

IN THE SUPERIOR COURT FOR FULTON COUNTY

STATE OF GEORGIA

DOROTHY WELDON, by and through  
her next friend, Joseph Weldon,  
Ina Price, by and through her next friend,  
Billie J. Price,

Plaintiffs,

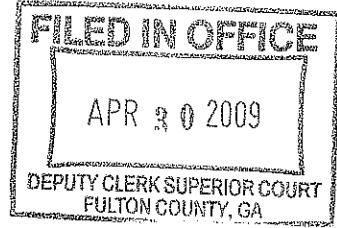
vs.

RHONDA M. MEDOWS, M.D.,  
in her official capacity as Commissioner,  
Georgia Department of Community Health,

and,

B. J. Walker, in her official capacity as  
Commissioner, Georgia Department  
of Human Resources,

Defendants.



Civil Action File

No. 08-CV-154469

**ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

This matter is before this Court on Plaintiffs' Motion for Summary Judgment. To prevail on a Motion for Summary Judgment under O.C.G.A. § 9-11-56, "the moving party must demonstrate that there is no genuine issue of material fact and that the undisputed facts, viewed in the light most favorable to the nonmoving party, warrant judgment as a matter of law." Lau's Corp. v. Haskins, 261 Ga. 491 (1991). "The burden of proof is shifted when the moving party makes a prima facie showing that it is entitled to judgment as a matter of law." Trust Co. Bank v. Stubbs, 203 Ga. App. 557, 560 (1992). At that time the opposing party must come forward with rebuttal evidence

giving rise to a triable issue or suffer judgment against him. Latson v. Boaz, 278 Ga. 113 (2004).

The legal issue in this case is whether the Defendants' Medicaid policy, at Georgia Medicaid Manual § 2555-1, which does not allow medical expenses to be considered as incurred medical expenses during months in which no vendor payment is made, violates federal Medicaid law. For the reasons stated below, Plaintiffs' Motion for Summary Judgment is **GRANTED** and Defendants' policy not to allow Plaintiffs to deduct their outstanding nursing home balance as an incurred medical expense in months for which no vendor payment is made is declared in violation of federal law and regulation.

Plaintiffs Weldon and Price are elderly and disabled residents of nursing facilities who receive Medicaid coverage to pay for their nursing facility care. Defendant Medows is the Commissioner of the Department of Community Health and Defendant Walker is the Commissioner of the Department of Human Resources. The Department of Community Health is the single state agency in Georgia responsible for determining Medicaid policy. O.C.G.A. § 49-2-11(f). Medicaid is a joint federal-state program that provides medical care for certain classes of eligible recipients. 42 U.S.C. § 1396-1396v. Although participation in the Medicaid program is optional, once a state elects to participate, it must comply with the requirements of the Medicaid Act. Doe v. Chiles, 136 F.3d 709, 714 (11th Cir. 1998). To receive federal financial contributions, the states must administer the Medicaid program in accordance with federal law and regulations.

Georgia's Medicaid program provides nursing home Medicaid coverage for those who need nursing facility care and financially qualify for the services. After being determined eligible, patients are then required to pay their available income toward the cost of their care as their patient liability cost. The Medicaid program pays for the balance of the cost of the nursing home care through a vendor payment to the facility. 42 C.F.R. § 413.53. Certain deductions are allowed to be made from the patient liability costs, including medical expenses that have been incurred on behalf of the patient. 42 C.F.R. § 435.725, Georgia Medicaid Manual §§ 2551-2559.

Federal law dictates how much of their income recipients are required to contribute toward their nursing facility care. States are required to disregard certain medical expenses, including incurred medical expenses that are not subject to payment by a third party. 42 U.S.C. § 1396a(r)(1)(A). This allows the residents to pay their uncovered medical bills and to be able to stay in their nursing facility placement. Implementing regulations require that in determining post-eligibility treatment of income, the agency must allow the recipient to deduct "amounts for incurred expenses for medical or remedial care that are not subject to payments by a third party, including . . . (ii) necessary medical or remedial care." 42 C.F.R. § 435.725(c)(4). In light of the federal statute and regulation, the Centers for Medicare and Medicaid Services (CMS) determined that states must allow medical expenses incurred both before and after Medicaid eligibility to be considered as incurred medical expenses and deductible from the patient liability cost of care. Decision of the Administrator, In re: The Disapproval of the Maryland State Plan Amendment 05-06, 5, 9-10, cited at Maryland Dept. of Health

and Mental Hygiene v. Centers for Medicare and Medicaid Services, 542 F.3d 424, 432 (4<sup>th</sup> Cir. 2008).

