BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

[redacted],	:	
Petitioner,	:	
	:	**Docket No.:**
v.	:	**OSAH-DFCS-NH-[redacted]-Miller**
	:	
DHS, FAMILY & CHILDREN SERVICES,	:	**Agency Reference No.:** [redacted]
Respondent.	:	

INITIAL DECISION

I. Overview

This matter is an appeal by the Petitioner, [redacted], of a decision by the Department of Human Services, Division of Family and Children Services ("Department"), Respondent herein, to deny his application for Nursing Home Medicaid. The hearing took place on June 27, 2016. The Petitioner was represented by Patrick C. Smith, Jr., Esq. Bennie Joiner, a Medicaid caseworker for the Department, appeared as the Department's representative.

At the hearing, the Petitioner filed a Brief in Support of Appeal for Increased Community Spouse Resource Allowance Under 42 U.S.C. § 1396r-5 ("Petitioner's Brief"). The Petitioner argues that the community spouse resource allowance allocated to his wife should be increased, with a corresponding decrease in the Petitioner's resources to a value below the limit for Nursing Home Medicaid eligibility. The parties agreed to stipulate to the facts of the case as set forth in the hearing record and the Petitioner's Brief. On July 18, 2016, the Department filed a timely response to the Petitioner's brief.[1]

After consideration of the stipulated facts and the parties' legal arguments, and for the reasons set forth below, this matter is **REMANDED** for a redetermination of the Petitioner's Medicaid eligibility.

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[1] The hearing record closed on July 18, 2016, when the Department's response brief was received.

II. Findings of Fact

The parties have jointly stipulated to the following facts:

1.

On March 31, 2016, the Petitioner submitted an application for Nursing Home Medicaid. The Petitioner is a resident of Lumber City Nursing & Rehab in Lumber City, Georgia. His wife, [redacted], resides outside the nursing home and is considered a "community spouse" for Medicaid purposes. (Hearing Record; Petitioner's Brief at 5; Exhibit R-1.)

2.

As of March 1, 2016, the Petitioner and Mrs. [redacted] owned countable assets totaling $202,921.34. These assets are held in seven certificates of deposit ("CDs") and a checking account,[2] as follows:

Renasant CD #[redacted]	$22,472.86
Renasant CD #[redacted]	$22,431.48
Renasant CD #[redacted]	$17,432.88
Renasant CD #[redacted]	$21,993.06
Renasant CD #[redacted]	$21,993.06
Renasant CD #[redacted]	$21,993.06
Renasant CD #[redacted]	$22,102.71
Renasant Bank Checking #[redacted]	$52,502.23
	$202,931.34

Together, the CDs generate earnings of $41.26 per month and $495.12 per year. The checking account is not interest-bearing. (Hearing Record; Petitioner's Brief at 8; Exhibits P-B, P-C, R-1, R-2.)

[2] It should be noted that the record contains minor inconsistencies regarding the account numbers and values of the Petitioner's assets. However, because the parties stipulated that the figures contained in the Petitioner's Brief were correct, the Court has adopted those figures. (Petitioner's Brief at 8; Department's Response at 2, footnote 3; Exhibit P-C.)

3.

The Petitioner's gross monthly income is $2,013.28, which consists of $1,426.90 in Social Security benefits; $453.21 in pension benefits; and $133.17 in Veterans Administration ("VA") benefits. After deducting a $50.00 per month personal needs allowance and a monthly payment of $597.78 for his private Medicare supplemental insurance, the Petitioner's remaining net income is $1,365.50. (Hearing Record; Petitioner's Brief at 4-5; Exhibit P-C.)

4.

Mrs. [redacted] receives monthly Social Security benefits of $911.90 and has no other income. As a community spouse, Mrs. [redacted] is entitled to receive income from the Petitioner (the "institutionalized spouse") to help meet her needs, so long as her gross monthly income does not exceed the minimum monthly maintenance needs allowance ("MMMNA") of $2,980.00. In this case, even if the Petitioner diverts all of his net income to Mrs. [redacted], her monthly income will be just $2,277.40, which is $702.60 below the MMMNA limit. (Hearing Record; Petitioner's Brief at 4-5; Exhibit P-C.)

5.

