

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

[REDACTED]

Petitioner,

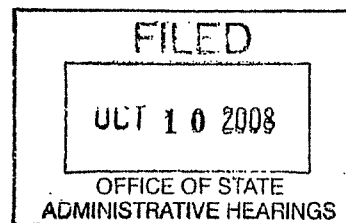
v.

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

Respondent.

DOCKET NO.
OSAH-DFCS-ABDR-0904247-144-KENNEDY

Agency Reference No. 947006542



INITIAL DECISION

Petitioner requested a fair hearing in response to Respondent's adverse action denying her June 2008 Nursing Home Medicaid application and her July 2008 Undue Hardship Waiver application. A fair hearing was held on September 15, 2008. Petitioner did not personally appear, but was represented through [REDACTED]. Respondent was represented by [REDACTED] Region 2 Medicaid Field Program Specialist. For the reasons set forth below, Respondent's adverse action denying Petitioner's Nursing Home Medicaid and Undue Hardship Waiver applications is **AFFIRMED**.

FINDINGS OF FACT

1.

[REDACTED] Petitioner, is 84 years old. She is unmarried, and has two adult children, and [REDACTED]. *Stipulation of Parties.*

2.

In December 2006, Petitioner entered a Union County Nursing Home located in Blairsville, Georgia. She has continuously resided at the nursing home since then. *Stipulation of Parties.*

3.

Petitioner, by and through her legal representative, submitted an application for Medicaid benefits through the Union County Department of Family and Children Services on June 2, 2008, seeking Medicaid benefits retroactive to May 1, 2008, to assist in paying the cost of her nursing home expenses. *Stipulation of Parties; Exhibit P-8.*

4.

At the time that Petitioner submitted her Medicaid application, she held an ownership interest in real property located at [REDACTED], Lithonia, Dekalb County,

Georgia, which is valued at \$137,500.00. She also held an ownership interest in real property located at [REDACTED], Blairsville, Union County, Georgia, that she jointly owns with her two adult children and which has a total value of \$138,588.00.¹ *Stipulation of Parties; Exhibit P-2, P-3, P-4, P-6, P-7.*

5.

After reviewing Petitioner's Medicaid application, Respondent made a determination that the value of Petitioner's countable resources exceeded the allowable resource limit to qualify for Medicaid. In making this determination, Respondent excluded the value of the DeKalb County real property as "homeplace property," but included the value of Petitioner's 1/3 joint ownership interest in the Union County real property as "non-homeplace property." Petitioner's 1/3 interest in the Union County real property is valued at \$46,196.00, which amount exceeds the \$2,000.00 resource limit to qualify for Medicaid. Accordingly, Respondent notified Petitioner, by letter dated July 2, 2008, that her Medicaid application was denied. *Exhibits P-4 and P-8.*

6.

After receiving notice of the denial of her Medicaid application, Petitioner submitted a request for exclusion of the value of the Union County real property from Respondent's resource determination pursuant to the Undue Hardship Waiver provisions of the Georgia Department of Human Resources Economic Support Services Policy Manual Section 2345, which provides that jointly owned real property can be excluded if the sale would cause undue hardship to the co-owner on the basis that it is the principal place of residence of the co-owner. In support of the July 11, 2008 Undue Hardship Waiver request, Petitioner's daughter, one of the co-owners of the Union County real property, submitted a sworn affidavit verifying that a sale of the Union County property would cause her undue hardship because she claims it is her principal place of residence. *Testimony of Petitioner's daughter; Exhibit R-1.*

7.

