IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

[redacted],
Petitioner,

v.

DEPARTMENT OF HUMAN SERVICES, DIVISION OF FAMILY & CHILDREN SERVICES,
Respondent.

Docket No.:
OSAH-DFCS-NH-[redacted]Woodard

Agency Reference No. [redacted]02906

FILED
OSAH
JUN 15 2015
Jenna Judy, Legal Assistant

INITIAL DECISION

I. Introduction.

Petitioner [redacted] appealed the Department of Human Services, Division of Family and Children Services' ("DHS") decision to deny his application for Medicaid and sought an order requesting relief under the provisions of the Medicare Catastrophic Coverage Act, 42 U.S.C. § 1396r-5. The hearing on this matter was held before the undersigned Administrative Law Judge at the Marietta Municipal Court in Marietta, Georgia on May 4, 2015. Petitioner was represented by Anthony Kirkland, Esq. of the Law Office of Anthony Kirkland. Susan Jackson, Esq. appeared for DHS. For the reasons indicated herein, DHS's action is **REVERSED** and the relief prayed for by Petitioner is **GRANTED**.

II. Findings of Fact

1.

Petitioner lives in a nursing home. His wife, [redacted] ("[redacted]"), lives in a private residence, and is not "institutionalized" as defined by Medicaid law. Petitioner applied for Medicaid coverage of his nursing care on October 14, 2014. His application was denied on March 31, 2015 by the Cobb County office of DHS's Division of Family and Child Services, Adult Services, on the grounds that the value of his resources was more than the maximum resource limit for enrollment in the program. DHS found at that time that the total value of Petitioner and [redacted]'s assets was $288,091.69; that Petitioner and [redacted] collectively earned $2,165.80 in monthly Social Security benefits; and that Petitioner earned a monthly Veteran's Affairs ("VA") benefit of $67.00, for a before-tax monthly income total for the couple of $2,232.80; these findings were included in its notice to Petitioner of its denial of his application. Petitioner stipulated that DHS's findings as to his and his wife's income and asset figures were correct, and that his application was properly denied at the county level under applicable law. (Pet'r's Br. 4; Pet'r's Br. Ex. B.)

2.

Petitioner's gross Social Security income is $1,258.90 per month. His VA benefit income is $67.00 per month. Thus, Petitioner's gross income is $1325.90 per month. This is under the income limit, or Medicaid CAP, of $2,199 for an individual. [redacted] receives $906.90 in Social Security income per month. The couple's total gross income is $2,232.80. (Pet'r's Br. 7; Pet'r's Br. Ex. B.)

3.

Pursuant to the Medicare Catastrophic Coverage Act ("MCCA"), 42 U.S.C. § 1396r-5, when one spouse in a couple is institutionalized in a nursing home (the "institutionalized spouse"), and the other spouse remains living in the community (the "community spouse"), the community spouse is entitled to a minimum monthly maintenance needs allowance ("MMMNA"), to be set by each State, from the income of the institutionalized spouse so that the community spouse is not impoverished. Georgia's MMMNA is called the Community Spouse Maintenance Allowance ("CSMA") and its value for the year 2015 is $2,980.50. (Pet'r's Br. 2.)

4.

Petitioner's income is devoted entirely to his nursing care. He may and does, however, deduct $50.00 per month for his personal needs allowance, and $203.25 per month for private Medicare Supplemental Insurance, from these payments; the remainder of his income, $1,072.65 per month, is paid to his nursing home. The latter amount, therefore, is Petitioner's current Patient Liability Amount, or the amount of his income which he must pay directly to his nursing home. Petitioner seeks in part an order reversing the denial of his application for Medicaid benefits, so that Medicaid rather than his income will fund his care, and allowing him to divert this $1,072.65 per month to [redacted]. [redacted]'s monthly Social Security Income of $906.90 plus the diverted income from Petitioner of $1,072.65 per month would equal $1,979.55. This figure falls $1,000.95 per month short of the CSMA for Georgia. Annually this shortfall totals $12,011.40. (Pet'r's Br. 7.)

5.

Petitioner was rejected each month from October 2014 to April 2015 for Medicaid on the grounds that the value of the resources possessed by him and Marie, $288,091.69, was more than the individual resource limit for the program, which is $2,000. Petitioner also seeks, however, to transfer all of the couple's assets of $288,091.69 to Marie. If Petitioner's income and resources were diverted to his spouse, he would qualify for Medicaid because his non-exempt income would be zero dollars per month and he would retain less than $2,000 in resources. (Pet'r's Br. Ex. B; OSAH Form 1 and attachments.)

