioner retires, based on Petitioner's *estimated* Social Security benefits for 2015, he still would not qualify for an undue hardship waiver. See Respondent's Exhibit 3, pgs. 84, 111, Documentation Submitted by Petitioner.

38. Petitioner also submitted additional documents in support of his undue hardship claim in open court, which were reviewed by Glana Surles. The new documentation indicated a change in Petitioner's current 2015 Social Security benefits. See Petitioner's Exhibits P1 - P4.

39. Petitioner testified about his current financial circumstances. He stated that he retired in 2015 and the only income he is now receiving is *net* Social Security benefits in the amount of \$1,689.00 per month; a slight increase from Petitioner's *estimated* 2015 *net* Social Security benefits of \$1,687.00 per month, which Ms. Surles testified would exceed the federal poverty threshold to qualify for an undue hardship waiver. See Respondent's Exhibit 3, p. 111, Documentation Submitted by Petitioner and Petitioner's Exhibit P1.

40. Ms. Surles further testified that a review of the new documentation submitted by Petitioner in court does not change Respondent's decision that Petitioner does not qualify for an undue hardship waiver. See Petitioner's Exhibits P1 - P4.

41. All of the income documentation submitted to the Department by Petitioner shows that his *gross* income exceeds 200% of the federal poverty level. See Respondent's Exhibits 2 and 3, Documentation Provided to Respondent by Petitioner in Support of Undue Hardship Claim. See also Respondent's Exhibit 4 and Petitioner's Exhibits P1 and P4.

42. Petitioner does not qualify for an undue hardship waiver because his income exceeds the federal poverty thresholds to qualify for an undue hardship waiver.

43. Petitioner has not submitted any additional documentation to the Respondent in support of his claim of undue hardship.

44. Petitioner does not satisfy the criteria to qualify for an undue hardship waiver of the Department's estate recovery claim against the Estate of Irene Poppe.

### **CONCLUSIONS OF LAW**

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 Irene Poppe 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 his 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 he met the criteria for an undue hardship waiver.

9. 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.

10. Petitioner did not meet his 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.

11. 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.

12. 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.

### **FINAL DECISION**

Although very sympathetic to Petitioner's cause, upon a review of the foregoing Findings of Fact and Conclusions of Law, I hereby **UPHOLD** the agency's denial of Petitioner's undue hardship waiver request. The Petitioner has not presented sufficient evidence to substantially carry its burden.

### **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 15<sup>th</sup> day of February, 2016.

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J Randall May  
Administrative Law Judge