

IN THE SUPERIOR COURT FOR FULTON COUNTY

STATE OF GEORGIA

DOROTHY WELDON, by and through
her next friend, Joseph Weldon, and
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

MOTION FOR SUMMARY JUDGMENT

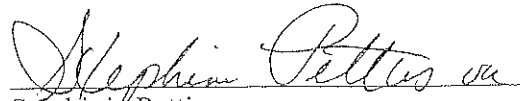
Dorothy Weldon and Ina Price, Plaintiffs in the above-styled action, move this court for summary judgment as provided in O.C.G.A. § 9-11-56 on the grounds that there is no genuine issue of material fact in dispute and Plaintiffs are entitled to judgment as a matter of law.

This 14th day of January, 2008.



Patrick Cates
Attorney for Plaintiffs
State Bar Number 116360

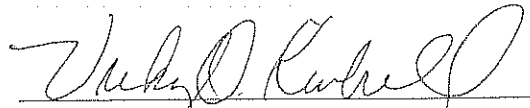
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in her official capacity as Commissioner,]	
Georgia Department of Community Health,]	
]	
and,]	
]	
B. J. Walker, in her official capacity as]	
Commissioner, Georgia Department]	
of Human Resources,]	
]	
Defendants.]	

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT

Plaintiffs Dorothy Weldon and Ina Price submit this Memorandum of Law in Support of their Motion for Summary Judgment. Plaintiffs show that there are no genuine issues as to any material facts and that they are entitled to summary judgment as a matter of law.

I. INTRODUCTION

Dorothy Weldon is a disabled 84-year-old resident of Hart Care Center Nursing Home in Hart County, Georgia who receives Medicaid to assist her in paying for her nursing facility care. Ms. Ina Price is a disabled 84-year-old resident of Wellstar

Nursing Facility in Dallas, Georgia who receives Medicaid to assist her in paying for her nursing facility care. Both of the Plaintiffs owe their nursing homes bills for months that were not covered by Medicaid prior to their Medicaid eligibility and both are subject to discharge for non-payment pending the outcome of this litigation. Defendants have refused to allow Ms. Weldon or Ms. Price to deduct those incurred medical expenses from their current patient liability amount because they were incurred in months prior to which a nursing facility vendor payment was made on behalf of the Plaintiffs.

Plaintiffs challenge Defendants' policy which limits the deduction of an incurred medical expense to months in which the state makes a Medicaid vendor payment. The Center for Medicaid and Medicaid Services (CMS) requires that states allow pre-eligibility medical expenses to be considered as incurred medical expenses, including expenses incurred in months prior to Medicaid eligibility.

II. Procedural History and Factual Statement

Ms. Dorothy Weldon applied for Medicaid at Hart County DFCS in March, 2008 and was approved for March through August 2008 and ongoing. However, she was determined ineligible for retroactive Medicaid for January and February, 2008 due to excess resources in those months. In April 2008, Ms. Weldon received a notice of discharge from her nursing home bed because of the nonpayment of her bill of \$1,442.20 for January 2008 and \$2,783.60 for February 2008. (Weldon Aff. Exhibit B). Ms. Weldon appealed the nursing home discharge notice. After negotiations, the discharge notice was rescinded because of a procedural defect. However, Ms. Weldon still has an unpaid bill at her nursing facility and is subject at anytime to a renewed discharge proceeding.

On May 29, 2008, Mr. Joe Weldon asked that DFCS deduct the nursing home liability amount as an incurred medical expense. (Exhibit Weldon Aff. Exhibit C). Ms. Weldon received a response dated July 3, 2008 that denied the request to use the unpaid nursing home bill as an incurred medical expense, citing the Medicaid Manual § 2555-1 which states that "IMEs incurred in months for which no vendor payment is made are not deducted.". (Weldon Aff. Exhibit D). Plaintiff filed this action challenging Defendants' policy on August 1, 2008.

Ms. Ina Price's representative, Billie Price, initially applied for Nursing Home Medicaid on her behalf on February 22, 2008. Paulding County DFCS notified the Petitioner that she was over the Medicaid resource limit and denied the application. Petitioner's representative disposed of her excess resources in March 2008, and DFCS mailed a second letter stating that she was eligible for Medicaid effective April 2008. Because there were no resources or income to pay for Ms. Price's nursing facility bills from December of 2007 through March of 2008, there is now an outstanding nursing facility balance of over \$15,000. Because of the outstanding bills, Ms. Price is at risk of being discharged from her nursing home.

On July 1, 2008, Ms. Price asked that DFCS deduct the nursing home liability that she owes to WellStar Paulding Nursing Center from her current income as an incurred medical expense. Her request was denied on August 1, 2008. [Price Aff. Exhibit B]. DFCS cited Medicaid Manual § 2555-1 which states that "IMEs incurred in months for which no vendor payment is made are not deducted."

Ms. Price filed a timely appeal to the denial. Judge David C. Langston with the Office of State Administrative Hearings (OSAH) entered an order on October 27, 2008,

affirming the Defendants' denial citing Section 2555-1 of the Medicaid Manual. [Price Aff. Exhibit C]. A timely Request for Agency Review was filed and denied by the Commissioner of the Department of Community Health designee on December 23, 2008. [Price Aff. Exhibit D]. On January 9, 2009, Ms. Price moved to be added as a Plaintiff in this action.

III. Legal Argument and Citation of Authority.

A. Summary Judgment Standard

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). Further, the burden is on the movant to conclusively establish the absence or nonexistence of any defense. Fletcher v. Ford, 189 Ga. App. 665, 667-68 (1988). Once the moving party supports the motion and carries the burden, then the burden shifts to the opposing party who must respond with property evidence setting forth specific facts which show that there is a genuine issue for trial. Gerben v. Beneficial Georgia, Inc., 283 Ga. App. 740 (2007). "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. At that time the opposing party must come forward with rebuttal evidence or suffer judgment against him." Trust Co. Bank v. Stubbs, 203 Ga. App. 557, 560 (1992). Because there are no factual disputes, Ms. Weldon shows that the only legal issue for the Court to decide is whether

the Defendants' policy, which does not allow incurred medical expense deductions for months in which no vendor payment is made, violates federal Medicaid law.

B. Plaintiffs Are Entitled to Deduct Medical Expenses Incurred Prior to Nursing Home Medicaid Eligibility as an Incurred Medical Expense.

1. Federal Law That Allows Medicaid Recipients to Deduct Medical Bills Incurred Prior to Nursing Home Medicaid Eligibility Prevails over Conflicting State Policy.

Medicaid is a joint federal-state program that provides comprehensive medical care for certain classes of eligible recipients. 42 U.S.C. § 1396-1396v. Although participation in the Medicaid program is entirely 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. In Georgia, the Department of Community Health is the single state agency responsible for administering the state Medicaid plan. O.C.G.A. § 49-2-11(f). DCH is obligated to administer the state plan "in a manner so as to receive the maximum amount of federal financial participation available in expenditures made under the state plan." O.C.G.A. § 49-4-157.

Georgia's Medicaid program provides nursing home Medicaid coverage for those who need skilled nursing facility care and financially qualify for the services. After being determined eligible, patients are then required to pay their income toward the cost

of their care as their patient liability cost.¹ 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. Medicaid Manual §§ 2551-2559.

