

STATE OF NORTH CAROLINA
COUNTY OF HARNETT

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
16 DHR 00473

MARY MARGARET SMITH)
PETITIONER)
VS.)
NC DEPARTMENT OF HEALTH)
AND HUMAN SERVICES, DIVISION OF)
MEDICAL ASSISTANCE, THIRD PARTY)
RECOVERY SECTION)
RESPONDENT)

**FINAL DECISION
SUMMARY JUDGMENT
FOR RESPONDENT**

Upon consideration of Respondent's Motion for Summary Judgment pursuant to Rule 56 of the North Carolina Rules of Civil Procedure, Petitioner's responses thereto, along with supporting documentation, statements of the parties, all other matters of record, and for good cause shown, the undersigned hereby **GRANTS** Respondent's Motion as follows:

APPEARANCES

Petitioner appeared *pro se*, and Assistant Attorney General Kimberly S. Murrell represented the Respondent.

ISSUE

Is Petitioner entitled to an undue hardship waiver of Respondent's estate recovery claim against the estate of Virginia Swain, Petitioner's mother?

APPLICABLE STATUTE AND RULES

N.C. Gen. Stat. § 108-70.5
10A NCAC 21D .0502
North Carolina Medicaid Plan

FINDINGS OF FACT

1. On September 10, 2015, Respondent notified Petitioner that it was denying Petitioner's request for an undue hardship waiver of Respondent's estate recovery claim against the estate of Virginia B. Swain. Respondent denied Petitioner's request, because based upon Petitioner's 2012 and 2013 tax documents submitted to Respondent, Petitioner's gross household income was not below 200% of the federal poverty level of maximum gross income.

2. On January 15, 2016, Petitioner filed a Petition for a Contested Case Hearing with the North Carolina Office of Administrative Hearings contesting Respondent's denial of her request for an undue hardship waiver. In her petition, Petitioner claimed she had "proven an undue hardship regarding mother's home is being occupied by Mary M. Smith. Unable to move, husband's income unstable. Hardship letter of explanation already provided."

3. Virginia B. Swain was a Medicaid recipient before her death on May 22, 2014. As a Medicaid recipient, Ms. Swain received \$137,254.96 in medical services paid for by Respondent that subjected her estate to the North Carolina Medicaid Estate Recovery plan, pursuant to N.C. Gen. Stat. § 108-70.5.

4. Petitioner is Ms. Swain's daughter and heir. Petitioner currently resides at the estate address, has continuously resided at that address for at least 12 months immediately before and on the date of her mother's death, and whose household assets are valued below twelve thousand dollars (\$12,000). These criteria are not at issue in this case.

5. The poverty guideline for 2015, published by the Department of Health and Human Services in the Federal Register (Vol. 80, No. 14), and dated January 22, 2015, is \$15,930.00 for a family of two. 200% of this guideline is \$31,860.00.

6. On October 17, 2016, Petitioner submitted her 2014 and 2015 federal income tax returns to Respondent for review for purposes of this case. According to Petitioner's documentation:

a. Petitioner's 2015 federal tax returns showed that Petitioner's household income exceeded 200% of the federal poverty guidelines by \$6605.00, and therefore, Petitioner did not qualify for the undue hardship waiver because her household income exceeds that qualifying guideline.

b. Petitioner's 2014 federal tax returns showed that Petitioner's household income was below 200% of the federal poverty guidelines by \$3855.00.

7. However, Respondent looks at the most recent tax returns available to determine if Petitioner qualifies for undue hardship. Petitioner's income exceeded the qualifying guidelines for tax year 2015. Additionally, based upon Respondent's review of Petitioner's tax returns for several tax years, 2014 is the only tax year in which Petitioner's household income was below 200% of the federal poverty guidelines. Petitioner's household income has otherwise consistently exceeded the qualifying guidelines.

8. Petitioner indicated that she filed for bankruptcy and currently, is unable to move due to the bankruptcy, tax liens, and judgments filed against her. The evidence shows that Petitioner was discharged from bankruptcy in 2012. However, neither the existence of bankruptcy, nor tax liens, nor judgments are listed as criteria to be considered by Respondent in determining whether Petitioner qualifies for a waiver of undue hardship under the applicable statute and rules.

CONCLUSIONS OF LAW

1. Pursuant to N.C. Gen. Stat. § 1A-1, Rule 56 of the North Carolina Rules of Civil Procedure, N.C. Gen. Stat. § 108A-70.5, N.C. Gen. Stat. § 150B-33, the undersigned is authorized to grant Summary Judgment. 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.

