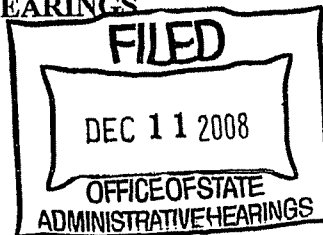


IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA



[REDACTED])
Petitioner,)
v.)
GEORGIA DEPARTMENT OF)
COMMUNITY HEALTH,)
Respondent.)

Docket No.:
OSAH-DFCS-NH-0912867-44-Gatto

Agency Reference No.: 423220614

INITIAL DECISION

COUNSEL: Miles P. Hurley, for Petitioner.

O.G. George, *Pro se*, for Respondent.

GATTO, Judge.

I. INTRODUCTION

This matter comes before the Court from an appeal of Petitioner [REDACTED] under Section 1396r-5(e) of the "spousal impoverishment provisions" of the Medicare Catastrophic Coverage Act, 42 U.S.C.A. § 1396r-5, after a decision of the Respondent Georgia Department of Community Health, acting through the Georgia Department of Human Resources' DeKalb County Department of Family and Children Services ("DFCS") to deny her Medicaid application. Specifically, Petitioner sought a § 1396r-5(e) fair hearing in an attempt to obtain a higher community spouse resource allowance for use in her eligibility determination. The Court has jurisdiction to hear this matter pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." For the reasons indicated below, Petitioner's community spouse resource allowance is raised, the decision of Respondent to deny Petitioner's Medicaid application is **REVERSED**, and the case is **REMANDED**.

II. FINDINGS OF FACT

Petitioner, a Medicaid applicant, is an "institutionalized spouse" as she has been institutionalized for more than 30 consecutive days in a medical institution or nursing facility and is married to a spouse who is not in a medical institution or nursing facility. Petitioner is married to [REDACTED] the "community spouse", who is not institutionalized and lives at home.

Stipulations as to income:

- a. Petitioner has gross income per month of \$587.40 from Social Security (Pet. Ex. 1).
- b. Petitioner has no other forms of income.
- c. [REDACTED] has gross income per month of \$990.40 from Social Security. (Pet. Ex. 2).
- d. [REDACTED] has gross income per month of \$608.91 from his Lockheed Pension (Pet. Ex. 3).
- e. [REDACTED] has no other forms of income, aside from interest income on current assets.
- f. Total joint gross income is \$2,186.71, before the allowable medical premium and other deductions allowed by Medicaid. After utilizing the Patient Liability Budget Sheet, DHR Form 968, the patient liability for Petitioner is ZERO dollars, after the Personal Needs allowance and IME's such as Medicare/health insurance premiums are deducted, along with the diverted income.

Stipulations as to countable, as of the date of application:¹

- g. Wachovia Checking Account (02 *9699): \$7,524.03 (Pet. Ex. 4).
- h. Wachovia checking Account (*1568): \$1,200.00 (Pet. Ex. 4A).
- i. Wachovia Money Market (02 *9835): \$51,008.50 (Pet. Ex. 5).
- j. CBS Community Bank Money Market: \$26,300.10; (Pet. Ex. 6).

- k. Capital One Bank Certificate of Deposit: \$100,000.00 (Pet. Ex. 7).
- l. Second vehicle, 1999 Kia Sportage: FMV of \$1,800.00 (Pet. Ex. 8).²
- m. The couple has total countable assets of \$187,832.63.

Stipulations as to income generated by countable assets:

- n. Wachovia checking (02 *9699) returns 0.5% interest;
 - i. Wachovia checking (02 *9699) generates the following income: \$11.76 annually; \$0.98 monthly.
- o. Wachovia checking (*1568) returns 0.5% interest;
 - i. Wachovia checking (*1568) generates the following income: \$6.00 annually; \$0.50 monthly.
- p. Wachovia Money Market (02 *9835) returns 0.84% interest;
 - i. Wachovia Money Market (02 *9835) generates the following income: \$427.44 annually; \$35.62 monthly.
- q. CBS Community Bank Money Market returns 1.6% interest;
 - i. CBS Community Bank Money Market generates the following income: \$420.80 annually; \$35.07 monthly.
- r. Capital One Bank Certificate of Deposit returns 4.21% interest;
 - i. Capital One Bank Certificate of Deposit generates the following income: \$4210.00 annually; \$350.83 monthly.
- s. The couple has income (beyond basic social security of applicant and spouse) from the couple's countable resources of \$423.00 per month.

