

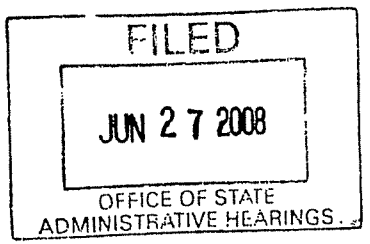
BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

[Redacted]
Petitioner,

v.

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

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: Docket No.: OSAH-DFCS-NH-0825874-
: 76-Woodard
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INITIAL DECISION

The issue on appeal is whether Petitioner, a nursing home resident, is entitled to a deduction from her patient liability for Medicaid for health insurance premiums paid by her spouse who resides in the community. Petitioner also seeks a deduction for taxes voluntarily withheld from retirement benefits and that are not required to be withheld by law. An evidentiary hearing was conducted on May 21, 2008, in Warner Robins, Georgia. Petitioner was represented by [Redacted], Attorney at Law, Martinez, Georgia. Respondent was represented by [Redacted], Medicaid Eligibility Specialist, Houston County Department of Family and Children Services (DFCS).

For the reasons set forth herein, Respondent's determination that the health insurance premiums are not deductible as incurred medical expenses and that voluntary income tax payments are not allowable deductions in the patient liability budget is AFFIRMED.

I. FINDINGS OF FACT

1. Petitioner is a resident of Warner Robins Rehabilitation and Nursing Center in Houston County, Georgia. Petitioner's spouse, [Redacted], resides outside the nursing facility. **Fn 1** A Medicaid application was filed on Petitioner's behalf on March 5, 2008, and she has been found eligible for Medicaid under the "Nursing Home" category of assistance. (Testimony of [Redacted])
2. DFCS determined that Petitioner was required to pay \$266.00 per month toward her nursing home care. This amount is referred to as the "Patient Liability." Calculations produced at the hearing indicate that the patient liability may now be \$359.00 per month, based on Petitioner's income of \$1,034.56 per month, a \$50 personal needs allowance, and diversion of her income to her spouse in the amount of \$625.56. **Fn 2** (Testimony of [Redacted]; Medicaid Budget Sheet (ALJ Exhibit 1)).
3. Petitioner asserts that the patient liability should actually be zero. In support of this position, Petitioner has provided verification that Petitioner's spouse pays health and dental insurance premiums of \$401.79 per month from his income. Respondent has denied any deduction for these insurance premiums in the patient liability budget, as it holds the position that only premiums paid by the institutionalized spouse can be allowed as incurred medical expense deductions. (Testimony of [Redacted])

1 As [Redacted] is not institutionalized in a nursing facility or receiving a community-based Medicaid waiver, he is termed a "Community Spouse" under Medicaid rules.

2 Copies of the community spouse income diversion budgets were not available at the hearing. However, both parties stipulated that the income figures used to calculate the patient liability were correct, other than the incurred medical expenses and voluntary tax payments which are in dispute on appeal.

4. Petitioner also asserts that voluntary federal income tax withholding from her retirement income should be allowed as a deduction in the patient liability budget. DFCS holds the position that only mandatory tax payments, such as for FICA or income taxes withheld from an employee's wages, can be deducted from the patient liability. (Testimony of [REDACTED])

II. CONCLUSIONS OF LAW

1. As this matter concerns the calculation of a Medicaid patient liability by the Department of Human Resources, the burden of proof is placed upon Respondent pursuant to OSAH Rule 616-1-2-.07. The standard of proof is by a preponderance of the evidence. OSAH Rule 616-1-2-.21(4).

2. Guidelines governing the Medicaid program in Georgia are found in the Economic Support Services Manual (ESSM), Part II.

3. Medicaid guidelines found in Sections 2550-2559 of the ESSM provide that an individual Medicaid recipient may be required to pay a portion of her nursing home bill, depending on her gross monthly income and the number and amount of deductions to which she is entitled. This is referred to as either "patient liability" or "cost share."

