

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

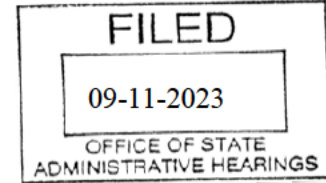
A [REDACTED] L [REDACTED],
Petitioner,

v.

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

Docket No.: [REDACTED]
[REDACTED]-OSAH-DFCS-M-NH-79-
Beaudrot

Agency Reference No.: [REDACTED]



INITIAL DECISION

I. Introduction

In this matter, Petitioner A [REDACTED] L [REDACTED], appearing through her Healthcare Advocate J [REDACTED] J [REDACTED], is requesting that her Medicaid Patient Liability / Cost share be modified based upon her inability to otherwise maintain a reasonable quality of life.

The hearing in this matter was held on September 5, 2023, at the Conyers Municipal Court, 1178 Scott Street, SE, Conyers, GA 30012. Witnesses at the hearing consisted of J [REDACTED] J [REDACTED], Petitioner's Healthcare Advocate, Andrew T. Holcombe, ABD Fair Hearing representative for Respondent, Donna Holman, Administrator for the [REDACTED] Nursing Home and Rena Holland, Bookkeeper for the [REDACTED] Nursing Home.

For the reasons indicated, the Petitioner's request must be denied and Respondent's actions in this matter must be **AFFIRMED**.

I. Findings of Fact

1. Petitioner is eighty-five-years old. She currently resides at the [REDACTED] Nursing Home located at [REDACTED] [REDACTED] (the "[REDACTED]").

2. Petitioner is bedridden and suffers from various medical conditions.

The parties agree that to survive, Petitioner requires at least intermediate nursing home level

of care. Petitioner has been advised by doctors that her medical conditions are incurable.

3. Mr. J [REDACTED] J [REDACTED] is Healthcare Advocate for Petitioner. Mr. J [REDACTED], who is 82, is Petitioner's long-time friend. The two got to know one another when they both worked for the federal government together at Dobbins Air Force Base.

4. Except for Mr. J [REDACTED], Petitioner has no surviving family, friends, or visitors to provide support and comfort to her for the duration of her remaining life.

5. Mr. J [REDACTED] has been zealous in his care of Petitioner and zealous in his advocacy of Petitioner's interests in this matter.

6. Prior to the issue arising in this case, Mr. J [REDACTED] has properly and diligently expended Petitioner's assets to ensure that Petitioner has quality healthcare and a reasonable quality of life as a resident of the R [REDACTED]. Among other things, he has expended Petitioner's funds to provide regular visits by nurses and CNAs whom he has engaged on Petitioner's behalf to check-up on Petitioner and to assure that Petitioner is being properly cared for at the [REDACTED]. Mr. J [REDACTED] has also reimbursed expenses of persons he has compensated to visit Petitioner, including reimbursements of expenses for visits by her pastor and others.

7. It is undisputed that prior to June 1, 2023, Petitioner had fully exhausted her assets. As of June 1, 2023, Petitioner's sole remaining asset and sole source of income is an annuity of \$2,612.59 per month she received from her longtime work as a civilian in the federal government at Dobbins Air Force.

8. Beginning on June 1, 2023, Petitioner's liability share amount for the cost of her care at the [REDACTED] was increased to \$2,542.006.

9. As a result of the pay rate increase, the remaining funds left over from her monthly payments under her annuity after satisfaction of Petitioner's patient liability share is \$70.59 (\$2,612.59 - \$2,542.00) for an entire month.

10. It is undisputed that if Petitioner's share of her Medicaid cost is not reduced, Mr. J [REDACTED] will not be able to provide the same level of care for Petitioner that he was able to provide prior to the increase. To the contrary, Petitioner will only receive the basic minimal

level of care available to persons who are residing in nursing homes who are funded by Medicaid.