2. Pursuant to N.C. Gen. Stat. § 108A-70.5, Respondent is authorized to pursue recovery of medical expenses, paid by Respondent on behalf of Medicaid recipients, from the estate of those recipients.

3. Under 10A NCAC 21D .0502 and the North Carolina State Plan for Medical Assistance, an undue hardship waiver of a Medicaid estate recovery claim is only available to an heir of a deceased Medicaid beneficiary. The North Carolina State Medicaid Plan has been updated to allow more lenient criteria for assessing undue hardship regarding the income criteria.

4. The NC State Medicaid Plan defines “undue hardship” as “when an heir is dependent on assets in the estate of the deceased for financial support or residence.”

5. Pursuant to the NC State Medicaid Plan, an heir is dependent on assets in the deceased’s estate for financial support or residence when the following criteria are met:

1. Real or personal property included in the estate is the sole source of income for a surviving heir and his or her spouse and related family members in his or her household and the gross income available to the surviving heir and his or her spouse and related family members in his or her household is below 200 percent of the federal poverty level.

2. Recovery would result in forced sale of the residence of a surviving heir who is living in and has continuously lived in the property since the decedent’s death and who lived in the property 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 gross income available to the surviving heir and his or her spouse and related family members in his or her household is below 200 percent of the federal poverty level and assets of the surviving heir and his or her spouse and related family members of his or her household are valued below twelve thousand dollars (\$12,000).

6. 10A NCAC 21D .0503(a) states that Respondent’s estate recovery administrator:

shall evaluate each claim of hardship within 60 calendar days of the request to make a determination to waive recovery of the claim in part or in full. In making this determination, the administrator may request documentation to support the survivor's claim of hardship including prior year's income tax returns, bank statements, wage and earnings files, real and personal property records, utility

records, tax records, medical bills, or other documents offered by the survivor to support his claim.

7. 10A NCAC 21D .0502(a) provides that “Recovery shall be waived if enforcement of the claim will cause undue or substantial hardship to the surviving heirs of the decedent.” The estate recovery claim by Respondent may not be waived under the applicable regulation and law, unless an heir can prove he or she meets all of the multiple criteria of undue hardship required under the North Carolina Medicaid State Plan, and 10 NCAC 21D .0502.

8. In this case, the Estate of Virginia B. Swain is subject to Respondent Department's estate claim.

9. Petitioner has not contended, and no information exists to suggest that the subject property is income producing so 10A NCAC 21D .0502(b)(1) is not at issue in this case. Petitioner also does not meet the criteria under 10A NCAC 21D .0502(b)(2) for undue hardship, because her household income in 2015 consistently exceeds the maximum qualifying threshold of 200% of the federal poverty level. While Petitioner's 2014 household income was less than 200% of the federal poverty level, Petitioner's household income from 2012, 2013, and 2015 exceeded the maximum qualifying threshold of 200% of the federal poverty level.

10. There is no issue as to any material fact in this matter that would necessitate a hearing on the merits. Based on all of the information presented to the undersigned, Petitioner does not meet the criteria for an undue hardship waiver of estate recovery as defined in the 10A NCAC 21D .0502, and in the North Carolina Medicaid State Plan.

11. Respondent did not substantially prejudice Petitioner's rights and did not 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 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.*, N.C. Gen. Stat. § 108A-70.5, and the North Carolina State Medicaid Plan, and Respondent is entitled to judgment as a matter of law.

12. Respondent properly denied Petitioner's request for an undue hardship waiver of Respondent's estate recovery claim according to the requirements in N.C. Gen. Stat. § 108-70.5, 10A NCAC 21D .0502, and the North Carolina State Medicaid Plan.

SUMMARY JUDGMENT - FINAL DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, and pursuant to the North Carolina Rules of Civil Procedure, the undersigned hereby **GRANTS** Respondent's Motion for Summary Judgment as there is no genuine issue of material fact, and Respondent is entitled to judgment as a matter of law. This contested case is hereby **DISMISSED**.

NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

Under N.C. Gen. Stat. § 150B-45, any party wishing to appeal this Final Decision 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 a Petition for Judicial Review within 30 days after being served with a written copy of this Final Decision.**

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. N.C. Gen. Stat. § 150B-46 describes the contents of the Petition for Judicial Review, and requires service of the Petition for Judicial Review on all parties. 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 November, 2016.

Melissa Owens Lassiter
Administrative Law Judge