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## *Elder Law Minute*

### Successful Agency Review

I have written several times in the past about a Gwinnett County case where my nursing home client transferred assets to a trust for her disabled daughter. Gwinnett DFCS took the position that the recipient trust had to be a Special Needs Trust and sent it to the Legal Services Officer at the Department of Community Health who is responsible for judging SNTs. I argued that the Medicaid Manual did not contain such a requirement for the recipient trust. DFCS refused to either approve or deny my client's Medicaid application because the Legal Services Officer would not rule without our cooperation.

April 3, 2008, I requested a Fair Hearing on the issue of the Standard of Promptness. The Medicaid application had been filed on May 21, 2007, and the Standard of Promptness requires a decision within 45 days of the date of application. On July 3, 2008, the Office of State Administrative Hearings ordered DFCS to complete the processing of the case within 20 days. On July 28, 2008, DFCS predictably denied the application and we requested another Fair Hearing.

As reported earlier, after denying cross motions for Summary Determination, the ALJ held an evidentiary hearing. Following the hearing, he ordered both parties to prepare proposed Findings of Facts and Conclusions of Law. On February 4, 2009, OSAH entered its Initial Decision in favor of DFCS. The decision on its face confirmed that the Judge did not adequately understand the issues to render a decision.

On February 11, 2009, I filed a Motion for Agency Review with DCH. My opponent throughout this nearly two year process had been Gwinnett County DFCS, which is a contractor for DCH. I couldn't imagine that after finally defeating me, that DCH would seriously consider reversing the ALJ's decision. But to its credit, on April 15, 2009, DCH reversed the OSAH decision, concluding that the recipient trust did not need to be declared a Special Needs Trust in order for the assets of the trust to be exempt.

If you would like a copy of the DCH decision, please let me know.

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