

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

[REDACTED]

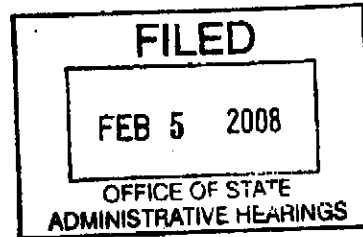
Petitioner,

v.

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

Respondent.

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* Docket No.:
* OSAH-DFCS-AMNNH-0813888-62-Teate
*
* Agency Reference No.: 734035476
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INITIAL DECISION

I. Introduction

Petitioner requested a hearing that was scheduled for January 7, 2008, at which time the parties agreed to submit proposed stipulations of fact, exhibits, and copies of statutes or regulations supporting their positions to allow a determination by the judge without necessity of hearing.

Petitioner appeals Respondent's denial of Petitioner's application for Medicaid under the Adult Medically Needy (AMN) Nursing Home class of assistance for October, November and December 2007 based on Respondent's determination that Petitioner's resources exceed the \$103,640.00 spousal impoverishment resource limit established by Respondent's rules and regulations. After institutionalization, but prior to Petitioner's application for Medicaid, Petitioner's spouse, with Petitioner consent, obtained a court order establishing Petitioner's spouse's community spouse resource allowance as a total of all assets that Petitioner and her spouse owned in order to generate sufficient income to meet a monthly minimum income of \$2,541.00, because assignment of all of Petitioner's income to her spouse less a \$50.00 per month personal needs analysis was insufficient for this purpose. Petitioner's legal position is based on provisions contained in 42 U.S.C.S. § 1396 r-5, and a Superior court order in Glascock County, Georgia issued October 18, 2007, "nunc pro tunc" to July 1, 2007, a date that coincides with the three months prior to Petitioner's Medicaid application date.

Respondent asserts that the *Economic Support Services Manual* provisions contained in Sections 2300 and 2502 require deeming, and that the value of the couple's countable resources that Respondent, calculated as \$284,175.65 in the month of application and in ongoing months, exceeded the \$103,640.00 spousal impoverishment resource limit such that Petitioner's application was appropriately denied as being over the spousal impoverishment resource limit.

The following documents attached to the OSAH 1 referral are made ALJ Exhibits subject to the right of the parties to object to their admission during the reconsideration period.

- ALJ Exhibit 1: Petitioner's appeal dated November 28, 2007
- ALJ Exhibit 2: Respondent's notice of summary notification dated November 15, 2007

ALJ Exhibit 3: Petitioner's application for Medicaid and Medicare Savings for Qualified Beneficiaries dated October 22, 2007

ALJ Exhibit 4: financial eligibility determination 11-15-07

The following exhibits submitted by the parties are admitted as indicated subject to the right of the parties to object to their admission during the reconsideration period:

Petitioner Exhibit 1: copy of 42 U.S.C.A. § 1396r-5 Treatment of income and resources for certain institutionalized spouses

Petitioner Exhibit 1-A: copy of Superior court order issued October 18, 2007

Respondent Exhibit 1: list of Petitioner and Petitioner's spouse's resources for October, November and December 2007

Respondent Exhibit 2: Respondent's letter containing its legal position dated January 9, 2007 with copies of Policy 2300 and 2502.

For reasons indicated, Respondent's decision is REVERSED.

II. Findings of Fact

The following findings are determined from the record submitted:

1. Petitioner is aged and disabled, and has been continuously institutionalized in a nursing home since November 26, 2006. Her spouse is not institutionalized. (Respondent Exhibit 2).
2. Petitioner's spouse filed a petition for support in his favor against Petitioner in the Superior Court of Glascock County, Georgia to allocate and set his Community Spouse Resource Allowance (CSRA) from the parties' countable assets, and for an order of monthly income support in his favor against Petitioner. Petitioner consented to the relief requested and the Court determined Petitioner's spouse to be a spouse in need of support from Petitioner. The order determined that Petitioner's spouse was entitled to a deviation from the starting point of resources and income set forth in the Medicare Catastrophic Coverage Act, 42 U.S.C. § 1396 r-5 and ordered 100% of Petitioner's monthly income, less her \$50.00 monthly personal needs allowance, be paid to Petitioner's spouse and, inasmuch as the total income did not exceed a monthly minimum of \$2,541.00 for Petitioner's spouse, that 100% of Petitioner's share of resources totaling approximately \$290,000.00 should be transferred from Petitioner to Petitioner's spouse in order that the resources could be used to generate the remaining income necessary to meet the monthly minimum of \$2,541.00. Although the judge entered the order on October 18, 2007, the order was made effective "nunc pro tunc" to July 1, 2007. (Petitioner Exhibit 1-A)
3. Shortly after the entry of the support order, Petitioner applied for Medicaid on October 22, 2007, at which time Respondent determined that total resources consisting of a checking account, certificates of deposit and time deposits were \$284,175.65 at the time of application. Inasmuch as the couple's resources exceeded the \$103,640.00 spousal impoverishment limit for an LA-D Individual with a Community Spouse, Respondent denied Petitioner's Medicaid application on the basis that resources exceeded the allowable limit. (ALJ Exhibits 1, 2, 3, and 4; Respondent Exhibit 1).