Georgia Medicaid policy allows the deduction of incurred medical expenses, but restricts the incurred medical expense deduction to medical costs that were incurred during a month in which a vendor payment to the nursing facility is made. Georgia Medicaid Manual § 2555-1. This policy is inconsistent with federal statute, regulation and CMS policy.

Although federal law allows states to impose reasonable limits on the amount of the incurred medical expenses, it does not allow states to completely disregard the incurred medical expenses simply because no vendor payment was made in the month that the medical expense was incurred. 42 U.S.C. § 1396a(r)(1)(A)(ii), Maryland Dept. of Health and Mental Hygiene v. Centers for Medicare and Medicaid Services, 542 F.3d 424 (4<sup>th</sup> Cir. 2008).

Plaintiffs ask this Court for declaratory relief pursuant to O.C.G.A. § 9-4-2 to declare that the Defendants' policy on incurred medical expenses violates federal statute, regulation, and policy. Plaintiffs challenged this policy after requesting that the Defendants permit them to consider their outstanding nursing home bills as an incurred medical expense and deduct them from their current patient liability. Defendants denied this request pursuant to Georgia Medicaid Manual § 2555-1, which specifically says that an incurred medical expense cannot be deducted for a month in which no vendor payment is made.

This Court has the authority to "declare rights and other legal relations of any interested party petitioning for the declaration, whether or not further relief is or could be prayed, in any civil case in which it appears to the Court that the ends of justice require that the declaration should be made." O.C.G.A. § 9-4-2(b). "The purpose of [the Declaratory Judgment Act] is to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations; [The Act] is to be liberally construed and administered." City of Atlanta v. Hotels.com, L.P., No. S08G0568, (March 23, 2009).

Both Plaintiffs have shown that they owe an unpaid balance to their respective nursing homes for nursing home services provided prior to Plaintiffs becoming eligible for Medicaid and therefore are at risk of discharge. Plaintiff Weldon has already confronted a discharge proceeding initiated by her nursing home, which was withdrawn prior to the initiation of this action because of a procedural defect in the discharge notice. Both Plaintiffs face uncertainty and risk with regard to essential nursing home care following the Defendants' denial of their requests to use their unpaid nursing home bills as an incurred medical expense.

Plaintiffs have satisfactorily shown that they face insecurity and uncertainty without a declaration of the rights under federal Medicaid law. The ends of justice require that this Court determine that the Defendants' policy and practice of preventing deductions of incurred medical expenses during months in which no vendor payment is made is in violation of federal Medicaid law.

This Court further concludes that Plaintiffs are not required to exhaust administrative remedies before asserting federal claims under 42 U.S.C. § 1983 in an

affirmative suit for declaratory and injunctive relief pursuant to federal law. Felder v. Casey, 487 U.S. 131 (1988). Defendants have a Medicaid policy that does not allow the deduction of an incurred medical expense in a month in which no vendor payment is made; it would be a futile act to ask the agency to reverse a decision which is correct based on its own policy. Wilson v. Ledbetter, 260 Ga. 180, 182 (1990). Plaintiffs challenge the validity of the rule on its face. Moreover, Ms. Price exhausted her administrative remedies pursuant to O.C.G.A. § 49-4-153 prior to filing this affirmative suit. Nor does sovereign immunity bar injunctive relief against the Defendants. International Business Machines v. Department of Administrative Services, 265 Ga. 215 (1995).

For the foregoing reasons, the Plaintiffs' Motion for Summary Judgment is **Granted**. Accordingly, the Court declares Defendants' policy at Georgia Medicaid Manual § 2555-1 which does not allow incurred medical expenses to be deducted in a month in which no Medicaid vendor payment is made to be in violation of federal Medicaid law and enjoins enforcement of such policy. In considering this motion, the Court has reviewed all of the materials presented by each of the parties and has viewed all disputed facts in a manner that favors the nonmoving parties.

It is hereby Ordered that judgment be entered in favor of Plaintiffs and against the Defendants.

So Ordered, this 29<sup>th</sup> day of April, 2009.



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Melvin K. Westmoreland, Judge  
Superior Court of Fulton County  
Atlanta Judicial Circuit

Prepared by:

Patrick Cates  
Post Office Box 1788  
Athens, Georgia 30603  
(770) 535-5717

Vicky O. Kimbrell  
Stephinie Griffin  
104 Marietta Street, Suite 250  
Atlanta, Georgia 30303  
(404) 205-5177