6.

Petitioner and [redacted]'s cash and savings assets are deposited in three Wells Fargo bank accounts. One account, a high-yield savings account, holds a value of approximately $170,607.48 and

earns interest at a 0.350% annual percentage yield ("APY") for an annual total interest income of $597.13, or $49.76 per month. The second, a checking account, holds a value of approximately $2,086.32 and earns 0.010% APY for an annual total interest income of $0.21, or $0.02 per month. The third, another checking account, holds a value of approximately $29,397.89 and also earns $0.010% APY for a total annual interest income of approximately $2.94, or $0.24 per month. The total monthly interest income of these three accounts is $50.02. Petitioner and his wife also own a non-homeplace property in Paulding County, Georgia valued at $86,000 that does not generate interest income. The combined value of the three bank accounts and the non-homeplace property is $288,091.69. (Pet'r's Br. 8; Pet'r's Br. Ex. C.)

7.

The MCCA provides that an amount of the institutionalized spouse's resources equal to a community spouse resource allowance established by each State may be transferred to the community spouse to prevent his or her impoverishment after the institutionalized spouse has been declared eligible for Medicaid benefits. In Georgia, the community spouse resource allowance is called the Community Spouse Protected Resource Amount ("CSPRA") and its value for 2015 is $119,220.00. Were the CSPRA to remain at $119,220.00, then Marie would only be able to supplement her income with interest collected on assets that count toward that amount. For example, if she counted the $86,000 non-homeplace property towards her $119,220 limit, only $33,220 would remain on which to collect interest. Setting the CSPRA at $288,091.69 would allow [redacted] to collect the full amount of monthly interest income generated by the cash and savings assets owned by Petitioner and her, $50.02, as additional monthly income. By adding $50.02 to $1,979.55, Marie would be able to collect $2,029.57 in monthly income. This would still fall short of the CSMA by $950.93, but would more closely approximate it than would Marie's Social Security income plus Petitioner's contribution alone. Petitioner has moved to increase the CSPRA for Marie to $288,091.69. (Pet'r's Br. 2, 8.)

8.

At the hearing, the parties announced that they had agreed that the Petitioner's motion to raise the CSPRA to $288,091.69 should be granted. They further agreed that the Petitioner's patient Liability Amount should be zero and that the denial of his application for Medicaid benefits should be reversed, effective as of the date of Petitioner's initial institutionalization of September 27, 2014, because his non-exempt income will be diverted entirely to [redacted] as will all of the couple's assets. Petitioner has been continuously institutionalized since September 27, 2014. The parties additionally agreed that Marie would be entitled to reimbursement of any funds which had been paid from Petitioner's non-exempt income to pay for Petitioner's nursing care since September 27, 2014, the initial date of his institutionalization. (Pet'r's Br. 9.)

III. Conclusions of Law

1.

The Medicaid program is a cooperative venture between the federal and state governments through which medical care is offered to the needy. Wilder v. Virginia Hosp. Ass'n, 496 U.S.

498, 502 (1990). Although participation in the program is voluntary, a state that chooses to participate must comply with the program requirements found in federal law. Id.

2.

Congress enacted the MCCA in 1988 "to protect the elderly and disabled population from the financial disaster caused by catastrophic health care expenditures not currently reimbursed under the Medicare and Medicaid programs." H.R. Rep. No. 100-105(II), at 65 (1988), reprinted in 1988 U.S.C.C.A.N. 857, 888. Under prior law, nearly all of a couple's assets had to be depleted before a spouse institutionalized in a nursing home could become eligible for Medicaid, which often resulted in impoverishment of the community spouse. Id. The Act was designed to "end this pauperization by assuring that the community spouse has a sufficient – but not excessive – amount of income and resources available to her while her spouse is in a nursing home at Medicaid expense." Id.

3.

The MCCA requires that, at the beginning of the first period of institutionalization of the institutionalized spouse, a computation of the couple's resources in which at least one spouse has an ownership interest must be made. 42 U.S.C. § 1396r-5(c)(1)(A). The State must provide the couple with a notice of the assessment. 42 U.S.C. § 1396r-5(c)(1)(B).

