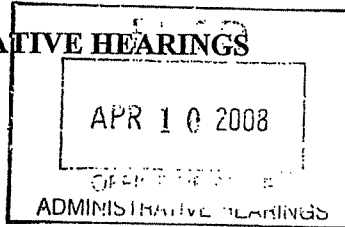


BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA



[REDACTED] :
 Petitioner, :
 :
 v. : Docket No.
 : OSAH-DFCS-NH-0816781-146-KENNEDY
 :
 DEPARTMENT OF HUMAN : Agency Reference No. 303914611
 RESOURCES, DIVISION OF FAMILY :
 AND CHILDREN SERVICES, :
 Respondent. :

INITIAL DECISION

Petitioner requested administrative review of Respondent's adverse action denying her Medicaid application for the months of May, June, and July 2007. A hearing was held on March 11, 2008. Petitioner did not appear, but was represented through her son, [REDACTED] Regional Aged, Blind, or Disabled Medicaid Caseworker, appeared on behalf of the Respondent. For the reasons set forth below, Respondent's action is **AFFIRMED**.

I. FINDINGS OF FACT

Background

1.

Petitioner, who is approximately 81 years old, entered Ridgewood Manor nursing home in Dalton, Georgia on April 26, 2007. Petitioner continuously resided at Ridgewood Manor through July 12, 2007, at which time she transferred to Shepherd Hills nursing home in LaFayette, where she has remained through the hearing in this matter. *Testimony of Petitioner's Representative; Testimony of Respondent's Representative; Exhibit R-1.*

2.

At the time Petitioner entered the nursing home, she was married to [REDACTED] Prior to entering the nursing home, Petitioner and her spouse resided together in their marital home located in Fort Oglethorpe, Georgia. *Testimony of Petitioner's Representative; Testimony of Respondent's Representative; Exhibit R-11.*

3.

Petitioner's spouse was admitted to a hospital in Tennessee on April 27, 2007. He was later discharged to a nursing home on May 15, 2007 to receive skilled nursing care, which cost was to be covered by Medicare. Petitioner's spouse was subsequently readmitted to a hospital on May 20, 2007, upon his kidneys failing. He passed away in the hospital on June 25, 2007. *Testimony of Petitioner's Representative.*

Medicaid Application

4.

Petitioner, through her son [REDACTED] filed an application for Medicaid on July 31, 2007 with the Walker County Department of Family and Children Services office. Petitioner's spouse did not file an application for Medicaid, and he never received Medicaid benefits. *Testimony of Respondent's Representative; Exhibit R-2.*

5.

Respondent subsequently notified Petitioner, by letter dated March 7, 2008, that she had been approved for Medicaid benefits from August 2007, ongoing.¹ Petitioner's application for Medicaid for the months of May, June, and July 2007, however, were denied. Upon notice of the denial of benefits for May, June, and July 2007, Petitioner filed a timely appeal. *Testimony of Respondent's Representative; Exhibit R-2 and R-8.*

Countable Resources²

Bank Accounts

6.

Petitioner and her spouse maintained two bank accounts with Capital Bank. For account number 30019855, the balance as of May 1, 2007, was \$6,122.08; the balance as of June 1, 2007, was \$5,266.23; and the balance as of July 1, 2007, was \$3,910.24. For account number 3295342, the balance as of May 1, 2007, was \$19,447.68; the balance as of June 1, 2007, was \$7,447.68; and the balance as of July 1, 2007, was 7,565.36. *Exhibit R-9.*³

Burial Contract and Life Insurance Policy

7.

As part of Petitioner's Medicaid application, Respondent received an ABD Medicaid Burial Contract Verification Form indicating that Petitioner had a burial contract with Lane Funeral Home. According to the form, Petitioner is the owner of the burial contract; it's paid in full; it was purchased on January 21, 1985; it cost \$1,695.00 when purchased; its current refund value is \$5,525.00; and it is funded by a life insurance policy and a trust. *Exhibits R-10 and R-11.*

¹ Respondent initially notified Petitioner, by letter dated November 27, 2007, that her Medicaid application for October 2007, ongoing had been approved and that her request for benefits for the months of July, August, and September had been denied based on a determination that she was over the resource limit.

² Petitioner owns property in Florida; however, Respondent determined that the property should be excluded as a countable resource in determining Medicaid eligibility because Petitioner presented verified that she had made a good faith effort to sell the property. *Testimony of Respondent's Representative.*

³ During the hearing, Petitioner's representative was advised that he could dispute the information contained on Exhibit R-9 within 10 days, but he was not provided a copy of the exhibit. Thus, a copy of Exhibit R-9 is attached to this decision. Petitioner may dispute the information contained in Exhibit R-9 within 10 days of the issuance date of this Order. If Petitioner chooses to submit additional information to dispute Exhibit R-9, a new hearing may be scheduled.

8.

Petitioner also submitted documentation from Lane Funeral Home in regard to a Protector Plan (803278), which references Lane Funeral Home's agreement to guarantee Petitioner a complete funeral. *Exhibit R-11*. The attached policy specifications indicate that the amount of insurance is \$2,100. *Exhibit R-12*.

9.

