BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

[redacted]
Petitioner,

v.

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

Docket No.:
OSAH-DFCS-NH-0824316-52-Miller

Agency Reference No.: 628051511

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OFFICE OF STATE ADMINISTRATIVE HEARINGS

INITIAL DECISION

I. Introduction

The Petitioner requested a hearing in response to the Respondent's action denying her application for Nursing Home Medicaid for the months of December 2007 and January 2008. A hearing was held on May 19, 2008. The Petitioner appeared through her daughter, [redacted]. Medicaid Eligibility Specialist [redacted] of the Elbert County Department of Children and Family Services appeared as the Respondent's representative. As set forth below, the Respondent's action is hereby **AFFIRMED**.

II. Findings of Fact

1.

The Petitioner resides in a nursing home and submitted an application for Nursing Home Medicaid to the Respondent on December 21, 2007. Approximately one week later, on December 27, 2007, the Petitioner's daughter, [redacted] participated in an intake interview with [redacted] a Medicaid Eligibility Specialist at the Respondent's Elbert County office. Following the intake interview, [redacted] gave [redacted] a "Form 981" checklist of documentation that was needed to process the Petitioner's application. (Testimony of [redacted]; Exhibits R-1, R-2, R-3.)

2.

On the Form 981, [redacted] erroneously failed to request documentation regarding the Petitioner's retirement income and social security benefits. When she realized her error, on February 5, 2008, she immediately contacted [redacted] who faxed the necessary documentation on February 6, 2008. (Testimony of [redacted]; Exhibits R-3, R-5, R-7.)

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3.

Upon reviewing the Petitioner's completed application, [redacted] noted that the Petitioner's income exceeded the established limit for Nursing Home Medicaid. Accordingly, on February 7, 2008, [redacted] called [redacted] and suggested that the Petitioner establish a Qualified Income Trust ("QIT") in order to become eligible for benefits. [redacted] mailed a packet of information regarding the QIT to [redacted] on the same date. (Testimony of [redacted] and [redacted]; Exhibit R-7.)

4.

[redacted] provided [redacted] with a copy of the executed QIT on February 29, 2008. The Petitioner's application was approved for the months of February 2008 and ongoing, but it was denied for the months of December 2007 and January 2008 because the Petitioner's income exceeded the applicable limit. (Testimony of [redacted] and [redacted])

III. Conclusions of Law

1.

Because this matter involves an application for Medicaid benefits, the Petitioner bears the burden of proof. OSAH Rule 616-1-2-.07(d). The standard of proof is a preponderance of the evidence. OSAH Rule 616-1-2-.21(4).

2.

The Respondent's policy manual provides that an applicant for Nursing Home Medicaid "whose income is equal to or greater than the Medicaid Cap may establish a QIT [Qualified Income Trust] as an alternative by which they may receive Medicaid benefits by sheltering all or a portion of their income from the eligibility determination process." Economic Support Services Manual of the Georgia Department of Human Resources ("ESSM") § 2407-1 (Exhibit R-8). The manual further provides:

> The QIT may NOT be backdated. It is effective beginning the month in which it is completed and signed by all required parties, not before.

ESSM § 2407-1 (Exhibit R-8) (emphasis in original).

3.

The Respondent's policy manual further instructs caseworkers to "[g]ive every A/R [Applicant/Recipient] or authorized representative of an A/R whose income exceeds the Medicaid Cap the following handouts: 'Qualified Income Trust (QIT) – A Guide for Trustees;' 'Qualified Income Trust (QIT) worksheet;' 'Certification of Department of Community Health

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Approved Qualified Income Trust;' [and] [c]opies of the three QIT templates."[1] ESSM § 2407-5 (Exhibit R-8).

4.

The Respondent's policy manual contains a Standard of Promptness, which provides that Medicaid applications submitted by aged or blind applicants should be determined within 45 days. ESSM § 2060-5. This requirement is also found in federal regulations, which provide as follows with regard to timely application processing:

> (a) The agency must establish time standards for determining eligibility and inform the applicant of what they are. These standards may not exceed—
>
> (1) Ninety days for applicants who apply for Medicaid on the basis of disability; and
>
> (2) Forty-five days for all other applicants.
>
> (b) The time standards must cover the period from the date of application to the date the agency mails notice of its decision to the applicant.
>
> (c) The agency must determine eligibility within the standards except in unusual circumstances, for example—
>
> (1) When the agency cannot reach a decision because the applicant or an examining physician delays or fails to take a required action, or
>
> (2) When there is an administrative or other emergency beyond the agency's control.
>
> (d) The agency must document the reasons for delay in the applicant's case record.
>
> (e) The agency must not use the time standards—
>
> (1) As a waiting period before determining eligibility; or
>
> (2) As a reason for denying eligibility (because it has not determined eligibility within the time standards).

42 C.F.R. § 435.911; see 42 U.S.C. § 1396a(a)(8). This standard carries the force of legal authority, as the Standard of Promptness is "undoubtedly cast in mandatory rather than precatory terms," Doe v. Chiles, 136 F.3d 709, 718 (1998).

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[1] According to the manual, this should be done before "[p]roceed[ing] with the eligibility process, including basic eligibility criteria, income/resource eligibility and PL/CS as applicable to the COA[class of assistance]." ESSM § 2407-6 (Exhibit R-2).

5.

Reading the Standard of Promptness *in pari materia* with the manual provisions regarding Qualified Income Trusts, the Court concludes that the Respondent was required to advise the Petitioner of her possible need for a QIT within 45 days of the date her application was received. See ESSM §§ 2060, 2407 (Exhibit R-8).

6.

Since the Petitioner's application was submitted on December 21, 2007, the Respondent was required to provide her with the required information regarding a QIT no later than February 4, 2008. Although [redacted] exceeded this time standard by three days, this did not affect the Petitioner's eligibility. Since the QIT was executed during the month of February 2008, the Petitioner's application was approved for that month. This was the earliest month of eligibility even if [redacted] had complied with the time standard.

IV. Decision

In accordance with the above Findings of Fact and Conclusions of Law, the Respondent's action denying the Petitioner's application for Medicaid for the months of December 2007 and January 2008 is hereby **AFFIRMED**.

SO ORDERED, this 17th day of June, 2008.

KRISTIN L. MILLER
Administrative Law Judge

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