III. Conclusions of Law

1. An "institutionalized spouse" is someone who resides in a medical institution or nursing facility, and is married to a spouse who is not in a medical institution or nursing facility. 42 U.S.C.A. § 1396r-5 (h) (1) (A) and (B). A community spouse is the legal spouse of a Medicaid applicant or recipient living in a nursing home or personal care home or assisted living (A/R in LA-D) who meets all related eligibility criteria. *Id.*, (2); *Economic Support Services Manual (ESSM)*, Section 2502, p. 2502-1. Petitioner's spouse is a community spouse and Petitioner is an institutionalized spouse.

2. Subject to the spousal impoverishment resource limit, a community spouse's resources are included with those of an institutionalized spouse's resources upon an application being filed by the institutionalized spouse for Medicaid under the Aged, Blind and Disabled (ABD) nursing home class of assistance. *Id.*, p. 2502-2. The couple's combined countable resources is then used to determine the Spousal Share, which is one-half of the couples combined resources excluding the couple's home, household good, an automobile and burial funds. 42 U.S.C.A. § 1396r-5. At the time of application, the spousal resource impoverishment limit was, as calculated by Respondent, \$103,640.00.¹ *Id.*, Appendix A1, p. A1-1. Respondent's determination is consistent with the directives of its *Manual* that the value of an applicant's countable resources cannot exceed the appropriate resource limit in order for the applicant to be eligible for ABD Medicaid. *Id.*, Section 2300, p. 2300-1. Accordingly, Respondent's manual only equates the Protected Resource Amount (PRA) with the State spousal resource standard of \$103,640.00 and disregards provisions that relate to an amount transferred to the community spouse for her/his support as directed by a court order that may exceed the PRA otherwise authorized. 42 U.S.C.A. § 1396r-5 (f) (2) (A) (iv) and (f) (2) and (3). While Petitioner consented to the transfer of assets in this matter, transfer of asset penalties contained in 42 U.S.C.A. § 1396p do not apply to amounts of resources transferred pursuant to a court order for support of a spouse. 42 U.S.C.A. § 1396r-5 (f) (3).

3. Special rules grant special treatment for institutionalized spouses. 42 U.S.C.A. § 1396r-5 (a) (1). "If a court has entered an order against an institutionalized spouse for monthly income for the support of the community spouse, the community spouse monthly income allowance for the spouse shall be not less than the amount of the monthly income so ordered." *Id.*, (d) (5). As applied to this case, the Superior Court ordered a minimum community spouse monthly income allowance for Petitioner's spouse of \$2,541.00 and found that Petitioner's income, less a \$50.00 monthly personal needs allowance, combined with that of her spouse, was insufficient to meet that the community spouse monthly income allowance. The Superior Court order then determined that the transfer of all of Petitioner's share of \$290,000.00 in resources to her spouse was necessary to meet the community spouse monthly income allowance. In a distinguishable case, the Court determined that all resources incident to a transfer by an institutionalized spouse of \$227,000.00 in shares of stock to her community spouse on the same date she applied for Medicaid constituted an allowable transfer of assets under 42 U.S.C.A. § 1396p (c) (2) (B) (i); however, the Court went on to determine that Congress did not intend for the provisions of §1396p to be considered separately from those in §1396r-5, the Medicare Catastrophic Coverage Act of 1988. *Feldman v Department of Children and Families*, 2005 Fla App. LEXIS 19679 (2005). In that case, the Court determined that because the spouses' total assets exceeded the community spouse resource allocation provide in §1396r-5 when the institutionalized spouse


¹ This amount has been increased to \$104,400.00 for 2008.

applied for benefits, the excess amount was required to be assessed to her. Id. In the current case, Petitioner made no application for benefits until after obtaining a Court order establishing a community spouse resource allocation that results in a PRA higher than that otherwise allowed for Petitioner in a manner consistent with the provisions of 42 U.S.C.A. § 1396r-5 (f) (2) (A) (iv) and (f) (2) and (3). Whether or not the Superior Court order correctly determined the community spouse resource allocation is beyond the scope of this hearing.

IV. Decision

Respondent's determination that Petitioner did not qualify for Medicaid benefits for October, November, and December 2007, as indicated in the summary notification issued on November 15, is **REVERSED**.

SO ORDERED, this 4th day of February 2008.



Steven W. Teate
Administrative Law Judge