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

**A S,**
**Petitioner,**

**v.**

**DHS, DIVISION OF FAMILY AND CHILDREN SERVICES,**
**Respondent.**

**Docket No.: -OSAH-DFCS-M-NH-149-Schroer**

**Agency Reference No.:**

# INITIAL DECISION

## I. Introduction

Petitioner, A S, appealed the decision by the Department of Human Services, Division of Family and Children Services ("DFCS") to deny her application for Medicaid and sought an order requesting relief under the provisions of the Medicare Catastrophic Coverage Act, 42 U.S.C. § 1396r-5. A hearing was held via Zoom on November 17, 2022. Petitioner was represented by Patrick C. Smith, Jr., Esq. of Think Different Legal Group. Jeanie Ware, Esq., represented Respondent. Also in attendance were Dophamia Dean, Department of Community Health ("DCH") Program Consultant for Aged, Blind, and Disabled Medicaid Policy, and Kiawana Hollimon, Fair Hearing Unit Representative for DFCS.

Prior to the hearing, Petitioner, through counsel, submitted a Brief in Support of Appeal for Increased Community Spouse Resource Allowance Under 42 U.S.C. 1396r-5. Respondent filed a brief in response.[1] For the reasons indicated herein, the matter is **REVERSED and REMANDED** to the Department for a redetermination of Petitioner's Medicaid eligibility.

[1] On November 14, 2022, Respondent inadvertently filed a copy of its response brief containing edits and margin comments. On November 17, 2022, Respondent filed a corrected version.

## II. Findings of Fact

1.

The facts of this case are not in dispute. Petitioner is a resident of [redacted] Health and Rehab Center in [redacted], Georgia. She is married to C[redacted] S[redacted], who, through October 2022 (and for the months applied for), was not institutionalized, lived in a private residence, and was considered a "community spouse" for Medicaid purposes.

2.

As set forth in Exhibit C attached to Petitioner's brief, the amount of total countable assets for Petitioner and Mr. S[redacted] is $311,112.00.[2] Petitioner and Mr. S[redacted] earn $685.00 and $1,583.30, respectively, in monthly Social Security benefits. Together, they earn a before-tax monthly income total of $2,268.30. (Their financial accounts and life insurance policies generate nominal interest of approximately $1.06 per month.) After deducting a $70.00 per month personal needs allowance, Petitioner is left with $615.00 of her monthly income that she may divert to her spouse. Mr. S[redacted] is permitted to keep all of his income of $1,583.30.

3.

As a community spouse, Mr. S[redacted] is entitled to receive income from Petitioner (the "institutionalized spouse") to help meet his needs, so long as his gross monthly income does not exceed the minimum monthly maintenance needs allowance ("MMMNA") of $3,435.00. In this case, even if Petitioner diverts all of her net income to Mr. S[redacted], his monthly income will be $1,236.70 below the MMMNA.

[2] Petitioner explains that although DFCS has found that the total countable assets are $311,112.00, her own calculation of total countable assets is $312,757.55. Petitioner states that she will stipulate to DFCS' finding and that Respondent's calculation as to assets does not affect the outcome. (Petitioner's Brief at 6.)

4.

Petitioner applied for Medicaid coverage of her nursing care. Her application was denied by DFCS on the grounds that the value of her resources was more than the maximum resource limit for enrollment in the program. DFCS applied resource allowances of $2,000.00 for Petitioner and $137,400.00 for Mr. S[redacted] as the community spouse, in accordance with its policy manual. Thus, the couple's assets, which totaled $311,112.00 by the agency's calculation, exceeded the combined resource allowance of $139,400.00.

5.

Petitioner timely appealed the denial of her application. She seeks an upward revision of the community spouse resource allowance ("CSRA"), from $137,400.00 to an amount sufficient to generate the total basic MMMNA of $3,435.00. She states that she is not requesting an increase in the MMMNA.

## III. Conclusions of Law

1.

Because this matter involves an application for public assistance benefits, the burden of proof is on Petitioner. Ga. Comp. R. & Regs. 616-1-2-.07(1)(d). 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 ultimate decision maker in the 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 $137,400.00. 42 U.S.C. § 1396r-5(f)(2); Medicaid Manual,

[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).

