

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

[REDACTED]

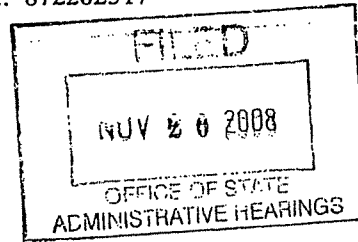
Petitioner,

v.

DEPARTMENT OF HUMAN RESOURCES
DIVISION OF FAMILY AND CHILDREN
SERVICES,

Respondent.

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* Docket No.: 090855 [signature]
* OSAH-DFCS-NH-0729856-148-Teate
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* Case No.: 872262517
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INITIAL DECISION

I. Introduction

The Petitioner appealed an agency determination that Petitioner was ineligible for Medicaid for June and July 2008. A hearing was held on November 6, 2008. For reasons indicated, Respondent's denial is AFFIRMED.

The notice of summary notification and the Petitioner's appeal are admitted as ALJ Exhibits 1 and 2 respectively, subject to the right of the parties to file written objection within the 10-day reconsideration period.

II. Findings of Fact

1. Incident to a nursing home admission, Petitioner's personal representative applied for Medicaid on June 27, 2008 at the nursing home; however, Respondent did not receive the application until July 10, 2008, and it was not signed by the Case Manager until July 22, 2008. Petitioner's representative did not receive written notice issued on July 22 and July 30, 2008 requesting income information proof. (Respondent Exhibits 1, 2, and 4).

2. On August 11, 2008, Petitioner's representative learned that Petitioner's income was over the allowable limit and that a Qualified Income Trust (QIT) could be executed with appropriate asset transfer that would allow him to qualify for Nursing Home Medicaid. Petitioner received \$2,367.80 per month as a Social Security Benefit and \$924.11 per month as a retirement benefit for a total of \$3,291.91 per month unearned income. Petitioner was aged and had a spouse continuing to reside at his former residence. (Testimony of [REDACTED]; step-son and step-son's spouse; ALJ Exhibit 1; Respondent Exhibit 3).

3. Petitioner's representatives promptly contacted an attorney, a QIT was executed and the QIT was filed with Respondent by August 31, 2008. On September 3, Respondent then approved Petitioner's application for August and September 2008; however, the application was denied for June and July 2008 based on a determination that Petitioner was over income for those June and July. (Testimony of [REDACTED]; Respondent Exhibit 5; ALJ Exhibits 1 and 2).

4. Petitioner's representative filed an appeal challenging the denial of the application for June and July,

requesting payment for July 13 through August 8. Petitioner expired prior to the hearing regarding this matter and the record does not reflect the appointment of either an Executor or an Administrator. Petitioner is survived by a spouse who did not act as his personal representative in this matter. (Testimony of [REDACTED]; ALJ Exhibit 2).

III. Conclusions of Law


1. Effective September 1, 2004, if an applicant's gross income is greater than or equal to the Individual Medicaid CAP and the applicant has not established a QIT, the applicant is income ineligible under any nursing home living arrangement unless or until a QIT is established. *Economic Support Services Manual*, Volume II, Section 2510, p. 2510-2. For an individual who resides in a nursing home separate from his spouse and whose income exceeds the individual Medicaid CAP of \$1,911.00 per month, Adult, Blind and Disabled (ABD) Medicaid is determined using the ABD Medically Needy Income Level (AMNIL) of \$317.00 per month. *Id.*, Sections 2510, p. 2510-2 and Appendix A1, p. A-1. As applied, Petitioner's income exceeded the allowable limits.

2. A QIT is a means by which certain recipients may remove income from the Medicaid eligibility determination process. *Id.*, Section 2407, p. 2407-1. The recipient, his or her guardian, or a party having appropriate power of attorney for the Petitioner may establish such a trust. *Id.* A QIT only becomes effective beginning in the month that it is completed and signed by all required parties. *Id.* Even though Petitioner's representatives acted responsibly and with due haste upon becoming aware of the requirement, there is no regulation that would allow an earlier effective date even if the applicant received no notice of the necessity of a QIT for benefit approval from one of Respondent's representatives. Accordingly, Respondent appropriately denied Medicaid for June and July 2008, since the QIT was not executed and submitted until August 31, 2008.

IV. Decision

Respondent's determination that Petitioner's application for Medicaid benefits for June and July is **AFFIRMED.**¹

SO ORDERED, this 20th day of November 2008.


Steven W. Teate
Administrative Law Judge

¹ Generally, the death of a principal revokes an agency agreement. O.C.G.A. § 10-6-33. Accordingly, the designation of a person representative in a public assistance matter is revoked by the death of the applicant or recipient and the right to proceed with an application or an appeal passes to the Executor or the Administrator of the recipient's estate. Although the record supports a conclusion that Respondent's is affirmed, the determination may not be binding on the Executor or Administrator unless one of the representatives appearing is so named.