

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

P [redacted] M [redacted]
Petitioner,

v.

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

Docket No.: [redacted]
OSAH-DFCS-NH-[redacted]-22-Schroer



MAR 13 2017

Christa Orban
Christa Orban, Legal Assistant

**ORDER GRANTING PETITIONER'S MOTION FOR
SUMMARY DETERMINATION**

I. Introduction

Petitioner, P [redacted] M [redacted], appealed the Department of Human Services, Division of Family and Children Services' ("DFCS") decision to consider his social security income when determining monthly payments for his nursing home care, and sought an order requesting relief under the provisions of the Medicare Catastrophic Coverage Act, 42 U.S.C. § 1396r-5. Petitioner, represented by Terry Haygood, Esq., was present at a pre-hearing conference with the Court on November 18, 2016. Respondent was represented by Michael Allison, a caseworker for Carroll County DFCS. At the pre-hearing conference, the parties agreed to submit stipulated facts and briefs. The parties submitted stipulated facts on December 5, 2016, and Petitioner filed a Motion and Brief for Summary Judgment ("Motion") on December 28, 2016. Respondent did not file a reply brief. For the reasons indicated herein, Petitioner's Motion is **GRANTED** and the Respondent's decision is hereby **REVERSED and REMANDED**.

II. Standard for Summary Determination

Summary determination in this proceeding is governed by OSAH Rule 15, which provides, in relevant part, that "[a] party may move, based on supporting affidavits or other probative evidence, for summary determination in its favor on any of the issues being adjudicated on the basis that there is no genuine issue of material fact for determination." Ga. Comp. R. & Regs. § 616-1-2-.15(1).

Additionally, “[w]hen a motion for summary determination is supported as provided in this Rule, a party opposing the motion may not rest upon mere allegations or denials, but must show, by affidavit or other probative evidence, that there is a genuine issue of material fact for determination. Ga. Comp. R. & Regs. § 616-1-2-.15(3).

In considering a motion for summary determination, “the court must view all evidence and draw all reasonable inferences in the light most favorable to the non-moving party.” Floyd v. Suntrust Banks, Inc., 878 F. Supp. 2d 1316 (N.D. Ga. 2012), citing Patton v. Triad Guar. Ins. Corp., 277 F.3d 1294, 1296 (11th Cir. 2002). See also Lau’s Corp v. Haskins, 261 Ga. 491 (1991).

III. Stipulated Facts

The parties have jointly stipulated to the following facts:

1.

Petitioner lives in a nursing home. His wife, B [REDACTED] M [REDACTED] lives in a private residence, and is considered a “community spouse” for Medicaid purposes.

2.

Mrs. M [REDACTED] is employed and earns \$3031.00 per month from M [REDACTED] B [REDACTED], LLC.

3.

On June 20, 2016, Mrs. M [REDACTED] filed a Petition for Support in the Superior Court of Carroll County (“Petition”). The Petition, which was stipulated to by both Petitioner and Mrs. M [REDACTED] set forth the M [REDACTED]’ financial situation, as follows:

- A. Petitioner and Mrs. M [REDACTED] were married on April 3, 2003, and lived at [REDACTED] [REDACTED], Whitesburg, GA 30185 until Petitioner, an optometrist, suffered a massive stroke and required twenty-four-hour care in a nursing facility.
- B. Petitioner’s Medicare coverage will terminate in June 2016, and he requires the assistance of Medicaid.