11. Mr. J. [REDACTED] argues convincingly that these changes in the patient share liability amount will result in hardship, suffering and destitution as it relates to the current quality of life for Petitioner. He argues that the liability share amount for the cost of her care should be reduced in order for him to be able to expend her funds to provide the level of care she has previously received. Mr. J. [REDACTED] argues this is necessary to give Petitioner the dignity, respect, and necessary care to support her in her last days.

12. Mr. J. [REDACTED] proposes to use a portion of Petitioner's remaining funds to provide ministers, caretakers, medical assistance, and comforters to assist Petitioner as was the case prior to the patient liability rate increase. To do this, Mr. J. [REDACTED] has identified expenses for Petitioner in the amount of approximately \$1,300 per month.

II. Conclusions of Law

1. The Respondent bears the burden of proof in this matter. Ga. Comp. R. & Regs. 616-1-2-.07(1). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

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. The program provides for payment only to the extent that the participant lacks income or resources to do so. 42 U.S.C. § 1396, et seq.; Moore v. Reese, 637 F.3d 1220, 1232 (11th Cir. 2011).

3. In Georgia, Medicaid benefits are provided through a variety of classes of assistance, each with its own eligibility criteria. See Medicaid Manual Sections 2101-2198. Federal law requires that the Respondent administer a periodic review of eligibility to ensure that a household remains eligible for Medicaid under the correct class of assistance. 42 C.F.R. §

435.916(a) and (b); Medicaid Manual Section 2700-2.

4. Eligibility for Medical Assistance must be determined under all classes of assistance before an application is denied. 42 C.F.R. § 435.916(f)(1), Medicaid Manual Section 2050-4. Additionally, the “agency must determine potential eligibility for other insurance affordability programs” 42 C.F.R. § 435.916(f)(2).

5. There is no dispute in this case that Petitioner qualifies for participation in the Medicaid program. The only dispute is the amounts Petitioner is required to pay each month as her share of the cost for such participation.

6. The Medicaid Program is designed to meet the medical needs of individuals whose income and resources are insufficient to meet the costs of necessary medical services, not to preserve a recipient’s assets or to provide additional services, irrespective of how desirable those expenditures or additional services may be. As a result, participants are required to use their own resources to pay the costs of their nursing home care until these are exhausted.

7. Medicaid provides for only limited exceptions to the rule that participants must exhaust their own resources before Medicaid will pay the expense. See generally “How Much Monthly Income Can Be Kept When Residing in a Medicaid-Funded Nursing Home”, American Council on Aging, <https://www.medicaidplanningassistance.org/personal-needs-allowance/>

8. One of these narrow exceptions is the allowance for a monthly personal needs allowance which is provided for in 42 USC 1396(a) and (q). Unfortunately for Petitioner, in Georgia, that amount is limited to \$70.00 per month. This is the amount which Respondent is allowing in Petitioner’s case. See “How Much Monthly Income Can Be Kept When Residing in a Medicaid-Funded Nursing Home”, *supra*.

9. There is no hardship exception as to the amount of monthly personal needs allowance.

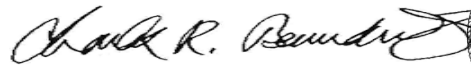
Although Mr. J [REDACTED] rightfully urges that \$70.00 a month is not reasonable from the perspective of maintaining Petitioner's level of care, this is the result mandated by the Medicaid statutory and regulatory scheme. Medicaid only covers a minimal, subsistence level of care. It only covers necessary expenses. It provides a minimal medical safety net. It is focused on survival, not quality of life.

10. Petitioner's case is sympathetic, as is, sadly, so often the case. Mr. J [REDACTED], diligent efforts to provide for the best possible care for Petitioner are laudable. The Court commends him for his diligent pursuit of every possible avenue in this matter. Unfortunately, there is no flexibility in the statutory and regulatory scheme.

IV. Decision

For the reasons stated, the Respondent's action must be **AFFIRMED**.

SO ORDERED, this 11th day of September, 2023.



Charles R. Beaudrot
Administrative Law Judge

