

STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 DHR 07341

<p>Jessie Buie, George Buie Petitioner,</p> <p>v.</p> <p>DHHS DMA Respondent.</p>	<p>FINAL DECISION ALLOWING SUMMARY JUDGMENT FOR RESPONDENT</p>
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THIS MATTER comes before the Honorable David F. Sutton, Administrative Law Judge presiding, for consideration of Respondent's Motion for Summary Judgment filed with the Office of Administrative Hearings on April 12, 2016. There is a pending Motion to Stay filed by the Respondent; however, this Order is dispositive of the entire case and therefore it is unnecessary to address that pending motion.

On April 22, 2016, the undersigned served Petitioners with a Request for Response to Motion, in which the undersigned advised Petitioners that Respondent had filed a Motion for Summary Judgment on April 22, 2016, and ordered that Petitioners respond to that motion on or before May 2, 2016 if Petitioners desired objections to be considered before a ruling was made. Petitioners have not responded to Respondent's Motion for Summary Judgment, nor have Petitioners raised any objection to the same. Having considered Respondent's Motion with attachments, and all matters of record appropriate for consideration, the Court finds as fact and concludes as a matter of law that there is no genuine issue of material fact and therefore summary judgment is appropriate.

At issue in this contested case is the Respondent's August 12, 2015 denial of Petitioners' 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. In denying Petitioners' request for an undue hardship waiver, Respondent was not arbitrary or capricious, did not exceed its authority or jurisdiction, did not fail to act as required by law or rule, did not act erroneously, and did use proper procedure.

It is therefore ORDERED that summary judgment for Respondent is ALLOWED, and the denial of Petitioners' 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 is affirmed.

NOTICE

Under the provisions of the 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 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, 2016.

David F Sutton
Administrative Law Judge