

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
16 DHR 03411

<p>Darrin L Roach Petitioner,</p> <p>v.</p> <p>Medicaid Estate Recovery Unit 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 June 24, 2016. There is a pending Motion to Stay filed by Respondent; however, this Order is dispositive of this entire case and therefore it is unnecessary to address that pending motion.

On June 28, 2016, the undersigned served Petitioner with a Request for Response to Motion, which the undersigned advised Petitioner that Respondent had filed a Motion for Summary Judgment on June 24, 2016, and ordered that Petitioner respond to that motion on or before July 5, 2016, if Petitioner desired objections to be considered before a ruling was made. On or about July 6, 2016, Petitioner telephoned the office of the undersigned indicating he had retained counsel in this matter. The undersigned granted Petitioner an extension to respond to Respondent's motion with a response due on or before July 12, 2016. On July 13, 2016, an email was received in the office of the undersigned, with a Notice of Appearance on behalf of Petitioner. A response email was sent to counsel indicating that the Notice of Appearance needed to be filed with the Clerk's office at the Office of Administrative Hearings and that a Motion for Summary Judgment had been filed by Respondent and that an additional extension would be granted until July 18, 2016, for response on behalf of Petitioner. Counsel was additionally advised that the undersigned would make a ruling on this motion by July 22, 2016. Petitioner has not responded to Respondent's Motion for Summary Judgment, nor has Petitioner raised any objection to same. Having considered Respondent's Motion and 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 March 10, 2016, denial of 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 of Medical Assistance. In denying Petitioner's 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 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 is affirmed.

NOTICE

THIS IS A FINAL DECISION issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statutes Chapter 150B, Article 4, any party wishing to appeal the Final Decision of the Administrative Law Judge may commence such appeal by filing 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 copy of the Administrative Law Judge's Final Decision.** N.C. Gen. Stat. §150B-46 describes the contents of the Petition and requires service of the Petition on all parties. **This Final Decision was served on the parties as indicated on the Certificate of Service attached to 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. 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 22nd day of July, 2016.

David F Sutton
Administrative Law Judge