- C. For purposes of Medicaid eligibility, all countable assets are considered, regardless of how the assets are held.
- D. The majority of liquid assets were brought into the marriage by Mrs. M [REDACTED], and are held in her name.
- E. Mrs. M [REDACTED] is employed and earns more than the Minimum Monthly Maintenance Needs Allowance (“MMMNA”).
- F. Petitioner receives \$1,431.00 per month in social security benefits.
- G. Medicaid does not take debts into account when determining eligibility for nursing home care.
- H. Petitioner owns the office building which housed his optometry practice. The building has a monthly mortgage payment of \$1,074.00. The building is up for sale.
- I. In order to maintain the building, the parties must pay utilities, security, taxes, insurance, and maintenance.
- J. Petitioner has unsecured business and credit card debt of approximately \$68,777.00.
- K. The office building has enough equity to pay all business debt if a reasonable offer is obtained by the real estate company.
- L. Since Mrs. M [REDACTED] earns more than the MMMNA, Medicaid requires that Petitioner’s social security check be paid to the nursing home before Medicaid pays the balance of Petitioner’s nursing home bill. This leaves none of Petitioner’s income available to Mrs. M [REDACTED] to pay Petitioner’s debts.
- M. Mrs. M [REDACTED] therefore, is required to pay Petitioner’s debts from her assets and income, and Mrs. M [REDACTED] refuses to liquidate her assets in order to do so.

4.

On July 29, 2016, Petitioner applied for nursing home Medicaid. After conducting an assessment, DFCS determined that Petitioner qualified for nursing home Medicaid, but, due to her income, Mrs. M [REDACTED] was not entitled to any of Petitioner's monthly social security income as part of the Community Spouse Resource Allowance ("CSRA").

5.

Instead, DFCS determined that the monthly social security income should be distributed as follows: (1) For July, August, and September 2016, \$1,380.00 to be paid to the nursing home, with the remaining \$50.00 for personal needs; and (2) as of November 1, 2016, \$1,503.00 to the nursing home, with the remaining \$79.00 for personal needs.

6.

On August 12, 2016, the Superior Court of Carroll County entered an Order for Spousal Support ("Support Order") in Mrs. M [REDACTED]'s favor. The Support Order held that, as of September 1, 2016, Petitioner must pay Mrs. M [REDACTED] \$1,431.00 each month, in exchange for Mrs. M [REDACTED] assuming responsibility for the debts of the parties and agreeing to pay Petitioner's monthly insurance premiums.¹

7.

DFCS has not revised its determination since the issuance of the Support Order. Accordingly, Petitioner filed an appeal, requesting that, due to the Support Order, his monthly social security income not be considered when determining monthly payments for his nursing care.

¹ The monthly support amount will increase each year in accordance with the cost of living increase granted Petitioner by the Social Security Administration.

IV. Conclusions of Law

1.

Because this matter involves a determination based on an initial 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).

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.² 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 (“Community Spouse”), the spouse may retain countable assets of up to \$119,220.00. 42 U.S.C. § 1396r-5(f)(2); Medicaid Manual, Appx. A1-1. This figure is known as the “community spouse resource allowance” (“CSRA”).³ Id.

6.

In addition to the CSRA, each state must establish a MMMNA for community spouses based upon a chosen percentage of the official poverty line. 42 U.S.C. § 1396r-5(d)(3)(A)(i). Currently, the MMMNA in Georgia is \$2,980.00 per month.⁴ Medicaid Manual, Appx. A1-3. As previously noted, Mrs. M■■■■’s monthly income is \$3,031.00, which is \$51.00 higher than the MMMNA. However, in certain circumstances, when a community spouse’s needs are greater than the MMMNA, an increase may be allowed. 42 U.S.C. § 1396r-5(e)(2)(B). The MMMNA may be increased in three ways: (1) by seeking an increase in the excess shelter allowance, (2) applying for a fair hearing, or (3) obtaining a court order of support for the community spouse. 42 U.S.C. §§ 1396r-5(d)(4), (1), and (5).

7.

If the increase is sought through a fair hearing, and either spouse can demonstrate that, “due to exceptional circumstances resulting in significant financial duress,” the needs of the community spouse are “above the level otherwise provided by the minimum monthly maintenance needs allowance,” the

² 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).

³ 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.

⁴ The Department’s policy manual refers to the MMMNA as the “community spouse maintenance need standard.” Medicaid Manual, Appx. A1-3.

MMMNA can be increased to provide the necessary additional income.⁵ 42 U.S.C. § 1396r-5(e)(2)(B).