After reviewing Petitioner's request for an Undue Hardship Waiver to exclude the value of the Union County property from Respondent's resource determination, Respondent issued a letter to Petitioner dated August 5, 2008 stating that the issue had been resolved by Respondent having determined that the value of the Union County property should have been excluded because it should have been designated as Petitioner's homeplace property. Respondent based its revised resource determination on a statement contained in Petitioner's daughter's sworn affidavit suggesting that Petitioner had lived with her daughter at the Union County residence prior to entering the nursing home. Based on Respondent's revised resource determination excluding the Union County real property as homeplace property, but including the DeKalb County real property as non-homeplace property, Petitioner's countable resources increased from \$46,196.00 (her 1/3 interest in the Union County real property) to \$137,500.00 (the total value of the DeKalb County

¹ Petitioner's other assets included a \$2,000.00 Life Insurance Policy, \$600.00 in a checking account with Peoples Bank; \$500.00 in a checking account with Stephens Federal Bank, and an immediate annuity valued at \$47,000.00. These assets did not directly affect Respondent's determination to deny Petitioner's Medicaid application and were not addressed by either party during the hearing.

real property). Respondent's revised resource determination did not affect Petitioner's ineligibility for Medicaid because the value of her countable resources remained in excess of the \$2,000.00 resource limit. *Exhibits P-1, P-4, P-6, P-7, and R-1.*

8.

Despite the statement contained in Petitioner's daughter's sworn affidavit that accompanied the Undue Hardship Waiver request suggesting that Petitioner had resided at the Union County residence, Petitioner never did, in fact, reside at the Union County residence. Instead, Petitioner resided in her DeKalb County residence on Covington Highway from 1960 until 2002. At that time, Petitioner temporarily moved into her daughter and son-in-law's primary residence in DeKalb County on Klondike Road because she could no longer care for herself. Petitioner later moved into an assisted living unit, before finally entering the nursing home in 2006. Since 1960, Petitioner has maintained her homestead exemption on her DeKalb County residence. At no time has Petitioner made a legal declaration of an intention to abandon her established domicile. *Testimony of Petitioner's daughter.*

9.

Petitioner chose to enter a nursing home located in Union County because a majority of her family resides nearby. Petitioner's daughter testified that she moved into the Union County residence when Petitioner entered the Nursing Home in 2006 so she could be closer to Petitioner and assist in her care. *Testimony of Petitioner's daughter.*

10.

On May 7, 2008, approximately one month before Petitioner submitted her Medicaid application, Petitioner's two children entered into a Lease Agreement whereby the children agreed to pay Petitioner \$266.00 per month in rent in reference to the Union County property that they jointly owned. *Testimony of Petitioner's daughter; Exhibit ALJ-1.*²

11.

Some time after Respondent denied Petitioner's Medicaid application, Petitioner's children terminated the Lease Agreement.³ Shortly thereafter, Petitioner's daughter submitted the sworn affidavit referenced above as part of Petitioner's request for an Undue Hardship Waiver. In the sworn affidavit, Petitioner's daughter asserts that she uses the Union County residence as her principal place of residence and that if the property were sold, she would have to relocate and such relocation would cause her undue hardship by jeopardizing her employment and her ability to assist in Petitioner's care. *Testimony of Petitioner's daughter; Exhibit R-1.*

² Exhibit ALJ-1 is a copy of the Lease Agreement, which is hereby admitted subject to an objection being filed within the 10-day reconsideration period.

³ According to Petitioner's daughter, the lease agreement was terminated because she realized that, as a co-owner, she did not have to pay rent to Petitioner to live in the premises.

12.

Also following Respondent's denial of Petitioner's Medicaid application, Petitioner's daughter registered to vote in Union County, and changed the address on her driver's license to reflect the Union County address. *Testimony of Petitioner's daughter.*

13.

Petitioner's daughter estimates that she spends 95 percent of her time at the Union County residence. She also testified that she not only lives in the residence, but also maintains a home office at the Union County residence. Petitioner's daughter, in fact, works out of her home and does not have an office where she reports for work. Petitioner's daughter pays all of the utilities for the Union County residence, but the property taxes are divided equally between Petitioner's daughter and Petitioner's son. *Testimony of Petitioner's daughter.*

14.