¹ The countable assets are less now, having paid privately for nursing home care for approximately 4 months.

² This asset has been sold for \$1,800.00.

Stipulations to Georgia ABD Financial Limits (Pet. Ex. 9):

- t. Resources: ABD Medicaid Resource limits applicable to LA-D Individual with a Community Spouse (community spouse resource allowance): \$104,400.00 + \$2,000.00 (individual resource allowance) = \$106,400.00 total allowable resources for this couple.
- u. Income: The Community Spouse Maintenance Need Standard or Minimum Maintenance Needs Allowance is \$2,610.00 for 2008 (Pet. Ex. 9).

III. CONCLUSIONS OF LAW

The federal Medicaid program provides funding to States that reimburse needy persons for the cost of medical care. See Social Security Act, tit. XIX, as added, 79 Stat. 343, and as amended, 42 U.S.C. § 1396 *et seq.* "Each participating State develops a plan containing reasonable standards . . . for determining eligibility for and the extent of medical assistance" within boundaries set by the Medicaid statute and the Secretary of Health and Human Services. *Schweiker v. Gray Panthers*, 453 U.S. 34, 36-37, 101 S. Ct. 2633 (1981) (internal quotation marks omitted); § 1396a(a)(17).³ In formulating those standards, States must "provide for taking into account only such income and resources as are, as determined in accordance with standards prescribed by the Secretary, *available* to the applicant." § 1396a(a)(17)(B) (emphasis added).

However, in 1988, Congress passed the "spousal impoverishment provisions" of the Medicare Catastrophic Coverage Act (MCCA or Act), 42 U.S.C.A. § 1396r-5, which outlined Medicaid eligibility standards to be adopted by the states to ensure that the community spouse had a necessary, but not excessive, amount of income and resources protected from inclusion in

³ The Secretary has delegated his rulemaking power to the Health Care Financing Administration (HCFA), see Statement of Organization, Functions, and Delegations of Authority for the Dept. of Health and Human Services, Pt. F, 46 Fed. Reg. 13262-13263 (1981), now called the Centers for Medicare and Medicaid Services, see 66 Fed. Reg. 35437 (2001).

the institutionalized spouse's eligibility for Medicaid, and as such these resources did not need to be spent down for the institutionalized spouse's care.⁴

The Act's income allocation rules direct that in any month in which one spouse is institutionalized, "no income of the community spouse shall be deemed available to the institutionalized spouse." § 1396r-5(b)(1). The MCCA also requires States to set for the community spouse a "minimum monthly maintenance needs allowance" (MMMNA), § 1396r-5(d)(3), and provides that if the community spouse's *post-eligibility* income is insufficient to yield income equal to or above the MMMNA, the shortfall -- called the "community spouse monthly income allowance" (CSMIA) -- may be deducted from the institutionalized spouse's income and paid to the community spouse. § 1396r-5(d)(1)(B). Adjusted annually on the first of July, the MMMNA set by Georgia is currently \$2,610.00. See Ga. Medicaid Manual, Appendix A3, Chart A1.10 (May 2008).

The MCCA's resource allocation rules provide, *inter alia*, that in determining the institutionalized spouse's Medicaid eligibility, a portion of the couple's resources -- called the "community spouse resource allowance" (CSRA) -- shall be reserved for the benefit of the community spouse. § 1396r-5(c)(2). To calculate the CSRA, the couple's jointly and separately owned resources are added together as of the time the institutionalized spouse's institutionalization commenced. Half of that total, subject to certain limits, is then allocated to the community spouse. §§ 1396r-5(c)(1)(A), (2)(B), (f)(2)(A), (g). The CSRA is deemed unavailable to the institutionalized spouse in the eligibility determination, but all resources above the CSRA (excluding a \$ 2,000 personal allowance reserved for the institutionalized spouse under federal regulations) must be

⁴ Under the Act, Petitioner is an "institutionalized spouse," as she has been institutionalized for more than 30 consecutive days in a medical institution or nursing facility and is married to a spouse who is not in a medical institution or nursing facility. See 42 U.S.C. § 1396r-5(h)(1). Erwin Altenheimer, who is not in a medical institution or nursing facility, is her "community spouse." See 42 U.S.C. § 1396r-5(h)(2).

spent before eligibility can be achieved. § 1396r-5(c)(2). Georgia's standard CSRA is a maximum of \$104,400.00 for the year 2008 (plus the \$2,000 personal allowance reserved for the institutionalized spouse), to be set aside for the benefit of the community spouse. See Ga. Medicaid Manual, Appendix A1, Chart A1.1 (May 2008).