Federal law dictates how much 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 still be able to stay in their nursing facility. 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). Based on an unambiguous reading of the federal statute and regulation, 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. SPA-05-06.

¹Nursing facility residents are allowed to retain \$50.00 per month as a personal needs allowance to pay for incidental personal expenses. Medicaid Manual § 2552-2. The Georgia Medicaid Manual is available on line through the Online Directive Information System at: http://www.odis.dhr.state.ga.us/3000_fam/3480_medicaid/MAN3480.doc.

2. Georgia Incurred Medical Expense Policy Violates Federal Statute, Regulation and CMS Policy.

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 is made. Medicaid Manual § 2555-1. This policy is in violation of federal statute, regulation, and CMS policy.

CMS has determined that the Medicaid statute and regulations do not allow states to restrict the incurred medical expense deduction to months in which a vendor payment has been made. In 2005, the State of Maryland submitted a Medicaid State Plan Amendment (SPA) which would disallow a medical expense deduction for expenses for dates of service before the effective date of medical assistance eligibility. In a final administrative decision, CMS disallowed the Maryland State Plan Amendment and required Maryland to treat incurred medical expenses consistently whether they were incurred prior to eligibility or after the recipient established Medicaid eligibility. SPA-05-06. The Fourth Circuit Court of Appeals affirmed the CMS decision. The court found that the CMS interpretation is reasonable in light of the congressional intent to permit "nursing home residents to pay down medical expenses incurred prior to Medicaid eligibility, as well as the clear purpose of the Medicaid statute to provide medical services to low-income recipients." Maryland Dep't of Health & Mental Hygiene v. Ctrs. for Medicare & Medicaid Servs., 542 F.3d 424, 427 (4th Cir. 2008).

In rejecting Maryland's attempt to restrict the incurred medical expense deduction to post-eligibility incurred medical expenses, the court noted that the federal Medicaid statute limits the authority of the states to calculate income. "States must

provide for taking into account only such income and resources as determined in accordance with standards prescribed *by the Secretary*, available to the applicant or recipient.” Maryland Dep’t of Health & Mental Hygiene, 542 F.3d at 433. The court noted that the Secretary had not exceeded CMS’s authority to define post-eligibility income and that the interpretation given to this statute by the Secretary was reasonable under the plain language of the statute. Maryland Dep’t of Health & Mental Hygiene, 542 F.3d at 433. Accordingly, the court held that CMS has foreclosed any possibility that states could limit or eliminate post-eligibility deductions for incurred medical expenses. “CMS’s requirement that states deduct uncovered medical expenses incurred before Medicaid eligibility from a nursing home resident’s post-eligibility contribution to care is a reasonable interpretation of Congress’ intent in enacting § 1396a(r)(1)(A). . . . We therefore uphold CMS’s interpretation as a permissible construction of the statute. Maryland Dep’t of Health & Mental Hygiene, 542 F.3d at 437.

Similarly, the Montana Supreme Court considered whether the Montana Medicaid agency could restrict incurred medical expense deductions to bills incurred post-eligibility. Timm v. Montana, 184 P.3d 994 (2008). Because Timm was decided before the Fourth Circuit affirmed the CMS denial of the Maryland State Plan Amendment, the court based its decision on the CMS’ State Plan Amendment denial. The Montana Supreme Court reviewed the CMS authority to impose federal Medicaid policy on the states. “The Secretary has broad authority to promulgate regulations defining eligibility requirements for Medicaid. . . .” Schweiker v. Gray Panthers, 453 U.S. 34 at 43, 101 S.Ct 2644 at 2640 (1981). Thus, the Montana Supreme Court

decided that “[u]nder the CMS decision, [recipient] may use her post-eligibility income to pay for costs incurred at the Roosevelt Memorial Nursing Home prior to the date of her Medicaid eligibility.” Timm v. Montana, 184 P.3d at 1005. Similarly, Georgia Defendants are required to follow CMS policy and allow the Plaintiffs to deduct their nursing home bills which were incurred prior to Medicaid eligibility from their patient liability.

Ms. Weldon and Ms. Price are elderly and disabled nursing facility residents who need skilled nursing home care or their health and their lives will be threatened. Both owe back payments to the nursing facilities and are at risk of discharge at any time. Federal statute, regulation, and policy require that DCH allow them to deduct these medical expenses from their patient liability amounts, pay their outstanding bills, and thereby secure their care in their facilities.

C. Plaintiffs Are Not Required to Exhaust Administrative Remedies Prior to Filing for Declaratory Relief Asking the Court to Declare that Defendants’ Incurred Medical Expense Policy Violates Federal Law.

Plaintiffs also ask this Court for relief declaring that the state's policy on incurred medical expenses violates federal statute, regulation, and policy. Plaintiffs asked Defendants to consider their outstanding nursing home bill as an incurred medical expense and reduce their current patient liability. They were denied based on Defendants’ policy which says that an incurred medical expense cannot be deducted for a month in which no vendor payment is made. Medicaid Manual § 2555-1. Because Plaintiffs ask this Court to declare that the Defendants’ unambiguous policy on incurred

medical expenses violates federal law, exhaustion of administrative remedies would be futile and Plaintiffs are not required to exhaust administrative remedies.

Plaintiffs ask for declaratory relief based on the statute which allows the court to specifically declare an agency action invalid and on the general declaratory action statute. The Court can declare Defendant's IME rule invalid based on the Court's authority to determine the

validity of any rule . . . in an action for declaratory judgment when it is alleged that the rule . . . or its threatened application interferes with or impairs the legal rights of the petitioner. A declaratory judgment may be rendered whether or not the petitioner has first requested the agency to pass upon the validity of the rule . . . in question.

O.C.G.A. § 50-13-10(a), Walter Blake Miller vs. DPS, 265 Ga. 62, 62 fn1 (1995).

Plaintiffs are also entitled to relief under Georgia's general declaratory relief statute. Where there is a case of actual controversy, the superior court has the power to "declare rights and other legal relations of any interested party petitioning for such declaration." O.C.G.A. § 9-4-2(a). The standard on which the court can enter a declaratory ruling is whether "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). Moss v. Central State Hosp., 255 Ga. 403 (1986).

Exhaustion of administrative remedies is not required when such relief is inadequate or when administrative relief is futile. Powell v. City of Snellville, 266 Ga. 315, 316 (1996), Hilton Constr. Co. v. Rockdale County Bd. of Ed., 245 Ga. 533, 539 (1980). Where "the administrative remedy exacts a price which causes it to be no

remedy at all" the courts permit a bypass of the exhaustion requirement. Moss v. Central State Hosp., 255 Ga. 403, 404 (1986).

Nor is exhaustion required in an action filed under 42 U.S.C. § 1983 action when it would merely interpose delay. New v. Hicks, 533 U.S. 353 (2001). The Eleventh Circuit held in another Medicaid case that "the Court rejects out of hand Defendant's . . . contention that there is no case or controversy because Plaintiffs have failed to exhaust the state administrative appeals process for denials of adolescent psychiatric care It is well established that a claim under 42 U.S.C. § 1983 cannot be barred by a plaintiff's failure to exhaust state remedies with respect to unreviewed administrative actions. E.g., Patsy v. Florida Bd. of Regents, 457 U.S. 496, 516, 102 S. Ct. 2557, 2568, 73 L. Ed. 2d 172 (1982)." Tallahassee Mem. Regional Medical Ctr. v. Cook, 109 F.3d 693 (11th Cir. 1997).