8.

If the increase is sought through a court order of support, a valid support order increases the MMMNA by the amount of ordered support. Specifically, “[i]f a court has entered an order against an institutionalized spouse for monthly income for the support of the community spouse, the community spouse monthly income allowance for the spouse shall not be less than the amount of the monthly income so ordered.” 42 U.S.C. § 1396r-5(d)(5). When determining the amount of the institutionalized spouse’s monthly income that is to be applied to payment for the costs of care in the institution, certain allowances, including community spouse monthly income allowances, must first be deducted from the institutionalized spouse’s monthly income. 42 U.S.C. § 1396r-5(d)(1)(B).

9.

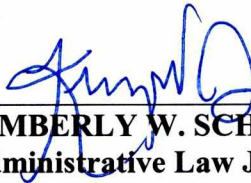
Taken together, these statutes require that, as a valid order of support against Petitioner exists, the Respondent must first deduct the amount of that order when determining the amount Petitioner must pay each month toward the costs of care in the institution.


⁵ 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). Presumably, the same need for balance also applies to upward revisions of the MMMNA.

V. Decision

In accordance with the foregoing Findings of Fact and Conclusions of Law, Respondent's decision that Petitioner must pay \$1,503.00 a month⁶ to the nursing home is hereby **REVERSED and REMANDED**. In accordance with the authority cited in this Order, Respondent shall re-determine the amount Petitioner must pay to his nursing facility each month, and shall notify Petitioner of the outcome within thirty days of the entry of this Order.

SO ORDERED, this 13th day of March, 2017.


KIMBERLY W. SCHROER
Administrative Law Judge



⁶ This amount reflects an increase in the amount Petitioner receives from the social security administration each month.



NOTICE OF INITIAL DECISION

Attached is the Initial Decision of the administrative law judge. A party who disagrees with the Initial Decision may file a motion with the administrative law judge and/or an application for agency review.

Filing a Motion with the Administrative Law Judge

A party who wishes to file a motion to vacate a default, a motion for reconsideration, or a motion for rehearing must do so within 10 days of the entry of the Initial Decision. Ga. Comp. R. & Regs. 616-1-2-.28, -.30(3). All motions must be made in writing and filed with the judge's assistant, with copies served simultaneously upon all parties of record. Ga. Comp. R. & Regs. 616-1-2-.04, -.11, -.16. The judge's assistant is Christa Orbann - 404-651-7595; Email: corbann@osah.ga.gov; Fax: 404-818-3724; 225 Peachtree Street NE, Suite 400, South Tower, Atlanta, Georgia 30303.

Filing an Application for Agency Review

A party who seeks review by the referring agency must file an application for agency review within 30 days after service of the Initial Decision. O.C.G.A. §§ 50-13-17(a), -41(e). **In nearly all cases, agency review is a prerequisite for judicial review.** O.C.G.A. § 50-13-19(a).

The application for agency review must be filed with: **Office of General Counsel, Attn: Appeals Reviewer, Georgia Department of Human Services, 2 Peachtree Street NW, 29th Floor, Atlanta, Georgia 30303.** Copies of the application for agency review must be served upon all parties of record and filed simultaneously with the OSAH Chief Clerk at 225 Peachtree Street NE, Suite 400, South Tower, Atlanta, Georgia 30303. If a timely application for agency review is not filed and the referring agency does not review the Initial Decision on its own motion, the Initial Decision will become the Final Decision of the referring agency by operation of law. O.C.G.A. §§ 50-13-17(a), -41(e).

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SCHROEDER

ORDER OF DISMISSAL

This matter involves the same agency action as, and is a duplicate of, docket number [REDACTED].
It was inadvertently docketed twice.

Accordingly, this matter is **DISMISSED** as a duplicate.

SO ORDERED, this _____ day of MAR 13 2017, 20__.

OSAH CLERK

Christa Urbann, Legal Assistant



MAR 13 2017