Based on the discrepancy between the ABD Medicaid Burial Contract Verification Form indicating that the cost of the policy when purchased was \$1,695.00, and the Policy Specifications form indicating that the amount of insurance was \$2,100.00, Respondent made a determination that Petitioner must have purchased two policies, one to fund her burial contract and one as a life insurance policy. Respondent further determined that, since it appears there are two policies, the cash value of the life insurance policy that funds the burial contract, valued at \$5,525.00, must be considered as a countable resource. Petitioner's son maintains that Petitioner only purchased one life insurance policy and that it has been used to fund the burial contract. *Testimony of Petitioner's Representative; Testimony of Respondent's Representative; Exhibits R-10, R-11, and R-12*.

Petitioner's Expenses

10.

While awaiting a decision on her Medicaid application, Petitioner paid \$5,148.00 to Ridgewood Manor for her care in April and May 2007; \$4,290 for her care in June 2007; and \$1,716.00 for her care in July 2007. Petitioner also paid \$3,308.00 in July 2007 to Shepherd Hills for the care she received there. *Testimony of Petitioner's Representative*.

11.

One of Petitioner's son's also chose to contest Petitioner's Spouse's will, and to contest [REDACTED]'s Petition for Guardianship of Petitioner. These legal actions resulted in Petitioner incurring \$6,700.00 in legal fees, which fees Petitioner has not been able to pay. *Testimony of Petitioner's Representative*.

II. CONCLUSIONS OF LAW

Burden of Proof

1.

Petitioner bears the burden of proof because this matter involves an adverse decision regarding an application for public assistance benefits; however, both Petitioner and Respondent bear the burden of proof as to any fact, asserted by them, if the proof of the fact is essential to their case or defense. O.C.G.A. § 24-4-1, OSAH Rule 616-1-2-.07(1)(d). The standard of proof is preponderance of the evidence. O.C.G.A. § 50-13-15(1), O.C.G.A. § 24-4-3, OSAH Rule 616-1-2-.21(4).

Resource Eligibility

2.

The combined value of a Medicaid applicant's countable resources must fall below the applicable resource limit for the applicant to qualify for benefits. *Georgia Department of Human Resources Economic Support Services Policy Manual (ESSM) Section 2300*. The individual resource limit is \$2,000. However, if an applicant has a community spouse, the spousal impoverishment limit allows the spouse \$101,640 in resources, and the applicant \$2,000 in resources, such that the allowable combined resource limit would be \$103,640. *ESSM Section A1-1 (2007)*.

3.

Use of the Spousal Impoverishment resource limit is limited to situations where an applicant/recipient in Living Arrangement D (LA-D)⁴ has a legal spouse in the community. *ESSM Section 2501*, at p. 2501-1.

4.

A community spouse is the legal spouse of a Medicaid applicant/recipient in LA-D who lives in his own home (LA-A), in a Personal Care Home/Assisted Living (not applicant/recipient in LA-D Class of Assistance) or in someone else's home (LA-B). *ESSM Section 2502*, at p. 2502-1. Under this definition, Petitioner's spouse does not qualify as a community spouse for the months in which she is requesting Medicaid benefits. During the months of May, June, and July 2007, Petitioner's spouse did not live in his own home, in a personal care home/assisted living, or in someone else's home. Rather, Petitioner's spouse was confined to a hospital and/or nursing home, which is considered LA-D. *ESSM Section 2235*. Petitioner's spouse remained in the LA-D for 30 consecutive days, thus meeting the Length of Stay requirement to potentially qualify for Medicaid benefits, even though he chose to not apply for Medicaid and did not, in fact, receiving Medicaid benefits.

5.

Respondent's policy also provides the following procedures to determine financial eligibility when both spouses, as here, enter LA-D in the same month, Petitioner having entered a nursing home on April 26, and her spouse having entered a hospital on April 27:

- Combine the countable resources of both spouses and apply them to the Couple resource limit to determine resource eligibility for the month of admission to LA-D.
- Treat each spouse as an Individual in determining resource eligibility beginning the month following the month of admission to LA-D. Apply each Individual's resources to the Individual resource limit.

ESSM Sections 2502, at p. 2502-2 and 2503, at p. 2503-2.

⁴ LA-D confinement includes confinement in a Medicaid participating hospital or nursing home, or non-Medicaid participating hospital or nursing home. *ESSM Section 2235*, at p. 2235-2.

Denial of Application Proper

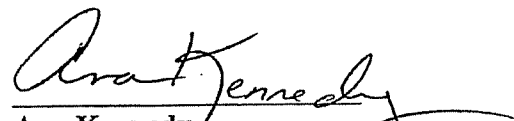
6.

Without having to address whether Respondent correctly determined that Petitioner had purchased two life insurance policies and that one of the values must be considered as a countable resource, Petitioner has not met her burden to show that her application was improperly denied. Pursuant to Respondent's policy, Petitioner is treated as an Individual in determining her resource eligibility for the months of May, June, and July 2007. The Medicaid Individual resource limit is \$2,000. On the first of the month for May, June, and July 2007, the total value of Petitioner's countable resources in her bank account alone exceeded the Individual resource limit of \$2,000. Moreover, although Petitioner's representative presented information regarding Petitioner's expenses, these are not considered in determining an individual's Medicaid eligibility. Accordingly, Respondent properly denied Petitioner's application.

III. DECISION

Respondent's action denying Petitioner's application based on excess resources is **AFFIRMED** inasmuch as the total countable value of Petitioner's resources exceeded the allowable Medicaid resource limit.

This 10th day of April 2008.



Ana Kennedy
Administrative Law Judge