

3. Petitioner is the owner of a real property located in Pulaski County. The property is subject to a mortgage, and Petitioner makes monthly payments for principal, interest, taxes, and insurance (“PITI”). *Petitioner’s Exhibit 2; Testimony of L. B. [REDACTED]*

4. Respondent determined that the Pulaski County property described *supra* was Petitioner’s “homeplace” and did not consider its value in the determination of resource eligibility for Medicaid.² According to Mr. B. [REDACTED], there is no possibility of Petitioner returning to reside at the property. *Testimony of Kathy Wallace; Testimony of L. B. [REDACTED]*

5. At the time Petitioner’s Medicaid application was approved, Respondent calculated Petitioner’s gross monthly income by adding the gross amount of her civil service annuity payments to the amount of her Social Security benefits. Respondent did not deduct federal or state income taxes from Petitioner’s civil service annuity payments in calculating her gross income. *Testimony of Kathy Wallace.*

6. In calculating Petitioner’s patient liability, Respondent deducted Petitioner’s Medicare Part B premium, her health insurance premium, and a personal needs allowance from her gross income. Based on its calculations, Respondent determined Petitioner’s patient liability to be \$2,505.00 for the months of October and November 2014. Petitioner’s patient liability increased to \$2,610.00 beginning in December 2014 as the time period during which Medicare Part B premium payments could be allowed as a deduction had expired.³ *Testimony of Kathy Wallace.*

7. Mr. B. [REDACTED] appealed Respondent’s calculation of Petitioner’s patient liability on or about November 10, 2014. At the hearing on this matter, Mr. B. [REDACTED] asserted that Respondent should have deducted state and federal taxes from Petitioner’s civil service annuity payments. He further contended that Petitioner was entitled to deductions for PITI payments on her homeplace property. According to Mr. B. [REDACTED] if these payments are not deducted from patient liability, Petitioner’s property will be subject to foreclosure. *Testimony of L. B. [REDACTED]*

8. Following the evidentiary hearing, Respondent determined that Petitioner was indeed entitled to have state and federal taxes deducted from her civil service annuity payments, and adjusted its calculation of patient liability accordingly.⁴ However, Respondent made no determination as to whether Petitioner was entitled to deductions for PITI. *Respondent’s Exhibit 1.*

² See Respondent’s Economic Support Services Manual, Volume II [hereinafter “Medicaid Manual”] § 2316.

³ See Medicaid Manual § 2552.

⁴ Respondent detailed its recalculation of patient liability in an e-mail sent to Petitioner and the Office of State Administrative Hearings on March 21, 2015. Respondent’s e-mail is admitted into the record as “Respondent’s Exhibit 1.”

9. After making the above-described deductions from Petitioner's civil service annuity payments, Respondent calculated Petitioner's countable income to be \$2,500.00, which, after deducting Petitioner's personal needs allowance, Medicare Part B premium, and health insurance premium, resulted in patient liability of \$2,154.00 for the months of October and November 2014. Petitioner's liability increased to \$2,259.00 in December 2014 when her Medicare Part B premiums ceased to be allowed as a deduction. Beginning in 2015, Petitioner's countable income increased to \$2,545.00 due to a 1.7% cost of living adjustment in her civil service annuity and Social Security benefits. Consequently, her liability for January 2015 and ongoing increased to \$2,297.00. *Respondent's Exhibit 1.*

III. Conclusions of Law

Based on the above findings of fact, the undersigned makes the following conclusions of law:

1. Because Petitioner disputes Respondent's calculation of her benefit amount, and this case does not concern agency action reducing, suspending, or terminating a benefit, Petitioner bears the burden of proof. Ga. Comp. R. & Regs. 616-1-2-.07(1)(e). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21.

2. Medicaid is a joint federal-state program that provides comprehensive medical care for certain classes of eligible recipients whose income and resources are determined to be insufficient to meet the costs of necessary medical care and services. 42 U.S.C. § 1396 et seq. Participation is voluntary, "but once a state opts to participate it must comply with federal statutory and regulatory requirements." *Id.* All states have opted to participate and, thus, each must designate a single state agency to administer its Medicaid plan. *Id.*; 42 C.F.R. § 431.10(a), (b)(1). In Georgia, administration of the Medicaid plan has been assigned to the Department of Community Health which, in turn, has delegated many functions of the program to the Division of Family and Children Services of the Department of Human Services, the Respondent in this case. Medicaid applicants may apply for Medicaid through Respondent, which issues program guidelines in its Medicaid Manual.