In this case, DCH Medicaid policy bars the deduction of a medical expense incurred prior to eligibility, although CMS has determined that federal law requires the deduction is allowable. DCH makes the final administrative decision on the case. O.C.G.A. § 49-4-153(b)(1) ("The commissioner, or the commissioner's designated representative, has 30 days from the receipt of the request for appeal to affirm, modify, or reverse the decision appealed from."). It would be a futile act to ask the agency to reverse an administrative decision which is correct based on its own policy.

The commissioner may not avoid judicial review for want of exhaustion of administrative remedies when the very rules of the department preclude both hearing and automatic grant adjustment, as a "review of the final agency decision would not provide an adequate remedy. The law does not require a useless act." Tendler v. Thompson, 256 Ga. 633, 634 (1987).

Wilson v. Ledbetter, 260 Ga. 180, 182 (1990).

Ms. Weldon has the right to deduct her medical expenses incurred in a month prior to her nursing home Medicaid eligibility from her monthly patient liability under federal Medicaid law. Also, Ms. Weldon faces the risk of discharge from her nursing home at any time which would be a threat to her health and security. Because Defendants do not dispute that their policy does not allow a pre-eligibility incurred medical expense deduction, it would be a futile act to require exhaustion of administrative remedies before that same agency. Moreover, Ms. Price has exhausted her administrative remedies and received a final administrative determination from the Department of Community Health designee, dated December 23, 2008 denying the deduction. [Price Aff. Exhibit D]. Plaintiffs therefore ask that this Court declare that the DCH policy is in violation of federal Medicaid statute, regulation, and policy.

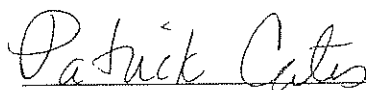
IV. CONCLUSION

Ms. Weldon and Ms. Price are at risk of losing their nursing home beds because they cannot pay the bills that they owe to the nursing home. The Hart County nursing facility began discharge proceedings, which were dropped pending the outcome of this litigation. The nursing facilities can again begin proceedings to discharge Plaintiffs at any time for non payment. Federal Medicaid law allows Ms. Weldon and Ms. Price to pay their nursing home bills, deduct those amounts from the current month's liability, and have Medicaid make up the difference. Defendants have steadfastly refused to apply the federal law in Georgia. Plaintiffs have met the standard for motion for summary judgment and ask this Court to declare that Defendants' policy violates

federal Medicaid law and require Defendants to allow Plaintiffs to deduct their bills as required by federal law.

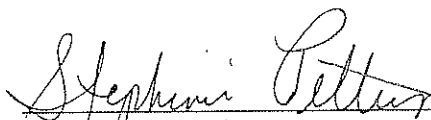
This 14th day of January, 2009.

Respectfully submitted,



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**PLAINTIFFS' STATEMENT OF EACH THEORY SUPPORTING
SUMMARY JUDGMENT**

Dorothy Weldon and Ina Price, Plaintiffs in the above-styled action, set forth their Statement of Each Theory Supporting Summary Judgment as part of their Motion for Summary Judgment as follows:

1. Plaintiffs have shown that there is no genuine issue of material fact and that the undisputed facts, viewed in the light most favorable to Defendants, warrant judgment as a matter of law.
2. Federal regulations implementing 42 U.S.C. § 1396 ("The Medicaid statute") require that in determining post-eligibility treatment of income, a state agency

must allow the Medicaid 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).

3. In an administrative notice dated August 16, 2005, the federal Centers for Medicare and Medicaid Services disapproved a proposed Maryland State Medicaid Plan Amendment that prohibited the deduction of IMEs incurred prior to a nursing home resident obtaining Medicaid coverage from the patient liability/cost share budget. Fed. Reg., Vol. 70, No. 157, 48155-7.
4. 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 is made. Medicaid Manual § 2555-1.
5. Defendants are required to follow federal policy and direction and allow Plaintiffs to deduct the nursing home bills they incurred prior to becoming eligible for Medicaid from their patient liability amount.
6. Plaintiff Weldon is not required to exhaust administrative remedies before seeking judgment from this Court on the validity of Georgia Medicaid Manual § 2555-1.

By statute, Ms. Weldon may request that this Court rule on the:

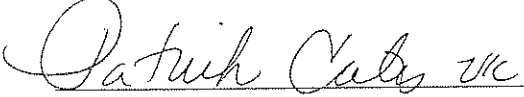
validity of any rule . . . in an action for declaratory judgment when it is alleged that the rule . . . or its threatened application interferes with or impairs the legal rights of the petitioner. A declaratory judgment may be rendered whether or not the petitioner has first requested the agency to pass upon the validity of the rule . . . in question.

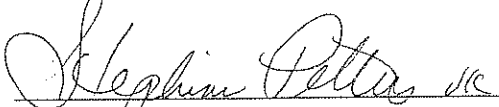
O.C.G.A. § 50-13-10, Walter Blake Miller vs. GPDS, 265 Ga. 62, 62 fn1 (1995).

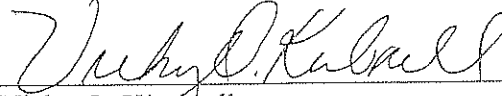
7. Plaintiff Price, however, has exhausted administrative remedies prior to joining this action. Judge David C. Langston with the Office of State Administrative Hearings (OSAH) entered an order on October 27, 2008, affirming the Defendants' denial citing Section 2555-1 of the Economic Support Services Policy Manual. [Exhibit P-C]. Ms. Price filed a timely Request for Agency Review, which a Commissioner of the Department of Community Health designee denied on December 23, 2008. [Exhibit P-D]. Thereafter, Ms. Price joined this action as a plaintiff.

This 14th day of January, 2009.

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Commissioner, Georgia Department]	
of Human Resources,]	
]	
Defendants.]	

PLAINTIFFS' STATEMENT OF FACTS AS TO WHICH THERE IS NO DISPUTE

Dorothy Weldon and Ina Price, Plaintiffs in the above-styled action, set forth their Statement of Facts as to Which There is no Dispute as part of their Motion for Summary Judgment as follows:

1.

Dorothy Weldon is 85 years old. She currently resides in Hart Care Center in Hart County, Georgia. (Weldon Aff. para. 1).

2.

Ina Price is 84 years old. She currently is a resident of WellStar Nursing Facility in

Paulding County, Georgia. (Price Aff. para. 2).

3.

Defendant Georgia Department of Community Health (hereinafter “DCH”) is the single state agency responsible for assuring that Georgia Medicaid policy complies with state and federal Medicaid law. (Defendant’s Responses to Plaintiff’s First Request for Admissions, para. 1).

4.

Dr. Rhonda Medows, acting in her official capacity as Commissioner of DCH, is the person appointed to supervise, direct, account for, organize, plan, administer, and execute the functions vested in the department. (Defendant’s Responses to Plaintiff’s First Request for Admissions, para. 3).

