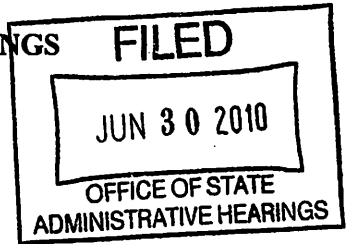


BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA



PERNIE DUPREE,
Petitioner,

v.

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

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Docket No.
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OSAH-DFCS-NH-1031072-146-KENNEDY
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Agency Reference No. 543555318
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INITIAL DECISION

I. Introduction

Petitioner requested administrative review of Respondent's denial of her March 8, 2010, Medicaid application. For the reasons indicated below, Respondent's determination is **REVERSED**.

II. Findings of Fact

1.

Petitioner entered a nursing home on September 11, 2009. Prior to entering the nursing home, Petitioner lived with her spouse in their residence located at 1 Bragg Circle. Petitioner and her spouse purchased the Bragg Circle property in 1949, and lived there together until she entered the nursing home. The Bragg Circle property is currently valued at \$45,411.00. *Testimony of Respondent's Representative; Exhibits R-4, R-5.*

2.

After Petitioner entered the nursing home, her spouse's health began to deteriorate. Based on his decline in health, Petitioner's spouse decided to move into his son's home located at 664 Lofton Lane. He then purchased a 90.63% interest in the Lofton Lane property for \$250,000.00, which was the fair market value for the interest he received. The Sales Contract for the purchase of the interest in the Lofton Lane property was completed on December 30, 2009, and a quitclaim deed was later executed on February 4, 2010. *Testimony of Respondent's Representative; Exhibits R-11, R-12, R-13, R-15, R-16.*

3.

Petitioner's spouse's principal place of residence changed from 1 Bragg Circle to 664 Lofton Lane some time prior to Petitioner submitting her March 8, 2010, Medicaid application. *Testimony of Respondent's Representative.*

4.

In processing Petitioner's March 8, 2010, Medicaid application, Respondent determined that the property located at 1 Bragg Circle was Petitioner's homeplace property and excluded the value of that property from her countable resources. Regarding the Lofton Lane property, Respondent considered it to be non-homeplace property and included the value of Petitioner's spouse's interest as a countable resource in determining her Medicaid eligibility. To qualify for Medicaid, the value of Petitioner's and her spouse's countable resources cannot exceed \$111,560. Given that Petitioner's spouse's interest in the Lofton Lane property is valued at \$250,000.00, Respondent denied Petitioner's Medicaid application because her countable resources exceeded the resource limit to qualify for Medicaid. *Testimony of Respondent's Representative; Exhibit R-1.*

5.

The Bragg Circle property was sold on April 29, 2010, for \$45,411.00. After the sale, Petitioner submitted a new Medicaid application that Respondent received in May 2010.¹ Respondent is processing Petitioner's May 2010 application to determine Petitioner's Medicaid eligibility in light of the sale of the Bragg Circle property and Petitioner's assertion that the Lofton Lane property is homeplace property. Respondent has not yet made a determination on the May 2010 application, and it is not at issue in this proceeding. *Testimony of Respondent's Representative; Exhibits R-6, R-7, R-8, R-9, R-10.*

III. Conclusions of Law

1.

To qualify for Medicaid, Petitioner and her spouse's combined countable resources cannot exceed \$111,560.00. *Medicaid Manual § 2503; Medicaid Manual Appendix A1-1 (2010).*

2.

Real property is considered a resource in determining Medicaid eligibility. *Medicaid Manual § 2300.* However, under certain circumstances, the value of the real property is excluded when determining resource eligibility. *Medicaid Manual §§ 2316 and 2329.* For example, homeplace property is a countable resource, but the value is considered exempt in certain instances. *Medicaid Manual § 2316.*

3.

Homeplace property is property in which an applicant or a deemor has an ownership interest and that serves as the principal place of residence of the applicant, the applicant's spouse or other dependent relative. *Medicaid Manual § 2316.* Although Petitioner does not have an ownership interest in the Lofton Lane property, her spouse, who is considered a deemor because his resources are deemed available to her, does have an ownership interest in the property. *Medicaid Manual § 2502.* Moreover, it is undisputed that the Lofton Lane property serves as Petitioner's spouse's principal place of residence. Therefore, the Lofton Lane property meets the requirements to be treated as homeplace property and the value of the interest in such property should be excluded from the resource determination. *Medicaid Manual § 2316. See Also 42*

¹ This application was submitted while the March 8, 2010, application denial was on appeal.

U.S.C. § 1382b(a) (In determining the resources of an individual and his/her eligible spouse, there shall be excluded the home, including the land that appertains thereto).

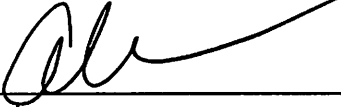
4.

Respondent erred in denying Petitioner's Medicaid application based on its determination that her spouse's interest in the Lofton Lane property exceeded the resource limit. As homeplace property, the value of the Lofton Lane property should have been excluded from the resource determination.

IV. Decision

For the reasons stated, Respondent's denial of Petitioner's March 8, 2010, Medicaid application is **REVERSED**. This matter is remanded to Respondent with direction to determine Petitioner's Medicaid eligibility in accordance with this decision, i.e., excluding the value of the Lofton Lane property as homeplace property.

This 30th day of June 2010.



Ana Kennedy,
Administrative Law Judge