4. Section 2555 of the ESSM states that certain "Medical expenses incurred by the [Medicaid] recipient that are not subject to payment by Medicaid or other third parties can be deducted in the patient liability / cost share budget." Such expenses include "Health and/or dental insurance premiums," which are 100% deductible in the patient liability budget. (ESSM Section 2555-1). This section goes on to state that medical expenses "must be incurred by the recipient, but not necessarily paid by the recipient." Expenses paid by a state or federal entity are not deductible.

5. ESSM Section 2555-2 addresses the issue of health and dental insurance payments when one spouse resides in a facility (or receives community-based Medicaid, such as the Community Care program), with a community spouse: "If the [Medicaid applicant / recipient] in a [nursing home] has a community spouse and has health insurance premiums for both deducted from the [applicant / recipient's] income, allow the full amount of the insurance premiums as a deduction from the [patient liability / cost share]."

6. ESSM Section 2555 does not specifically address the situation where a health insurance premium is paid by a community spouse, but the premium is claimed as a deduction in the nursing home resident's patient liability budget. The regional Medicaid consultant for Houston County requested a policy clearance on this issue from the State Medicaid Program Analyst. The situation stated by the Regional Medicaid Consultant concerns a different Medicaid case, but DFCS applied the State Program Analyst's answer to the facts presented by Petitioner and her spouse:

SITUATION: [applicant / recipient] in nursing home has state health insurance family coverage \$214.98 deducted from his retirement check. The AR's spouse has no other medical coverage other than the family coverage her husband carries. We are concerned with patient liability because the wife's income is over the community spouse maintenance allowance so no income is being diverted to the spouse at home. Do we allow the total \$214.98 as an IME for the nursing home AR?

ANSWER: Since the IME is coming out of the A/R's check for both, allow the entire amount of the IME (health insurance premium) as an IME for the A/R. **However, if the situation was reversed, I.E. it was coming out of the community spouse's check, we would not allow any as an IME to the A/R.** [Emphasis added].

7. Georgia appellate courts recognize that deference is afforded to state agencies in their reasonable interpretation and application of the laws they are charged with enforcing and administering. Georgia Department of Community Health, Division of Health Planning v. Gwinnett Hospital System, Inc., 262 Ga. App. 879, 881, 586 S.E. 2d 762 (2003). State agencies provide a "high level of expertise" that allow them to "make rules and enforce them in fashioning solutions to very complex problems." Bentley v. Chastain, 2452 Ga. 348, 3540-351, 249 S.E. 2d 38 (1978); See also Albany Surgical P.C. v. Department of Community Health, 257 Ga. App. 636, 638, 572 S.E. 2d. 638 (2002).

8. As stated previously, the language of ESSM Section 2555 does not specifically address the situation presented in Petitioner's Medicaid case. Respondent's interpretation of that policy is reasonable, however, as it affirms Respondent's policy that, in general, incurred medical expense deductions are allowed when the Medicaid recipient pays the expense, and not when third parties or the government pay. For this reason, the interpretation of Medicaid rules contained in the Medicaid policy clearance issued March 19, 2008 is entitled to deference by the administrative court.

9. Section 2552 of the ESSM addresses the issue of deductions in the patient liability budget for "mandatory" expenses. These include income tax withholding and payments. Section 2552-1 states that DFCS is not to "allow any deductions from income that are within the control of the individual." This includes withholdings that are the result of the [applicant / recipient's] deductions and / or court-ordered actions (e.g., voluntary income tax withholding.....)

10. In the present situation, the income tax withholdings from Petitioner's retirement benefits are voluntarily, and thus not subject to deduction from the patient liability budget.

III. DISPOSITION

It is the Initial Decision of this administrative court that Houston County DFCS correctly denied deductions from Petitioner's patient liability for nursing home Medicaid for health and dental premiums paid by her community spouse, and for voluntary federal income tax payments from her retirement benefits. Therefore, Respondent's actions in this matter are AFFIRMED.

SO ORDERED, this 27 day of June 2008.



M. PATRICK WOODARD JR.
Administrative Law Judge