5.

Defendant Georgia Department of Human Resources (hereinafter “DHR”) is the state agency responsible for interpreting and implementing the policy on incurred medical expenses found at Section 2555-1 of the ESS ABD Medicaid Manual on ODIS. (Defendant’s Responses to Plaintiff’s First Interrogatories to Defendant, Response to Interrogatory 9).

6.

B.J. Walker, acting in her official capacity as Commissioner of DHR, is the person appointed to supervise, direct, account for, organize, plan, administer, and execute the functions vested in the department.

7.

Plaintiff Dorothy Weldon is a Medicaid recipient. She has been institutionalized at Hart

Care Center, a nursing home since June, 2006. Ms. Weldon receives Medicaid-covered services at the nursing home. (Weldon Aff. para. 2).

8.

Ms. Weldon is mentally incompetent. Her son, Joe Weldon, has power of attorney for Ms. Weldon. She suffers from senile dementia and depression, among other health problems, and requires full-time skilled nursing care. (Weldon Aff. para. 3).

9.

On March 31, 2008, Ms. Weldon, through her power of attorney, applied for Medicaid coverage at Hart County Department of Family and Children Services (DFCS). (Weldon Aff. para. 4).

10.

Hart County DFCS approved Ms. Weldon for Medicaid coverage for March, 2008 through August, 2008 and ongoing. (Weldon Aff. para. 5).

11.

DFCS determined that Ms. Weldon is ineligible for retroactive Medicaid services for January and February, 2008 due to excess resources in those months. (Weldon Aff. para. 6).

12.

Ms. Weldon owes a balance to Hart Care Center for nursing home services provided to her in January and February, 2008. Ms. Weldon currently owes Hart Care Center \$1,442.20 for January, 2008, and \$ 2,783.60 for February, 2008. (Weldon Aff. para. 7).

13.

On May 29, 2008, Ms. Weldon, through her attorney, mailed a letter to Hart County

DFCS requesting that DFCS deduct the nursing home liability amounts that Ms. Weldon owes to Hart Care Center from her income as an “incurred medical expense” in order to redetermine the patient liability amount Ms. Weldon owes the nursing home. (Weldon Aff. para. 10; exhibit C).

14.

Ms. Weldon received a response from Hart County DFCS dated July 3, 2008 that denied the request to use the unpaid nursing home bills as incurred medical expenses because “the service or item is not on the list of allowable deductions as issued by the Department of Medical Assistance.” In explanation, Hart County DFCS stated that uncovered nursing home liability is a non-allowable deduction pursuant to Section 2555-1 of the Georgia ESS Medicaid manual. (Weldon Aff. para. 11; exhibit D).

15.

Section 2555-1 of the Georgia ESS Medicaid manual states that “incurred medical expenses (“IMEs”) incurred in months for which no vendor payment is made are not deducted” in the patient liability/cost share budget.

16.

DCH did not submit Section 2555-1 of the Georgia ESS Medicaid manual to the Medical Advisory Committee of the Centers for Medicare and Medicaid Services for review and approval. (Defendant’s Responses to Plaintiff’s First Request for Admissions, para. 7).

17.

Federal regulations implementing 42 U.S.C. § 1396 (“The Medicaid statute”) require that in determining post-eligibility treatment of income, a state agency must allow the Medicaid 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).

18.

Plaintiff Ina Price has Medicaid coverage to help her pay for her nursing facility care. (Price Aff. para. 3).

19.

Ms. Price’s representative, Billie Price, initially applied for Nursing Home Medicaid on her behalf on February 22, 2008. Paulding County DFCS notified the Petitioner that she was over the Medicaid resource limit and denied the application. (Price Aff. para. 5).

20.

Ms. Price’s representative disposed of her excess resources in March 2008, and DFCS mailed a second letter stating that she was eligible for Medicaid effective April 2008. (Price Aff. para. 7).

21.

Because there were no resources or income to pay for Ms. Price’s nursing facility bills from December of 2007 through March of 2008, there is now an outstanding nursing facility balance of \$13,936.63. (Price Aff. para. 10).

22.

Because of the outstanding bills, Ms. Price is at risk of being discharged from her nursing home. (Price Aff. para. 11).

23.

On July 1, 2008, Ms. Price asked that DFCS deduct the nursing home liability that she

owes to WellStar Paulding Nursing Center from her current income as an incurred medical expense. (Price Aff. para. 12).

24.

DFCS cited Economic Support Services Policy Manual, Medicaid Program, Section 2555-1, which states that "IMEs incurred in months for which no vendor payment is made are not deducted." (Exhibit B).

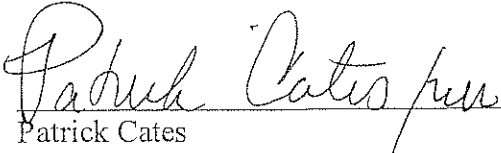
25.

Ms. Price filed a timely appeal to the denial. Judge David C. Langston with the Office of State Administrative Hearings (OSAH) entered an order on October 27, 2008, affirming the Defendants' denial citing Section 2555-1 of the Economic Support Services Policy Manual. (Exhibit C).

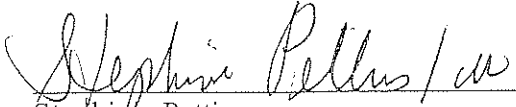
26.

A timely Request for Agency Review was filed and denied by the Commissioner of the Department of Community Health designee on December 23, 2008. (Exhibit D).

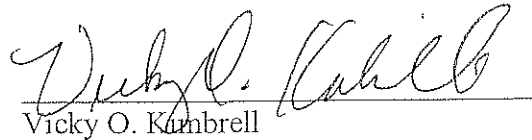
This 14th day of January, 2009.


Patrick Cates
Attorney for Plaintiffs
State Bar Number 116360

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


Stephanie Petties

Attorney for Plaintiffs
State Bar No. 574785

A handwritten signature in cursive script, appearing to read "Vicky O. Kumbrell", written over a horizontal line.

Vicky O. Kumbrell
Attorney for Plaintiffs
State Bar No. 418850

104 Marietta St., N.W.
Suite 250
Atlanta, GA 30303
(404) 206-5175

IN THE SUPERIOR COURT FOR FULTON COUNTY

STATE OF GEORGIA

DOROTHY WELDON, by and through]
her next friend, Joseph Weldon, and]
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

AFFIDAVIT OF PLAINTIFF WELDON
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

I, Joe Weldon for Dorothy Weldon, being duly sworn, depose and say that Dorothy Weldon is a Plaintiff in the above-styled case and I, Joe Weldon, am her son. My mother has given me power of attorney. (Exhibit A). I am over the age of eighteen years. I have personal knowledge of the facts contained within this affidavit and understand that it will be used by the Plaintiffs in the above-styled matter. I understand that I am making this affidavit under oath and I swear that the facts contained within this affidavit are true.

1.

My mother is 85 years old. She is a resident of Hart Care Center in Hartwell, Georgia.

2.

My mother has Medicaid coverage to help pay her nursing home bills. She has been institutionalized at Hart Care Center, a nursing home, since June of 2006.

3.

My mother suffers from senile dementia and depression, among other health problems, and requires full-time skilled nursing care.

4.