On April 18, 2016, the Department notified the Petitioner that his application for Nursing Home Medicaid had been denied because the value of his resources exceeded the limit for program eligibility. The Department applied resource allowances of $2,000.00 for the Petitioner and $119,220.00 for Mrs. [redacted] as the community spouse, in accordance with its policy manual. Thus, the couple's assets, which totaled $202,921.34, exceeded the combined resource allowance of $121,220.00. (Hearing Record; Petitioner's Brief at 5; Exhibit R-3.)

6.

The Petitioner timely appealed the denial of his application. He seeks an upward revision of the community spouse resource allowance, from $119,220.00 to the base total of the couple's countable assets, or $202,921.34. (Hearing Record; Petitioner's Brief at 9.)

III. Conclusions of Law

1.

Because this matter involves an application for public assistance benefits, the burden of proof is on the Petitioner. 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(4).

2.

When a contested case is referred to the Office of State Administrative Hearings, the administrative law judge assigned to the case has "all the powers of the referring agency . . . ." O.C.G.A. § 50-13-41(b). The evidentiary hearing is *de novo*, and the administrative law judge "shall make an independent determination on the basis of the competent evidence presented at the hearing." Ga. Comp. R. & Regs. 616-1-2-.21(1). To the extent an issue involves the interpretation of a federal statute, "it is a question of law which is reviewed *de novo*." Draper v. Atlanta Indep. Sch. Sys., 518 F.3d 1275, 1284 (11th Cir. 2008).

3.

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.

4.

In Georgia, Medicaid benefits are provided through a variety of classes of assistance, each with its own specific eligibility criteria. Georgia Department of Human Services Medicaid Manual (Volume II, MAN 3480) ("Medicaid Manual") § 2101 et seq.

5.

Nursing Home Medicaid is a class of assistance that provides Medicaid coverage for individuals who reside in a participating nursing home. Medicaid Manual § 2141. Among other eligibility requirements, a recipient of Nursing Home Medicaid may not retain cash or other countable assets that exceed $2,000.00 in value.[3] 42 U.S.C. § 1382(a)(1)(B)(ii); Medicaid Manual, Appx. A1-1. If the recipient has a spouse who continues to reside in the community, the spouse may retain countable assets of up to $119,220.00.[4] 42 U.S.C. § 1396r-5(f)(2); Medicaid Manual, Appx. A1-1. This figure is known as the "community spouse resource allowance" ("CSRA"). Id.

6.

In this case, the Petitioner's and Mrs. Dixon's countable assets, which total $202,921.34, exceed their combined resource allowance of $121,220.00. However, pursuant to 42 U.S.C. § 1396r-5(e)(2)(C), the Petitioner may request an upward revision of the CSRA in order to

[3] All of a couple's non-exempt, available resources must be considered when determining the Medicaid eligibility of the institutionalized spouse. It is immaterial whether the resource is owned jointly or individually by either spouse. 42 U.S.C. § 1396r-5(c)(2). "The term 'assets', with respect to an individual, includes all income and resources of the individual and of the individual's spouse . . . ." 42 U.S.C. § 1396p(h).

[4] The CSRA was established in 1988 as part of the Medicare Catastrophic Coverage Act ("MCCA"). Prior to the enactment of the MCCA, an institutionalized spouse did not become eligible for Medicaid until nearly all marital assets were depleted, which frequently had the unintended consequence of causing the impoverishment of the community spouse. The MCCA sought "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." H.R. Rep. No. 105 (II), 100th Cong., 2d Sess. 65-68 (1988), *reprinted in* 1988 U.S.C.C.A.N. 803, 888.

generate additional income for Mrs. [redacted], up to the MMMNA. The statute provides, in relevant part:

> If either 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) of this section, an amount adequate to provide such a minimum monthly maintenance needs allowance.

42 U.S.C. § 1396r-5(e)(2)(C).

7.

Currently, the MMMNA in Georgia[5] is $2,980.00 per month. Medicaid Manual, Appx. A1-3. As previously noted, Mrs. [redacted]'s monthly income, which includes her own Social Security benefits plus income diverted from the Petitioner, is $2,277.40. This leaves her with an MMMNA shortfall of $702.60. Yet the question remains: is an upward revision of the CSRA required to meet the shortfall, and if so, to what degree? In determining whether and in what amount to grant an upward revision of the CSRA, it is necessary to strike a balance between the community spouse's interest in a guaranteed adequate income and the public's interest in ensuring that taxpayer-funded Medicaid coverage is awarded only to the truly needy. See Johnson v. Lodge, 673 F. Supp. 2d 613, 619 (M.D. Tenn. 2009).