Petitioner's daughter receives some mail at the Union County address, but receives all of her "critical" mail at the residence she jointly owns with her spouse located on Klondike Road in DeKalb County. Although Petitioner claims that her primary residence is the Union County property; she and her spouse have claimed a homestead exemption on their jointly owned property in DeKalb County since it's purchase. Petitioner's son-in-law continues to reside in DeKalb County and has not moved to the Union County residence with Petitioner's daughter because his mother is ill and lives closer to the DeKalb County residence. Petitioner's daughter indicated that when one of their mothers passes, they will most likely move to whichever residence is closest to the mother that is still living. She further testified that she and her husband may eventually move to the Union County residence on a permanent basis some time in the future. *Testimony of Petitioner's daughter; Exhibit P-5.*

CONCLUSIONS OF LAW

Burden of Proof

1.

Petitioner bears the burden of proof to show that Respondent improperly denied her Medicaid application and her Undue Hardship Waiver application. OSAH Rule 7(1)(d). Petitioner has not met her burden. First, Respondent properly determined that Petitioner's countable resources exceeded the resource limit rendering Petitioner ineligible for Medicaid. Second, Respondent properly determined that Petitioner is not entitled to an Undue Hardship Waiver.

Petitioner's Countable Resources

2.

Petitioner's interest in both the DeKalb County and Union County real properties is a countable resource for Medicaid eligibility purposes. However, the treatment of the

countable resource differs whether the property is categorized as homeplace or non-homeplace property.

Petitioner's Homeplace Property

3.

Petitioner's homeplace is a countable resource for Medicaid purposes, but the value is considered exempt so long as (1) Petitioner remains in the nursing home, (2) she retains an ownership interest in the property, and (3) the property has an equity value of \$500,000.00 or less. *Georgia Department of Human Resources Economic Support Services Policy Manual (ESSM) § 2316.*

4.

In determining which of the two properties, either the DeKalb County or the Union County real property, is Petitioner's homeplace and, thus, not included in determining the total value of Petitioner's countable resources for Medicaid eligibility purposes, Respondent's policy provides that "homeplace" is real property in which the applicant has an ownership interest and that serves as the principal place of residence of the applicant. *ESSM § 2316.*

5.

In this matter, the only location where Petitioner resided and also held an ownership interest in is her residence located in DeKalb County. Petitioner purchased the DeKalb County residence in 1960, and continued to reside there for 42 years until she could no longer care for herself. Petitioner then temporarily moved into her daughter and son-in-law's residence, in which she held no ownership interest, prior to entering an assisted living unit and ultimately the nursing home. Based on Respondent's policy definition of "homeplace," Petitioner has established that her "homeplace" is her DeKalb County residence. Accordingly, although the DeKalb County residence is a countable resource, the equity value of the DeKalb County property is not included in determining if the value of Petitioner's resources exceeds the applicable resource limit to qualify for Medicaid so long as Petitioner remains in the Nursing Home, she retains her ownership interest and the equity value remains less than \$500,000.00.

Petitioner's Non-Homeplace Property

6.

Based on the above-determination that Petitioner's DeKalb County residence is her homeplace, the Union County residence would be considered non-homeplace property. The equity value of an applicant's interest in non-homeplace real property is a countable resource. However, non-homeplace property may be totally or partially excluded if it meets certain conditions. *ESSM § 2329.* For instance, if the property can be categorized as non-business income producing property, such as rental property that produces a net annual return, it can be totally excluded as a countable resource. *ESSM § 2327.* Non-homeplace property can also be totally excluded as a countable resource if the property is jointly owned and the sale of the property would cause undue hardship to a co-owner. *ESSM § 2345.*

7.

Although Petitioner's two children entered into a Lease Agreement to rent the Union County property from Petitioner, such lease agreement was terminated and it is not known if such agreement would even be considered valid inasmuch as the children are co-owners with a right to live in the premises. Other than the Lease Agreement that was temporarily in place, Petitioner has presented no other evidence to suggest that the Union County property is rental property that produces a net annual return. Accordingly, that provision is inapplicable.

8.

Moreover, Petitioner has not shown that the sale of the jointly owned property would cause an undue hardship to a co-owner as defined by Respondent's policy.