On March 31, 2008, my mother applied for Medicaid coverage at the Hart County Department of Family and Children Services (DFCS).

5.

Hart County DFCS subsequently approved my mother for Medicaid coverage for the months of March, 2008 through August, 2008 and ongoing.

6.

DFCS determined, however, that my mother is ineligible for retroactive Medicaid coverage for the months of January and February, 2008, due to her having excess resources in those months.

7.

My mother owes a balance to Hart Care Center for nursing home services provided to her in January and February, 2008. As of August 1, 2008, she owed Hart Care Center \$1,442.20 for January and \$2,783.60 for February.

8.

In April of 2008, my mother received a notice of discharge from Hart Care Center due to

nonpayment of her nursing home bill. (Exhibit B). My mother appealed the nursing home discharge notice.

9.

Hart Care Center ultimately rescinded the discharge notice because of a procedural defect, although my mother still has an unpaid bill at her nursing facility for services received in January and February, 2008 and is subject to a renewed discharge proceeding at any time.

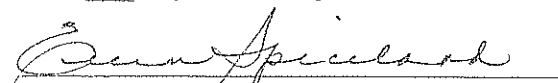
10.

On May 29, 2008, my mother asked DFCS to deduct the unpaid nursing home bill amount that she owes to Hart Care Center for January and February of 2008 as an incurred medical expense and recalculate her patient liability amount. (Exhibit C).

11.

Shortly after July 3, 2008, my mother received a response from DFCS dated July 3, 2008 that denied her request to use the unpaid nursing home bill as an incurred medical expense to recalculate her patient liability amount. The reason for the denial is listed as "Medicaid Manual section 2555-1 - last sentence," which says in part, "IMEs incurred in months for which no vendor payment is made are not deducted." [Exhibit D].

Sworn to and Subscribed Before Me
This 4th day of January, 2009.


(Notary Public)


Joe Weldon for Dorothy Weldon

Notary Public, Cobb County, Georgia
My Commission Expires Jan. 12, 2010

CLERK OF SUPERIOR COURT
HART COUNTY, GEORGIA

2005 DEC 27 AM 8:39

RECORDED
BOOK 542 PAGE 123-124
DATE 12-27-2005
W.E. "BOB" J. H. Clerk

[Signature]
DEPUTY CLERK

GEORGIA, HART COUNTY

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

That I, Dorothy W. Weldon, of Hart County, Georgia, have constituted, made and appointed, and by these presents do make, constitute and appoint my son, Joe Wesley Weldon, my true and lawful Attorney-in-Fact, for me and in my name, place and stead, to manages, and conduct all of my affairs, and for that purpose for me and in my name, place and stead, and for my use and benefit, and as my act and deed, to do any of the following acts, deeds, and things:

(1) To buy, accept, or otherwise acquire; to sell or convey; to hypothecate, pledge as collateral, or encumber by Deed to Secure Debt of Security Deed, or dispose of, any property that I might own in the State of Georgia, wherever situated, be it real, personal, or mixed upon such terms and conditions as my Attorney-In-Fact deems proper and just;

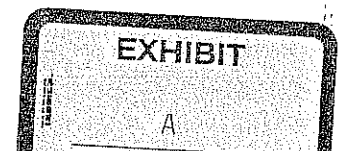
(2) To hold, invest, lease, or otherwise manage any or all of my real, personal, or mixed property;

(3) To transact all and every kind of business including the collection, payment and adjustment of all accounts, claims, causes of actions, and obligations, which may be due, owing, or payable by me or to me;

(4) To make, endorse, accept, sign, and execute bills of sale, certificates, checks, notes, bonds, releases, and such other instruments in writing of whatever kind and natures as may be necessary, convenient, or proper;

(5) To make deposits or investments in, or withdrawals from any accounts, or certificates which I may now or hereafter have, or be entitled to, in any bank or investment institution;

(6) To borrow money from any banking institution on my behalf, upon such terms and conditions that my Attorney-In-Fact shall deem proper and just; to execute any and all loan documents required to



effectuate a loan from said banking institution.

(7) To prosecute, defend, or settle legal or equitable claims;

(8) To act as my attorney or proxy in respect to any stocks, shares, bonds, or other securities, I may now or hereafter hold;

(9) To prepare, execute and file income and other tax returns, and governmental reports or applications;

(10) To act as my proxy in respect to any policy of insurance on my life or property and to exercise any right, or option which I may have thereunder or pertaining thereto;

(11) To enter my safety deposit box and remove its contents;

(12) To authorize medical treatment on my behalf; and

(13) To execute and file on my behalf any and all insurance claim forms.

My Attorney-In-Fact shall have full and complete power and authority in and about the premises and generally to do and perform all and every act and acts, thing and things, device and devices, in the law whatsoever needful and necessary to be done in and about the premises and for Joe Wesley Weldon to execute and perform, as largely and as amply, to all intents and purposes as I might or could do if I were personally present. I hereby ratify and confirm all that Joe Wesley Weldon shall lawfully do by virtue hereof.

This Power of Attorney shall be good and valid until I revoke or modify the same by filing a notice of revocation or modification with the Clerk of Superior Court of Hart County, Georgia, or in the case of land, with the appropriate recording official in the county and state wherein the land lies.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal, this 16th day of August, 2002.

Dorothy W. Weldon (SEAL)

Dorothy W. Weldon

[Handwritten Signature]

Witness

[Handwritten Signature]
Notary Public





Hart Care Center

March 12, 2008

Dorothy W. Weldon
261 Fairview Avenue
Hartwell, GA 30643

Re: Notice of Involuntary Discharge

Dear Ms. Weldon:

This letter is to provide you with notice of the intent of Hart Care Center, Inc. (the "Facility") to discharge you effective April 14, 2008, which is at least thirty (30) days from the date of this notice. The reason that you are being discharged is for nonpayment of allowable fees, for which involuntary discharge is permitted pursuant to the Georgia Bill of Rights for Residents of Long-Term Care Facilities.

Pending further discussion with you and your family, the Facility is currently planning to discharge to the following location: 2454 Bowersville Hwy; Bowersville, GA 30516. If you prefer to be discharged to an alternative location, we will work with you and your family on locating such placement. In any event, the Facility will work with you and your family to prepare a plan prior to discharge designed to mitigate the effects of transfer stress, which plan shall include counseling of you or your representative regarding available community resources and informing any appropriate state or social service organizations.

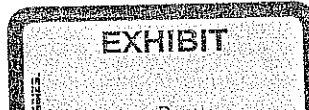
You have the right to appeal this discharge to the Georgia Department of Human Resources, pursuant to O.C.G.A. § 31-8-125, and the right to participate in an administrative hearing pursuant to the Georgia Administrative Procedure Act (O.C.G.A. §§ 51-13-1 to 50-13-44) and GA ADMIN. CODE r. 290-5-39-.15. An appeal of this discharge decision may be filed in writing to the following: Appeals Reviewer, Legal Services Department, Department of Human Resources, 2 Peachtree Street, NW, 31st Floor, Atlanta, Georgia 30303. You have the right to representation by legal counsel in your appeal.