Appx. A1-1. This figure, as indicated in the Findings of Fact above, is known as the community spouse resource allowance or CSRA.[4] Id.

6.

In this case, Petitioner's and Mr. S[redacted]'s countable assets, which total $312,757.55 (or, in the alternative, $311,112.00), exceed their combined resource allowance of $139,400.00. However, pursuant to 42 U.S.C. § 1396r-5(e)(2)(C), Petitioner may request an upward revision of the CSRA in order to generate additional income for Mr. S[redacted] up to the MMMNA. The statute provides, in relevant part:

> 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)(C).

7.

Although counsel for Respondent argued that Petitioner has not provided documentation of undue hardship or financial duress, the statute does not require such a showing. Rather, as quoted above, the statute provides that in a case such as this one, in which the community spouse's income is shown to be less than the MMMNA of $3,435.00, an amount adequate to provide the MMMNA "shall be substituted" for the standard CSRA. See, e.g.,

[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), *as reprinted in* 1988 U.S.C.C.A.N. 803, 888.

Ruck v. Novello, 295 F. Supp. 2d 258, 260 (W.D.N.Y. 2003) ("With respect to the resource allowance for the community spouse (CSRA), if either spouse can establish at a fair hearing "that the [CSRA] (in relation to the amount of income generated by such an allowance) is inadequate to raise the community spouse's income to the … needs allowance," the state must increase the CSRA and allow for the retention of more assets until the community spouse's resources can generate sufficient income to do so.") (quoting 42 U.S.C. § 1396r-5(e)(2)(C)); N.E. v. New Jersey Div. of Med. Assistance and Health Servs., 399 N.J. Super. 566, 574-75 (2008) (same); McCollom v. McCollom, No. M2011-00552, 2012 Tenn. App. LEXIS 238, at *9 (Tenn. Ct. App. Jan. 27, 2012) ("If a spouse's income is less than the MMMNA and the amount of income generated by a standard CSRA does not cover the shortfall, the Act requires that a new CSRA amount be substituted that is adequate to provide the MMMNA.").[5]

8.

Currently, the MMMNA in Georgia[6] is $3,435.00 per month. Medicaid Manual, Appx. A1-4. As previously noted, Mr. S[redacted]'s monthly income, which includes income diverted from Petitioner, is $2,198.30. This leaves him with an MMMNA shortfall of $1,236.70. It is undisputed that even if all of the couples' countable resources are taken into account, the nominal revenue generated by those resources ($1.06 per month in interest) would not come close to raising Mr. S[redacted]'s income to the MMMNA. Therefore, pursuant to 42 U.S.C. § 1396r-5(e)(2)(C), the Court

[5] In contrast, a couple that chooses to seek an MMMNA higher than the current amount of $3,435.00 would be required to address financial duress. See 42 U.S.C. § 1936r-5(e)(2)(B) ("If either such spouse establishes that the community spouse needs income, above the level otherwise provided by the minimum monthly maintenance needs allowance, due to exceptional circumstances resulting in significant financial duress, there shall be substituted, for the minimum monthly maintenance needs allowance in subsection (d)(2)(A), an amount adequate to provide such additional income as is necessary."). Again, Petitioner has stated clearly that she is not requesting an increase in the MMMNA.

6 The Department's policy manual refers to the MMMNA as the "community spouse maintenance need standard." Medicaid Manual, Appx. A1-4.

shall substitute the amount of all of the couples' countable assets, $312,757.55, for the CSRA, in order to get closer to the MMMNA, although, as demonstrated in Petitioner's Exhibit C, the amount generated still will fall short of the MMMNA.

## IV. Decision

In accordance with the foregoing Findings of Fact and Conclusions of Law, Respondent's action denying the Petitioner's application for Nursing Home Medicaid is hereby **REVERSED**. Petitioner's Medicaid is approved as of the date of her original application, and three months prior. This approval raises the base CSRA to the total of the couple's countable assets of $312,757.55 (or, in the alternative, $311,112.00), effective retroactively to three months prior to the application.

**SO ORDERED**, this 14th day of December, 2022.

**Kimberly W. Schroer**
**Administrative Law Judge**