Section 1396r-5(e)(2)(C) of the Act provides a "fair hearing" mechanism through which a couple may obtain a higher CSRA by establishing that the standard CSRA (in relation to the amount of income it generates) is inadequate to raise "the community spouse's income" to the MMMNA. In the present case, the combined countable resources were \$187,832.63. Therefore, DFCS determined that as of the date of Petitioner's application, the couple possessed resources exceeding their \$106,400 limit by \$81,432.63. DFCS accordingly concluded that Petitioner would not be eligible for Medicaid until the couple's spending reduced their resources by the \$81,432.63 amount. Petitioner sought a § 1396r-5(e) hearing to obtain a higher CSRA, arguing that because her husband's monthly income fell below the applicable MMMNA, this Court was obliged to increase his CSRA to 100% of the couple's countable assets in order to provide him with the required MMMNA.⁵ This Court agrees.

Section 1396r-5(d)(6) of the Act, the "income first" rule, provides that: "a State must consider that all income of the institutionalized spouse that could be made available to a community spouse . . . has been made available before the State allocates to the community spouse an

⁵ The MCCA provides for a "fair hearing" mechanism through which a couple may challenge the State's determination of a number of elements that affect eligibility for, or the extent of assistance provided under Medicaid. §§ 1396r-5(e). The dispute in this case centers on § 1396r-5(e)(2)(C), which allows a couple to request a higher CSRA. That section provides in relevant part: "If either . . . spouse establishes 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 [MMMNA], there shall be substituted, for the [CSRA] under subsection (f)(2) of this section, an amount adequate to provide [the MMMNA]." § 1396r-5(e)(2)(C). If the couple succeeds in obtaining a higher CSRA, the institutionalized spouse may reserve additional resources for post-eligibility transfer to the community spouse. The enhanced CSRA will reduce the resources the statute deems available for the payment of medical expenses; accordingly, the institutionalized spouse will become eligible for Medicaid sooner.

amount of resources adequate to provide the difference between the [MMMNA] and all income available to the community spouse.”

Applying this rule to the present case, the total joint gross income of the Petitioner and her community spouse is \$2,186.71 (before the allowable medical premium and other deductions allowed by Medicaid), coupled with income of \$240 per month from the couple’s countable resources, or a total of \$2,426 per month.⁶ Thus, Petitioner’s income, combined with that of her spouse, was insufficient to meet the MMMNA of \$2,610.


Since this Court concludes that the standard CSRA (in relation to the amount of income it generates) is inadequate to raise “the community spouse’s income” to the MMMNA, it must substitute the standard CSRA on this case of \$104,400.00 (plus the \$2,000 personal allowance reserved for the institutionalized spouse) with a CSRA equal to all assets that Petitioner and her community spouse own in order to generate sufficient income to meet the MMMNA.

Accordingly,

IV. ORDER

IT IS HEREBY ORDERED THAT the decision of Respondent to deny Petitioner’s application is **REVERSED** and the case is **REMANDED** with instructions to DFCS to substitute the standard CSRA (spousal impoverishment resource limit) on this case of \$104,400.00 (plus \$2,000) with a CSRA equal to all assets that Petitioner and her community spouse own.

SO ORDERED THIS 11th day of December, 2008.



JOHN B. GATTO, Judge

⁶ Although the total income (beyond basic social security of applicant and spouse) from the couple’s countable resources was \$423.00 per month, this Court only attributes the percentage yielded in assets reserved in the CSRA. See *Wis. Dep’t of Health & Family Servs. v. Blumer*, 534 U.S. 473, 487 n. 8 (U.S. 2002).