We will also send a copy of this notice to the State and Community Long-Term Care Ombudsman offices. You may discuss this discharge with the State or Community Long-Term Care Ombudsman, who may be contacted as follows:

CHC- Hart Care Center, LLC
261 Fairview Avenue
Hartwell, Georgia 30643

Phone: 706.376.7121 Fax: 706.376.6530

www.cypresshealthcare.net





Hart Care Center

March 12, 2008

Page 2

State Long-Term Care Ombudsman
2 Peachtree St. NW, Suite 9-231
Atlanta, Georgia 30303-3176
Phone: (888) 454-5826
Fax: (404) 463-8384

Dianne Brookins
P.O. Box 2534
Gainesville, GA 30503
770-538-2685
770-538-2696

If you suffer from developmental disabilities or mental illness, you may also seek assistance from the following:

Georgia Advocacy Office
150 East Ponce de Leon Avenue, Suite 430,
Decatur, Georgia 30030
Phone: (404) 885-1234; 1-800-537-2329
Fax: (404) 378-0031

Please do not hesitate to contact the Facility's social services staff if you have any questions with regard to discharge planning. Thank you for your attention to this matter.

Sincerely,
Kathryn A. Meeks

Kathryn A. Meeks
Nursing Home Administrator
Hart Care Center

- cc: Joe Weldon (via overnight mail)
- Sreeroop Sen (via facsimile 706-856-6976)
- Dianne Brookins (via facsimile 770-538-2696)
- Office of the State Long-Term Care Ombudsman (via facsimile 404.463.8384)

WENDY GLASBRENNER
MANAGING ATTORNEY

ANE NYE-TUCKER
SUPERVISING ATTORNEY

BONNIE MILLER
CHRISTINA M. RAYNER
NIMIE E. STOWE
PATRICK B. CATES
BRAD SPERR
AMY PEDERSEN
STAFF ATTORNEYS

MARTA S. SHELTON
KRIS JONES
JUDY D. SPAIN
PARALEGALS

VALERIE A. ORANGE
PAI COORDINATOR

GEORGIA LEGAL SERVICES PROGRAM
GAINESVILLE REGIONAL OFFICE

705 WASHINGTON STREET, SUITE B-1
P. O. BOX 1337
GAINESVILLE, GEORGIA 30503
(770) 535-5717 / FAX (770) 531-6011
1-800-745-5717 (for clients only)
TDD 1-800-255-0056
<http://www.legalaid-ga.org>

ATHENS OFFICE
525 S. MILLEDGE AVENUE
P. O. BOX 1788
ATHENS, GEORGIA 30603-1788
(706) 227-5362 / FAX 706-227-5347
OPEN MONDAY - THURSDAY

COPY
PHYLLIS J. HOLMEN
EXECUTIVE DIRECTOR

BOARD OF DIRECTORS
JAMES W. BOSWELL, III
PRESIDENT
ANNIE ERVIN
VICE PRESIDENT
LISA CHANG
VICE PRESIDENT
MARK SCHAEFER
TREASURER
VENZELLA STOWERS
SECRETARY

TERENCE A. DICKS
AT LARGE
LEIGH M. WILCO
AT LARGE

NON-ATTORNEY
MANAGEMENT STAFF
THOMAS J. ANTHONY
ASSOCIATE DIRECTOR
JACK M. WEBB
DIRECTOR OF FINANCE

May 29, 2008

Hart County Department of Family and Children Services
ATTN: Case Manager Jennifer Denard
P.O. Box 518
Hartwell, GA 30643-0518


RE: Dorothy Weldon
Use of Incurred Medical Expense Deduction to Pay Old Nursing Home Bill Incurred Prior
to Medicaid Eligibility

Dear Ms. Denard,

As we have discussed, Ms. Weldon continues to owe a balance to Hart Care Center for nursing home services. Ms. Weldon incurred this liability to Hart Care Center in the months of January, February, and March, 2008 a period for which Hart County DFCS determined she was ineligible for nursing home Medicaid due to excess resources. I understand that Ms. Weldon has now been approved for Medicaid for April, 2008 through June, 2008.

Federal regulations require states to allow post-eligibility deductions for incurred medical expenses before a Medicaid categorically-eligible resident pays the nursing home. 42 C.F.R. § 435.725. The regulations require states to allow deduction of amounts for incurred medical expenses not subject to payment by a third party, including necessary medical or remedial care. Pursuant to these federal regulations, Ms. Weldon now requests that Hart County DFCS deduct the nursing home liability that she owes to Hart Care Center from her current income as an incurred medical expense. In other words, she wishes to use her old nursing home bills as an incurred medical expense for the current month and future months, as necessary.

Please contact me if you have any questions about this request. If this request is denied, please issue a formal notice of denial, including all applicable appeal rights, to my office and to Joe Weldon,

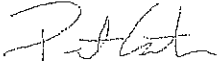
 LSC

Serves Banks, Barrow, Cherokee, Clarke, Dawson, Elbert, Fannin, Forsyth, Franklin, Gilmer, Habersham, Hall,
Hart, Jackson, Lumpkin, Madison, Oconee, Oglethorpe, Pickens, Rabun, Stephens, Towns, Union and White County
AN AFFIRMATIVE ACTION/EQUAL OPPORTUNITY EMPLOYER M/F/V/H

EXHIBIT

power of attorney for Ms. Weldon. Thank you.

Sincerely,



Patrick Cates
Attorney for Dorothy Weldon

cc: Joe Weldon, power of attorney for Ms. Weldon

GEORGIA DEPARTMENT OF HUMAN RESOURCES
NOTIFICATION OF DEDUCTION OF MEDICAL EXPENSE

Hart
County Department of Family and Children Services

07/03/08
Date

GA Legal Services Program

RE: Dorothy Weldon

Dear Mr. Cates / Mr. Weldon -

You have requested a deduction from the amount you owe the nursing home / Community Care provider for the following medical expenses: unpaid bills Dorothy Weldon

owes Hart Care Center

The expense is not an allowable deduction, and therefore, it will not reduce your cost share. The expense is not an allowable deduction for the following reason:

- Verification was not received in time.
Verification must be received by the tenth day of the month following the expense.
- This service or item is Medicaid reimbursable, and therefore, is not an allowable deduction.
- This service or item is not on the list of allowable deductions as issued by the Department of Medical Assistance.
- Other 2SSS-1 - last sentence

If, for any reason, you think that proper consideration has not been given to your situation, you have the right to appeal to the State Department of Human Resources for a fair hearing. You may request a fair hearing either orally or in writing by notifying your County department staff within 30 days of the date given at the top of this form. If you request a hearing orally, you have 15 days from the date of your oral request to submit your request in writing.

The hearing will be held in your county by a representative of the State Department. Any member of the County department staff will be glad to furnish necessary forms and help you in filing your appeal, and to assist you in every way possible to prepare for the hearing. You may be represented by legal counsel, friend, or other spokesman. If an attorney is desired, contact your worker at the County Department of Family and Children Services for information about legal services which may be available in your community without cost to you.

JH Darnal

Signature

702.856.27

Telephone

IN THE SUPERIOR COURT FOR FULTON COUNTY

STATE OF GEORGIA

DOROTHY WELDON, by and through]	
her next friend, Joseph Weldon, and]	
INA PRICE, by and through her next]	
friend, Billie J. Price,]	
]	
Plaintiffs,]	Civil Action File
]	
vs.]	
]	
RHONDA M. MEDOWS, M.D.,]	No. 08-CV-154469
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.]	