4.

Medicaid requires that the nursing home resident be in need to qualify for coverage; an applicant is not eligible to receive Medicaid if his or her countable resources exceed $2,000. 42 U.S.C. § 1382(a)(1)(B); Economic Support Services Manual of the Georgia Department of Human Services (hereinafter "Medicaid Manual") App'x A1, Chart A1.2; see also 42 U.S.C. § 1396a(a)(17); Medicaid Manual § 2510. The MCCA provides, however, that in order to provide for the community spouse, the institutionalized spouse may transfer an amount of resources to the community spouse equal to the community spouse resource allowance. 42 U.S.C. § 1396r-5(f); see Medicaid Manual § 2502. In Georgia, the community spouse resource allowance is called the Community Spouse Protected Resource Amount ("CSPRA"). Memorandum from The Department of Family and Children Services, Office of Family Independence, State Medicaid Policy Unit to Regional Directors, Regional Managers, OFI Program Directors, and OFI Staff (December 4, 2014) (on file with OSAH) (hereinafter "Medicaid Memo") (providing 2015 figures to update the 2014 figures in Medicaid Manual App'x A1). The CSPRA in Georgia for the year 2015 is $119,220.00. Id.; see also Medicaid Manual App'x A1, Chart A1.1 (providing figures for 2014). A community spouse and an institutional spouse would be able to cumulatively possess up to $121,220 in resources because the community spouse's maximum would be the CSPRA, and the institutionalized spouse's maximum would be the standard Medicaid resource limit of $2000; this combined figure is called the Spousal Impoverishment Resource Limit. Medicaid Memo.

5.

Once the institutionalized spouse's eligibility for Medicaid is established, the MCCA requires a determination to be made of the amount of income that will be deducted from the institutionalized spouse's income to the community spouse and for other uses. 42 U.S.C. § 1396r-5(d). The institutionalized spouse deducts a personal needs allowance from his income. 42 U.S.C. §§ 1396r-5(d)(1)(A), 1396a(q)(1)-(2); Medicaid Manual § 2552 and App'x A1, Chart A1.9. The community spouse would be entitled to support from the income of an institutionalized spouse in the amount of a minimum monthly maintenance needs allowance, or MMMNA, to be set by the States. 42 U.S.C. § 1396r-5(d)(3). The MMMNA for 2015 in Georgia is $2,980.50 and in Georgia it is called the community spouse maintenance allowance ("CSMA"). Medicaid Memo; see Medicaid Manual § 2554. A family deduction is made if either spouse has any dependents residing with him or her. 42 U.S.C. § 1395r-5(d)(1)(C); Medicaid Manual § 2554. A fourth deduction, for "[M]edicare and other health insurance premiums, deductibles or coinsurance" is taken. 42 U.S.C. § 1396a(r)(1)(i); 42 U.S.C. § 1395r-5(d)(1)(D); see Medicaid Manual § 2555. The remainder of the income of an institutionalized Medicaid recipient that exceeds the MMMNA for the community spouse, after the family, personal needs, and medical care deductions, is then paid to the nursing home. 42 U.S.C. § 1396r-5(d)(1); Medicaid Manual § 2552. This remainder is called the Patient Liability Amount, or the cost share. Id. There was no dispute in this proceeding that Marie's income plus the income diverted from Petitioner to Marie, $2,029.57, would not exceed the CSMA of $2,980.50. Therefore the only question before the Court is whether the CSPRA should be increased for the benefit of [redacted].

6.

The MCCA provides:

> (e) Notice and Fair Hearing
>
> . . .
>
> (2) Fair Hearing
>
> (A) In general
>
> . . .
>
> (v) the determination of the community spouse resource allowance (as defined in subsection (f)(2) of this section);
>
> Such spouse is entitled to a fair hearing described in section [1396a(a)(3)] of this title with respect to such determination of an application for benefits under this title has been made on behalf of the institutionalized spouse. Any such hearing respecting the determination of the community spouse resource allowance shall be held within 30 days of the date of the request for the hearing.
>
> . . .

> (C) Revision of community spouse resource allowance. If either such spouse establishes that the community spouse resource allowance (in relation to the amount of income generated by such an allowance) is inadequate to raise the community spouse's income to the minimum monthly maintenance needs allowance, there shall be substituted, for the community spouse resource allowance under subsection (f)(2), an amount adequate to provide such a minimum monthly maintenance needs allowance.