3. Respondent must reduce its payment to a nursing home for services provided to an individual who qualifies for Medicaid under the Nursing Home class of assistance by the amount of that individual's countable income, less certain prescribed deductions. 42 C.F.R. § 435.725, .832; *see, e.g., Miller v. Olszewski*, No. 09-13683, 2009 U.S. Dist. LEXIS 118984, *9 (E.D. Mich. Dec. 21, 2009). These prescribed deductions include:

- (1) A Personal needs allowance;
- (2) Maintenance needs of the recipient's spouse;
- (3) Maintenance needs of the recipient's family; and
- (4) Incurred Medical Expenses.

42 C.F.R. § 435.725; *see* MEDICAID MANUAL § 2552.

4. In addition to the deductions described *supra*, States may, at their option, allow deductions for maintenance of the individual's home, provided that "(1) the amount is deducted for not more than a 6-month period; and (2) [a] physician has certified that . . . the individual[] is likely to return to the home within that period." 42 C.F.R. § 435.725(d). Georgia has not elected to allow deductions for maintenance of an individual's home. See STATE MEDICAID PLAN, Attachment 2.6-A, 5, available at <https://dch.georgia.gov/medicaid-state-plan>.

5. In the present case, Mr. B [REDACTED]'s contention that Petitioner's patient liability should be reduced by the amount of her federal and state income taxes, and the PITI payments for the maintenance of her homeplace is without support in the governing law. Respondent agrees with Mr. B [REDACTED]'s contention regarding income taxes, and has reduced the countable income in her Medicaid budget accordingly. However, Mortgage payments are not included among the deductions expressly provided for in Medicaid regulations. See 42 C.F.R. § 435.725. Respondent appropriately disregarded Petitioner's mortgage payments in determining Petitioner's patient liability.

IV. Decision

In accordance with the foregoing Findings of Fact and Conclusions of Law, the patient liability calculated by Supervisor Kathy Wallace which reduced the patient liability by only the federal and state income taxes paid is AFFIRMED. Petitioner's request to have PITI payments deducted in the patient liability budget is DENIED.

SO ORDERED this 15th day of April, 2015.


M. PATRICK WOODARD
Administrative Law Judge

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

MARGIE A BENNETT,	:	
Petitioner,	:	Docket No.: OSAH-DFCS-NH-1526255-116-Woodard
	:	
v.	:	Agency Reference No.: 664561519
	:	
DHS, FAMILY & CHILDREN SERVICES,	:	
Respondent.	:	

NOTICE OF INITIAL DECISION

This is the Initial Decision of the Administrative Law Judge (Judge) in the case. This decision is reviewable by the Referring Agency. If a party disagrees with this decision, the party may file a motion for reconsideration, a motion for rehearing, or a motion to vacate or modify a default order with the OSAH Judge. A party may also seek agency review of this decision.

FILING A MOTION WITH THE JUDGE AT OSAH

The Motion must be filed in writing within ten (10) days of the entry, i.e., the issuance date, of this decision. **The filing of such a motion may or may not toll the time for filing a request for agency review.** See OSAH Rules 616-1-2-.28 and .30 in conjunction with O.C.G.A. § 49-4-153. Motions must include the case docket number, be served simultaneously upon all parties of record, either by personal delivery or first class mail, with proper postage affixed, and be filed with the OSAH clerk at:

Clerk
Office of State Administrative Hearings
Attn.: Victoria Hightower, vhightower@osah.ga.gov
225 Peachtree Street, NE, South Tower, Suite 400
Atlanta, Georgia 30303-1534

REQUEST FOR AGENCY REVIEW

A request for Agency Review must be filed within thirty (30) days after service of this Initial Decision. O.C.G.A. § 49-4-153(b)(1). A copy of the application for agency review must be simultaneously served upon all parties of record and filed with the OSAH clerk. The application for Agency Review should be filed with:

Department of Community Health
Legal Services Unit, Attn: Appeals Reviewer
2 Peachtree Street, 40th Floor
Atlanta, Georgia 30303

This Initial Decision will become the Final Decision of the agency if neither party makes a timely application for agency review. O.C.G.A. § 49-4-153(b)(1) and (c). When a decision becomes Final, an application for judicial review must be filed within thirty (30) days in the Superior Court of Fulton County or the county of residence of the appealing party. 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. O.C.G.A. § 49-4-153(c).