AFFIDAVIT OF PLAINTIFF PRICE
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Personally appeared Billie J. Price for Ina Price, before the undersigned, an officer duly authorized by law to administer oaths, who being sworn, does hereby state as follows:

1.

Ina Price is a Plaintiff in the above-styled case and I, Billie J. Price, am her daughter. My mother has given me power of attorney. (Exhibit A). I am over the age of eighteen years. I have personal knowledge of the facts contained within this affidavit and understand that it will be used by the Plaintiffs in the above-styled matter.

2.

My mother is 84 years old. She is a resident of WellStar Paulding Nursing Home, located in Dallas, Georgia

3.

My mother has Medicaid coverage to help pay her nursing home bills. She has been institutionalized at WellStar Paulding Nursing Home since April 17, 2007.

4.

My mother is confined to a bed. She suffers from Alzheimer's disease and requires full-time skilled nursing care.

5.

On February 22, 2008, I helped my mother apply for Medicaid coverage at the WellStar Paulding Nursing Home. The Administrator assisted with the application.

6.

On April 18, 2008, the Paulding County Department of Family and Children Services ("DFCS") determined that my mother was over the Medicaid resource limit.

7.

In March 2008, after disposing of my mother's excess resources, DFCS reevaluated my mother's application.

8.

DFCS approved the application and my mother became eligible for Medicaid effective April 1, 2008.

9.

DFCS determined that my mother was ineligible for retroactive Medicaid services for February and March of 2008 due to her having excess resources in those months.

10.

My family has no resources or income to pay for my mother's nursing facility bills from November of 2007 through March of 2008, therefore, there is now an outstanding balance of \$13,936.63 owed to the nursing home.

11.

Such outstanding bills places my mother at risk of being discharged from the nursing home.

12.

On July 1, 2008, I asked DFCS to deduct the nursing home liability amount that my mother owes WellStar Paulding Nursing Home for November of 2007 through March of 2008 as an incurred medical expense and recalculate her patient liability amount.

12.

On August 1, 2008, I received a letter from DFCS denying my mother's request to use the unpaid nursing home bill as an incurred medical expense to recalculate her patient liability amount. (Exhibit B).

13.

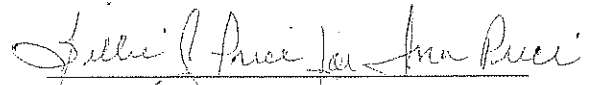
I filed a timely appeal of DFCS' denial on August 28, 2008. A hearing was set for October 3, 2008.

14.

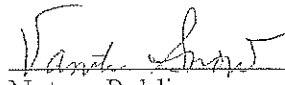
Administrative Law Judge David C. Langston, entered an order on October 27, 2008 affirming DFCS' denial. (Exhibit C)

15.

I filed a request for agency review on November 26, 2008. The Department of Human Resources by final administrative decision affirmed DFCS initial decision on December 23, 2008. (Exhibit D).


Billie J. Price for Ina Price

Sworn to and Subscribed Before Me
This 7th day of January, 2009.



Notary Public
My commission expires: 6/14/2011

GEORGIA
COBB COUNTY

GENERAL DURABLE POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That I, INA BEA PRICE, a legal resident of Cobb County, Georgia, have made, constituted and appointed, and by these presents do make, constitute and appoint my daughter, BILLIE JANE PRICE, of Cobb County, Georgia, my true and lawful attorney in fact to act generally in, manage and conduct all my estate and all my affairs, and for that purpose for me and in my name, place and stead, and for my use and benefit, and as my act and deed, to do and execute any act on my behalf with full power and authority to do and perform each and every act, deed, matter and thing whatsoever in and about my estate, property, person and affairs, including but not limited to the following acts, deeds and things, that is to say:

1. **BANKS & FINANCIAL INSTITUTIONS.** To deposit and withdraw for any purpose, in either my said attorney's name or my name, or jointly in both our names, in or from any bank, financial institution or brokerage firm, including without limitation any accounts at First Union National Bank or any other Bank, on which I am authorized to sign checks or withdraw funds, any funds, negotiable paper, or moneys which may come into my said attorney's hands as such attorney or which I now or hereafter may be entitled to or have on deposit.
2. **SAFETY DEPOSIT BOXES & STORAGE.** To enter any safety deposit box at First Union National Bank, or any other Bank, or any other safety deposit box, mini warehouse, storage facility or place of safekeeping I might have or maintain at any time and to remove any papers, documents or other things therefrom or place any of same therein from time to time and generally have the right to use such safety deposit box or other place of safekeeping in the same manner that I am authorized to do.
3. **PROPERTY.** To buy, receive, lease, accept, or otherwise acquire; to sell, convey, transfer, assign, mortgage, hypothecate, pledge, warranty, quit claim or otherwise encumber or dispose of; or to contract or agree for the acquisition, disposal or encumbrance of any property whatsoever, no matter where situated, be it real, personal or mixed, tangible or intangible, or any custody, possession, interest or right therein or pertaining thereto, upon such terms as my said attorney shall think proper, including without limitation any stocks, bonds, mutual funds or other securities to be acquired for me or held by me or by Triad Advisors, Inc. of Norcross, GA. or any other brokerage firm for me, and any interest in any real property I might own in Georgia and all car titles and registrations.
4. **MANAGE PROPERTY.** To take, hold, possess, invest, lease, let or otherwise manage any or all of my real, personal or mixed property or any right or interest therein or pertaining thereto, to eject, remove or relieve tenants or other persons from and recover possession of, such property by all lawful means; and to maintain, protect,



TBP

preserve, insure, remove, store, transport, repair, rebuild, modify or improve the same or any part thereof, and make and settle any insurance claims therefore.

5. **BUSINESS, CLAIMS & OBLIGATIONS.** To make, do and transact business of whatever nature or kind, including the power to incur debts, purchase goods, services or any other thing on credit, and including the receipt, recovery, collection, payment, compromise, settlement and adjustment of all accounts, insurance claims by or against the undersigned, legacies, bequests, interests, dividends, annuities, demands, debts, taxes and obligations, which may now or hereafter be due, owing or payable by me or to me.

6. **DOCUMENTS.** To make, endorse, accept, receive, sign, seal, execute, acknowledge and deliver deeds, assignments, agreements, certificates, hypothecations, checks, notes, bonds, vouchers, receipts, releases and such other instruments in writing of whatever kind and nature as may be necessary, convenient or proper in the premises.

7. **TAX RETURNS, RETIREMENT ACCOUNTS, & LIFE INSURANCE.** To sign any tax returns and make any tax elections on my behalf, to make any decisions concerning any retirement plan I may have, including any individual retirement accounts, pensions or other retirement plans, to borrow on my life insurance policies, to deal with my life and casualty insurance policies as owner, including increasing or decreasing coverage, and to make gifts.

8. **INCAPACITY & INCOMPETENCY.** This power shall survive my incapacity or incompetency should that occur, and my said attorney shall have full power to make any and all health care and medical decisions for me or on my behalf, and make any and all arrangements as may be appropriate for my personal care, including nominate a guardian.