9.

Respondent's policy provides that the sale of jointly owned property can cause undue hardship to a co-owner if one of the following situations exists:

- The co-owner uses the property as his/her principal place of residence
- The co-owner would have to move if the property were sold⁴
- The co-owner has no other readily available housing.⁵

ESSM § 2345.

10.

Respondent's policy further provides that Respondent should obtain a statement from the co-owner regarding whether he or she:

- Uses the property as his/her principal place of residence
- Would have to move if the property were sold
- Would have other living quarters readily available

11.

Respondent argues that the co-owner, in this case Petitioner's daughter, must show that (1) she uses the Union County residence as her principal place of residence, (2) that she would have to move if the property were sold, and (3) that she would have no other living quarters readily available if the property were sold. However, given the express language of Respondent's policy manual setting forth that only one of the situations must exist, Petitioner's daughter need only establish one of the situations to qualify for an undue

⁴ If an applicant alleges that the sale of certain real property would force a co-owner living in it to move, Respondent should obtain the following verification:

- The individual's signed statement to that effect
- Evidence of joint ownership.

ESSM § 2345.

⁵ Respondent may accept any reasonable allegation from the co-owner that there is no readily available housing, no other affordable housing available, or no other housing with necessary physical modifications for a handicapped individual.

hardship waiver that would then authorize Respondent to exclude the non-homeplace property as a countable resource based on undue hardship to a co-owner.

12.

In this matter, Petitioner's daughter alleges undue hardship based on an allegation that she uses the jointly owned property as her principal place of residence. Respondent's policy does not define "principal place of residence" for Medicaid purposes, however the term "principal place of residence" has been deemed to refer to one's "domicile" in Georgia statutes relating to domestic relationship matters, probate matters, and eligibility to hold public office. See O.C.G.A. §§ 19-2-1, 15-9-31, and 45-2-1. See also Wright v. Goss, 229 Ga. App. 393 (1997). Accordingly, it is reasonable to infer that Respondent's policy referring to "principal place of residence" means a person's domicile.

13.

In *Dozier v. Baker*, 661 S.E.2d 543 (2008), the Supreme Court of Georgia held that an individual's "domicile" or "principal place of residence" can be established through evidence of an individual's

- Voter registration
- Voter history
- Driver's license
- Homestead exemption
- Vehicle registration
- Testified intention
- Payment of property tax
- Service on a traverse jury
- Income tax returns
- Receipt of personal and business mail
- Church attendance
- Payment of utilities

14.

Although Petitioner's daughter testified about some of the factors referenced above and to other factors in addition to those referenced above, the totality of the evidence was insufficient to meet Petitioner's burden of proof. Petitioner's daughter's assertion that the Union County residence is her principal place of residence was simply not credible based on her manner of testifying, her intelligence, her means and opportunity of knowing the facts to which she testified, her interest or want of interest and also her personal credibility as it appeared to me when she testified. O.C.G.A. § 24-9-80. First, Petitioner's daughter's actions call into question her testimony. Second, Petitioner's daughter's established a domicile with her spouse in the jointly owned property they maintain in DeKalb County and she has not presented sufficient evidence to prove a change in domicile.