8.

Congress has not mandated a particular method for determining the amount of income-generating assets a community spouse may retain for the purpose of covering an MMMNA shortfall. See 42 U.S.C. § 1396r-5(e)(2). However, the Centers for Medicare & Medicaid Services ("CMS") has instructed the states to use "any reasonable method for determining the

[5] The Department's policy manual refers to the MMMNA as the "community spouse maintenance need standard." Medicaid Manual, Appx. A1-3.

amount of resources necessary to generate adequate income, including adjusting the CSRA to the amount a person would have to invest in a single premium annuity to generate the needed income, attributing a rate of return based on a presumed available rate of interest, or other methods." Section 6013: Application of the Spousal Impoverishment "Income-First" Rule Under the Deficit Reduction Act of 2005, Centers for Medicare & Medicaid Services (July 27, 2006).[6] Neither party to this case has indicated which "reasonable method," if any, the Department has chosen to apply, and the Court has been unable to locate any discussion of a particular method in the Department's regulations or policy manual.

9.

The Petitioner seeks to raise Mrs. [redacted]'s CSRA to the total of the couple's countable assets, or $202,921.34, an amount that exceeds the couple's combined resource limit by more than $80,000.00 and is potentially a windfall for Mrs. [redacted] and/or her heirs. The Petitioner's proposal also presupposes that the assets will continue to be invested in low-interest CDs generating only $41.26 per month in additional income. However, 42 U.S.C. § 1396r-5(e)(2)(C) does not require the preservation of the principal balance of CSRA assets. In fact, the statute, by referencing "the amount of income generated by such an allowance," specifically contemplates that the CSRA be depleted in order to generate income for the community spouse. Here, the record contains no evidence that the baseline CSRA is inadequate to generate income to cover the MMMNA shortfall,[7] particularly if Mrs. [redacted] should select another investment vehicle, such as an annuity. For example, in Johnson, 673 F. Supp. 2d at 618-19, the district court

[6] CMS' interpretation of the statute is afforded "respectful consideration in light of the agency's significant expertise, the technical complexity of the Medicaid program, and the exceptionally broad authority conferred upon the Secretary under the [Medicaid] Act." Johnson, 673 F. Supp. 2d at 620 (citations omitted).

[7] As noted in the Findings of Fact, above, $52,502.23 is currently held in a checking account that does not produce any income whatsoever.

expressly determined that "[a] CSRA that is equal to or higher than the cost of a sufficient annuity is thus '[]adequate to raise the community spouse's income to the [MMMNA],' 42 U.S.C. § 1396r-5(e)(2)(C); there is no requirement that the state increase such a CSRA."[8]

IV. Decision

In accordance with the foregoing Findings of Fact and Conclusions of Law, the Department's action denying the Petitioner's application for Nursing Home Medicaid is hereby **REMANDED**. The Department shall redetermine the Petitioner's Medicaid eligibility as of the date of his original application, and shall notify the Petitioner of the outcome within thirty days of the entry of this Initial Decision. In conjunction with the redetermination, the Department shall apply a reasonable method for determining the amount of resources necessary to allow Mrs. [redacted] to generate income sufficient to cover the MMMNA shortfall. If the application of this reasonable method should reveal that an upward revision of the CSRA is necessary, the CSRA shall be revised accordingly.

SO ORDERED, this 18th day of August, 2016.

KRISTIN L. MILLER
Administrative Law Judge

[8] Of course, Mrs. [redacted] may invest her assets in any way she chooses. The price of a suitable annuity is simply one benchmark for determining the value of assets necessary to generate income to cover the MMMNA shortfall. See Lynch v. Commissioner of the New York State Department of Health, No. 5871-07, 856 N.Y.S.2d 499, 2008 N.Y. Misc. LEXIS 21, at *14-15 (N.Y. Sup. Ct. Jan. 9, 2008).

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STATE OF GEORGIA

[redacted] Petitioner,	:	Docket No.: OSAH-DFCS-NH-[redacted] Miller
v.	:	Agency Reference No. [redacted]
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.: Gloria McDonald, gmcdonal@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).

RE: ALFRED DIXON, Petitioner

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

MAIL TO:

☐ [redacted]

☐ PATRICK SMITH
[redacted]