

**GEORGIA DEPARTMENT OF COMMUNITY HEALTH
OFFICE OF THE COMMISSIONER
AGENCY APPEAL REVIEW**

PERNIE DUPREE,
Petitioner,

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OSAH-DFCS-NH-1031072-146-KENNEDY

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v.

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Agency Ref. No.: 543555318

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**Department of Human Services,
Division of Family and Children Services,
Respondent.**

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**NOTICE OF FINAL DECISION
AFFIRMING THE INITIAL DECISION
RIGHT OF APPEAL**

PLEASE READ CAREFULLY:

Enclosed is the Final Administrative Decision of the Commissioner of the Georgia Department of Community Health under the authority granted in O.C.G.A. § 49-4-153 (b)(1). The Commissioner, pursuant to the authority conferred on him and through the undersigned as his designated representative, has VACATED the Initial Decision of the Administrative Law Judge as indicated in the attached Final Administrative Decision.

If you desire to contest this Final Decision, you may do so only by filing a timely petition for judicial review in accordance with the provisions of O.C.G.A. § 49-4-153 and O.C.G.A. § 50-13-19. When a decision becomes a Final Decision, a petition for judicial review must be filed in the Superior Court of Fulton County or the county of residence of the appealing party within thirty (30) days of service of the Department's Final Decision. If the appealing party is a corporation, the action may be brought in the Superior Court of Fulton County or the superior court of the county where the party maintains its principal place of doing business in this state. A copy of such a petition shall be served upon the Commissioner and all parties of record. Additional requirements related to the filing of such a petition are found in the two statutes referenced above. You are directed to review and comply with each and every requirement found therein.

This Notice and enclosed copy of the Final Administrative Decision is hereby Issued this September 29, 2010 by:



Richard L. Greene
Agency Appeal Officer
Georgia Department of Community Health
Designated Representative of
Commissioner Clyde L. Reese, III, Esquire

cc: Honorable Ana Kennedy, Administrative Law Judge, OSAH
Mr. John Rasheed, Clerk, OSAH

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FINAL ADMINISTRATIVE DECISION

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. INTRODUCTION

The Petitioner requested administrative hearing after Respondent's denial of her March 8, 2010 application for Nursing Home Medicaid benefits. An Initial Decision was issued on June 30, 2010 reversing the Respondent's denial. Respondent timely filed for Agency Review. Subsequently, several conference calls were conducted between the parties and the undersigned. Counsel for both parties agreed that the issues in this matter are now moot.

II. FINDINGS OF FACT

1. Petitioner's initial application was denied based upon Respondent's designation of the Bragg Circle property as the principal place of residence of the Petitioner.
2. As noted in the Initial Decision, Petitioner filed another application prior to the issuance of the Initial Decision.
3. The Respondent accepted the subsequent application and applied the treatment of the homeplace property in an entirely different manner than in the initial application. This different treatment was inconsistent with Respondent's position in the initial application.

III. CONCLUSIONS OF LAW

4. Although the Respondent may not have intentionally applied the treatment of the homeplace property differently, the fact remains that Respondent's actions in processing the second application rendered the issues raised in this case moot.
5. The substantive issues of litigation disputed by the parties concerning the proper treatment of homeplace properties remain unresolved; however, they are of no consequence here since this particular case has been

rendered moot by error of the Respondent by the procedural treatment of the Petitioner's second application. Nothing in this Final Decision is to effect the processing of the second application.

IV. DECISION

Without agreeing or disagreeing with its Findings of Fact or Conclusions of Law; the Initial Decision of the Administrative Law Judge is hereby VACATED. The decision of the Respondent to deny benefits to the Petitioner under the first application is now moot as the treatment of the homeplace properties in the second application are no longer applicable to this particular case. A finding of the issues being moot does not equate to either an approval or denial of the Nursing Home Medicaid benefits sought by the Petitioner. Nothing herein should serve as a barrier to either party in the processing of the Petitioner's second application for Nursing Home Medicaid benefits.

SO ORDERED this September 29, 2010.



Richard L. Greene
Agency Appeal Officer
Georgia Department of Community Health
Designated Representative of
Commissioner Clyde L. Reese, III

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a copy of the within and foregoing **Final Administrative Decision, Notice of Final Decision and Right of Appeal** on all parties by depositing a copy of same in the United States Postal Service mail, First Class and or Certified postage properly affixed to the addresses of the parties or by hand delivery if so noted, each as shown below:

FOR PETITIONER: (USPS 1st Class Mail and Certified)

Ms. Pernie Dupree
C/O Mr. David McGuffey, CELA, Esquire
Elder Law Practice of David L. McGuffey
105 North Pentz Street
Dalton, Georgia 30720

FOR RESPONDENT: (USPS and/or hand delivery)

Walker County DFCS Office
C/O Ms. Ginger Henry, DHS
2 Peachtree Street, NW, Suite 21-398
Atlanta, GA 30303

Ms. Lynnette Rhodes, Esquire
Medicaid Legal Services Unit, 40th Floor
2 Peachtree Street, NW
Atlanta, GA 30303

September 29, 2010

Date



Richard L. Greene

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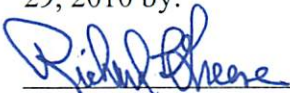
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