Petitioner's Daughter's Actions

Petitioner's daughter, the only witness at the hearing, has a personal and financial interest in ensuring that Petitioner is approved for Medicaid benefits. She testified that the Union County residence has been her principal place of residence since December 2006 when Petitioner entered the nursing home. However, Petitioner's daughter's actions in first entering into a Lease Agreement 17 months after she allegedly began living at the Union County residence and one month before Petitioner submitted her Medicaid application, and then terminating the Lease Agreement when it appeared that Petitioner's Medicaid application would be denied, along with her subsequent actions of registering to vote and changing the address reflected on her driver's license only after Respondent denied Petitioner's Medicaid application, calls into question whether the Union County residence is, in fact, Petitioner's daughter's principal place of residence. Although Petitioner's daughter claims that the Union County residence has been her principal place of residence since December 2006, she did not register to vote in Union County and did not change the address on her driver's license to reflect the Union County address until after Respondent denied Petitioner's Medicaid application. Thus, it appears that her actions were, more likely than not, taken in response to Respondent's adverse action rather than the natural result of a change in her principal place of residence from the home she jointly owns with her husband to the property she jointly owns with her mother and brother. Moreover, Petitioner's daughter maintains a homestead exemption on the home she jointly owns with her husband and, although Petitioner's daughter receives some mail at the Union County property, she receives all of her "critical" mail, such as bills and other important documentation, at the residence she owns with her husband in DeKalb County. The fact that Petitioner's daughter may pay the utilities, and may maintain a home office at the Union County address, is not sufficient to overcome the totality of the evidence that, more likely than not, the Union County property is not her principal place of residence. Although this court acknowledges that Petitioner's daughter most likely spends time at the Union County property to be close to her mother or to assist in her care, Petitioner has not established that it is her daughter's principal place of residence for purposes of qualifying for an undue hardship waiver.

Petitioner's Daughter's Domicile

A domicile, once established, continues to be that persons' domicile until a new domicile is acquired. Williams v. Williams, 191 Ga. 437 (1940). A person's domicile cannot be changed simply by a change of residence but, rather, it must be with the intention of abandoning the old residence and of remaining permanently or for an indefinite time in the new. Thus, Georgia law recognizes that a person can have more than one residence, but only one domicile.⁶ Williams v. Williams, 191 Ga. 437 (1940). Petitioner's daughter may maintain a residence at the Union County property, but Petitioner has not established

⁶ Residence means living in a particular locality and simply requires bodily presence as an inhabitant in a given place. Domicile, unlike residence, means a permanent place of habitat.

that it is her daughter's domicile. Petitioner's daughter established a domicile with her spouse in the property they jointly own in DeKalb County. Petitioner's daughter has maintained her ties to that domicile through her voter registration and driver's license until just recently when Respondent denied Petitioner's Medicaid application and she then took actions to change her voter registration and driver's license. Petitioner's daughter has also maintained her homestead exemption on the DeKalb County property, and receives all of her "critical" mail at the DeKalb County address. Finally, Petitioner's daughter indicated that she and her spouse will move into whichever residence is closest to their respective mother who is still living after one of their mother's passes away. Accordingly, Petitioner has not presented sufficient evidence to prove that her daughter has abandoned her established domicile at the property she jointly owns with her spouse in DeKalb County in order to establish a new domicile in the Union County property.

15.

Based on the above findings and conclusions, Respondent properly determined that the value of the Union County property can not be excluded based on a claim of undue hardship to a co-owner.

Resource Limit

16.

To qualify for Medicaid, the value of Petitioner's countable resources cannot exceed \$2,000.00. *ESSM § 2300.*

17.

If real property is jointly owned, such as the Union County real property, the value of Petitioner's resource is determined by dividing the equity value by the number of joint owners. *ESSM § 2302.*

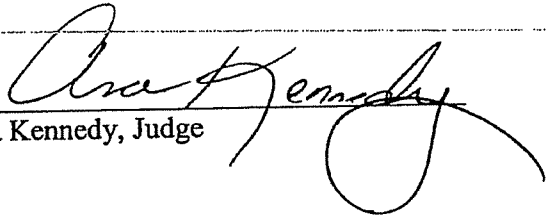
18.

In this matter, Respondent properly determined that Petitioner's 1/3 interest in the Union County real property is \$46,196.00, which amount exceeds the allowable resource limit of \$2,000.00. Accordingly, Respondent properly determined that Petitioner does not qualify for Medicaid based on the value of her countable resources exceeding the allowable resource limit.

DECISION

Respondent's adverse action denying Petitioner's Medicaid application and Undue Hardship Waiver Application is **AFFIRMED**.

~~So ordered this 10th day of October 2008.~~


Ana Kennedy, Judge