42 U.S.C. § 1396r-5(e)(2) (emphasis added). Therefore, if Petitioner has demonstrated that the income generated by a CSPRA of $119,220.00 is inadequate to generate Georgia's CSMA of $2,980.50 for Marie, then this Court "shall" revise the CSPRA upward so that it will provide the CSMA. Id.

7.

In this case, the parties agreed at the hearing that a CSPRA for [redacted] of $119,220.00 would be inadequate to generate the CSMA for her of $2,980.50, and that the CSPRA should consequently be raised to $288,091.69 in order to provide $50.02 more in monthly income to [redacted]. Petitioner demonstrated in his brief that he and [redacted] hold $288,091.69 in assets and that the interest income from those assets is $50.02 per month. Thus, upon the granting of Petitioner's motion, all of Petitioner and [redacted]'s $288,091.69 in assets will be transferred to [redacted] as her CSPRA. See 42 U.S.C. § 1396r-5(f)(1); Medicaid Manual § 2502. The parties further agreed that Petitioner will continue to deduct $50 per month as his personal needs allowance, see 42 U.S.C. §§ 1396r-5(d)(1)(A); 1396a(q)(1)-(2); Medicaid Manual § 2552, and $203.25 as his medical care deduction for Medicare Supplemental Insurance premiums, see 42 U.S.C. §§ 1396a(r)(1)(i), 1395r-5(d)(1)(D); Medicaid Manual § 2555. Petitioner does not claim a family deduction. See 42 U.S.C. § 1395r-5(d)(1)(C); Medicaid Manual § 2554. Therefore, upon the granting of Petitioner's motion, Petitioner will monthly transfer $1,072.65 out of his $1,325.90 income to [redacted]. See 42 U.S.C. § 1395r-5(d); Medicaid Manual § 2554.

8.

Petitioner demonstrated that a diversion of all of his non-exempt income to [redacted], plus providing her with all of the $50.02 per month of interest income, would not cause Marie to exceed the CSMA. Therefore, Petitioner will not have excess income to pay directly to his nursing home for his care. See 42 U.S.C. § 1396r-5(d)(1); Medicaid Manual § 2552. His Patient Liability Amount, upon the granting of his motions, would therefore be zero dollars per month. See id.

9.

The MCCA provides that "[d]uring the continuous period in which an institutionalized spouse is in an institution and after the month in which an institutionalized spouse is determined to be eligible for [Medicaid] benefits . . . no resources of the community spouse shall be deemed available to the institutionalized spouse." 42 U.S.C. § 1396r-5(c)(4). Petitioner has been institutionalized continuously since September 27, 2014; thus, Petitioner properly requested that

his Medicaid benefits be approved as of September 27, 2014. Consequently, upon the granting of this motion, Petitioner's non-deductible income, $1,072.65 per month, and the full amount of his and [redacted]'s assets, $288,091.69, would be considered as having belonged to [redacted] since September 27, 2014 and would be considered unavailable to Petitioner to pay for his nursing care. See id. [redacted] would need to be reimbursed accordingly for expenses incurred out of the portion of Petitioner's income that should have been redirected to her since September 27, 2014 – Petitioner's non-deductible income of $1072.65 per month – that was instead used to pay for Petitioner's nursing home care.

IV. Decision

In accordance with the foregoing Findings of Fact and Conclusions of Law, the Petitioner's motion to raise the CSPRA for Marie to $288,091.69 and to set his Patient Liability for his nursing home care at zero dollars per month, is **GRANTED**. The Respondent's denial of Petitioner's application for Medicaid benefits is **REVERSED**, effective as of September 27, 2014, the initial date of Petitioner's institutionalization. All appropriate reimbursements to Marie for payments which have been made from Petitioner's income to his nursing home since September 27, 2014 are hereby **ORDERED**.

SO ORDERED, this 15th day of June, 2015.

Patrick Woodard
Administrative Law Judge

Volume _____ Page _____

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

JOSEPH DIBENEDETTO, Petitioner,	:	Docket No.: OSAH-DFCS-NH-1549571-33-Woodard
v.	:	Agency Reference No.: 887502906
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 conjuction 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.: Jenna Judy, jjudy@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).