

IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA

[REDACTED]

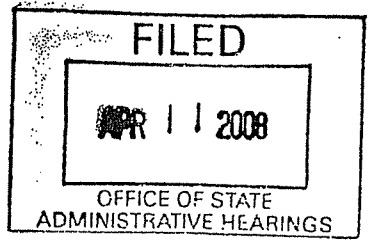
Petitioner,

v.

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

Respondent.

:  
: Docket No.: OSAH-DFCS-NH-0820577-67-Langston  
:  
: Agency Reference No.: 293442814  
:  
:  
:



INITIAL DECISION

PARTIES: [REDACTED] Pro se.

[REDACTED] Gwinnett County Department of Family and Children Services, Pro se, for Respondent.

BARNES, Judge.

I. INTRODUCTION

This matter comes before the Court from an appeal of [REDACTED] ("Petitioner") under O.C.G.A. § 49-4-13 from the decision of the Department of Human Resources of the State of Georgia, acting through the Gwinnett County Department of Family and Children Services ("Respondent"), to deny his application for Medicaid. 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, the decision of Respondent is **AFFIRMED**.

II. FINDINGS OF FACT

1.

On July 20, 2007, Petitioner, who resides in a nursing home, applied for Medicaid. His case was reviewed by the Gwinnett County Department of Family and Children Services ("DFCS") and on January 23, 2008, DFCS issued a letter denying Petitioner's application for the months of July 2007-February 2008, finding that the value of

Petitioner's resources was more than the resource limit for the Medicaid program. Testimony of [REDACTED]

2.

Prior to the issuance of the denial, Petitioner's case was reviewed by DFCS to determine whether a portion of Petitioner's income could be diverted to his spouse. Petitioner's spouse lives in the Philippines as did Petitioner periodically prior to his admission to a nursing home. Testimony of [REDACTED]

3.

Petitioner's wife is trying to obtain a visa to come to the United States but, as of the date of the hearing on the instant matter, has been unable to do so. Testimony of [REDACTED] Petitioner's Ex. 2.

4.

In its review of Petitioner's application, DFCS concluded that Petitioner's spouse, by moving out of the country when Petitioner entered a nursing home, was exhibiting indifference and thus the marital relationship had ceased. Therefore, Petitioner's spouse could not be considered a community spouse for purposes of determining resource eligibility and patient liability and Petitioner's resources could not be diverted to her. Georgia Department of Human Resources, Economic Support Services Manual ("ESS Manual"), Volume II – MT 1, at p. 2501-2 (01/02).

### III. CONCLUSIONS OF LAW

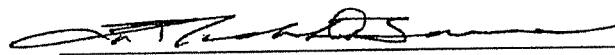
The Community Spouse Maintenance Need Standard is used to determine the amount of diverted income if the following conditions are met: the community spouse is available to receive the allowance and the recipient chooses to make the allowance available to the community spouse or to someone else for the benefit of the community spouse. Manual, Volume II/MA, MT 20, at p. 2554-1 (04/06). A spouse is not considered to be a community spouse if the marital relationship has ceased. Under the manual provisions, a marital relationship has ceased for an individual who is legally married but is living separately from his spouse due to estrangement, which included alienation, loss of affection, or indifference. Manual, Volume II – MT 1, at p. 2501-2 (01/02). As it is

undisputed that Petitioner's spouse resided outside of the United States during the time period for which Petitioner sought Medicaid benefits, DFCS properly concluded that the marital relationship had ceased for purposes of determining Medicaid eligibility; that, consequently, Petitioner's spouse did not qualify as a community spouse; and that Petitioner's income thus could not be diverted to her. Without the diversion of income, the value of Petitioner's resources exceeded the resource limit for the Medicaid program and therefore, DFCS was correct in denying his application. Accordingly,

#### IV. DECISION

**IT HEREBY IS ORDERED THAT** Respondent's decision to deny Petitioner's application for Medicaid for the months of June 2007 through February 2008 is **AFFIRMED**. The Court, however, knows of no reason that Petitioner may not reapply for benefits after his wife meets the requirements for diversion of income under the Community Spouse Maintenance Need Standard.

**SO ORDERED THIS 11<sup>th</sup> day of April, 2008.**



**LA RONDA D. BARNES, Judge**