9. **MEDICAL INFORMATION & HEALTH CARE.** My attorney shall have access to any and all medical and related information and records, and may disclose same to others, may employ and discharge medical and related personnel on my behalf, consent to or refuse or terminate any medical care on my behalf.

GIVING AND GRANTING unto my said attorney full power and authority to do and perform all and every act, deed, matter and thing whatsoever in and about my estate, property, person and affairs as fully and effectively to all intents and purposes as I might or could do in my own proper person, the above specially enumerated powers being an aid and exemplification of the full, complete and general power herein granted and not in limitation or definition thereof; and hereby ratifying all that my said attorney shall lawfully do or cause to be done by virtue of these presents.

WAIVER OF PRIVILEGE. I hereby waive voluntarily any physician-patient privilege or psychiatrist-patient privilege that may exist in my favor and I authorize the physicians and psychiatrists to examine me and disclose physical or mental condition in order to determine my incapacity or capacity, for purposes of this instrument.

SEVERABILITY. And I hereby declare that in the event any paragraph, sentence or phrase hereof shall be declared or adjudged invalid or unlawful, or is deemed to have expired by the passage of time, such adjudication or expiration shall in no manner affect the other paragraphs, sentences or phrases of this Power, which shall remain of full force and effect, as if the paragraph, sentence or phrase so declared or adjudged invalid or unlawful or expired were not originally a part hereof. I hereby declare that I would have executed this Power containing only the remaining parts without such invalid, unlawful or expired parts if I had known that such part or parts hereof would be declared or adjudged invalid, unlawful or expired.

RATIFICATION. And I hereby declare that any act or thing lawfully done hereunder by my said attorney shall be binding on myself, and my heirs, legal and personal representatives, and assigns, whether the same shall have been done before or after my death, or other revocation of this instrument.

REVOCAION OF PRIOR POWERS. And I hereby revoke and cancel all powers of attorney previously given by me to any person or persons for any purpose or purposes whatsoever; and do hereby declare that all powers of attorney executed by me prior to the one herein, are null and void upon the execution of the within power of attorney, and are hereafter of no force and effect whatsoever; and I do further declare that the within power of attorney is, upon its execution, the only legal and valid power of attorney outstanding in my name in favor of anyone for any purpose or purposes whatsoever.

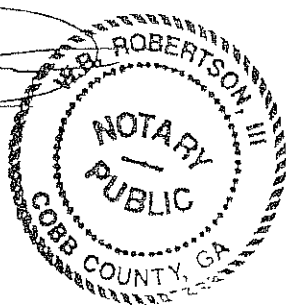
IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 6th day of November, 2000.

Signed, sealed and delivered
in the presence of:

[Signature]
Witness

Ina Bea Price (SEAL)
INA BEA PRICE

[Signature]
Notary Public
My commission expires:



Notary Public, Cobb County, Georgia
My Commission Expires Aug. 8, 2003

August 1, 2008

Kimberly Puckett
Georgia Legal Services
104 Marietta St. Suite 240
Atlanta, GA 30303

RE: Ina Price, Use of Incurred Medical Expense Deduction

Ms. Puckett,

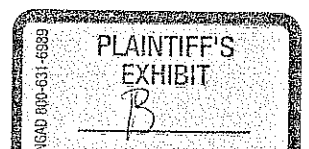
After review of the Medicaid policy for IME (copy of MAN3480, section 2555-1 is attached) it has been determined that the prior month nursing home vendor payments can not be allowed. Policy specifically states "IMEs incurred in months for which no vendor payment is made are not deducted".

The federal regulation quoted also states to allow "post-eligibility" deductions for incurred medical expenses not pre-eligibility. You will find attached form 943 (Notification of Deduction of Medical Expense) denying your request.

If you disagree with this decision you have the right to appeal and request hearing of this decision. A form 118 (Request for Hearing) is included.

Doug Forrest
Paulding County DFCS
678-363-4104

Copies to:
Kimberly Puckett
Billy Price



BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

INA B. PRICE,

Petitioner

vs.

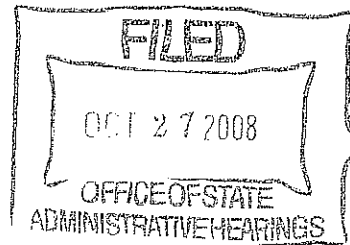
DEPARTMENT OF HUMAN RESOURCES,
DIVISION OF FAMILY & CHILDREN
SERVICES,

Respondent

Docket No.:

OSAH-DFCS-NH-0829137-110-Langston

Agency Reference No.: 459460016



INITIAL DECISION

I. Introduction

This case involves the denial of nursing home vendor payments by the Respondent. For the reasons set forth below, the action of the Respondent is **AFFIRMED**.

II. Findings of Fact

1.

Petitioner entered the Wellstar Paulding Nursing Center on April 17, 2007. Petitioner, through her authorized representative, applied for Medicaid on February 22, 2008, to cover ongoing nursing home expenses. Petitioner also requested Medicaid coverage for the three months prior to the Medicaid application dated February 22, 2008, of November 2007, December 2007, and January 2008.

2.

After having designated \$9973.39 of John Hancock stocks for the burial exclusion, Petitioner's remaining countable resource of her checking account at Wachovia Bank showed the following balances as verified by copies of bank account statements in file.

November 1, 2007	=	\$5569.73
December 1, 2007	=	\$4077.13
January 1, 2008	=	\$2262.17
February 1, 2008	=	\$3707.84
March 1, 2008	=	\$5169.38

For each of these months, the account balance exceeded the resource limit of \$2000.00. Petitioner was not eligible for Medicaid for any of these months and no vendor payment was made by Medicaid.



3.

Petitioner became eligible for Medicaid effective with April 1, 2008, as her checking account balance was verified as being below the \$2000.00 countable resource limit.

4.

On July 1, 2008, the Petitioner requested that the Paulding County Department of Family and Children Services ("DFCS") deduct the nursing home liability that she owes to Wellstar Paulding Nursing Center from her current income as an incurred medical expense ("IME") for the month of the request and future months as necessary.

5.

This request was denied by DFCS based on Economic Support Services Policy Manual, Medicaid Program, Section 2555-1 which states "IMEs (incurred medical expenses) incurred in months for which no vendor payment is made are not deducted."

Conclusions of Law

1. The value of an applicant/recipient's countable resources cannot exceed the appropriate resource limit for the applicant/recipient to be eligible for ABD Medicaid. Section 2300, Economic Support Services Policy Manual, Medicaid Program.
2. The countable resource limit for the nursing home class of assistance for an individual is \$2000.00. Appendix A, Section 2300, Economic Support Services Policy Manual, Medicaid Program.
3. "IMEs (incurred medical expenses) incurred in months for which no vendor payment is made are not deducted." Economic Support Services Policy Manual, Medicaid Program, Section 2555-1
4. The policy for the Medicaid program for the State of Georgia is received and interpreted by the Department of Community Health who, in turn, issues the Economic Support Services Policy Manual, Medicaid Program, for the use of the Department of Family and Children Services in making eligibility determinations for Medicaid. This is the basis for the DFCS determination in this case.
5. The interpretation of a statute by an administrative agency, which has the duty of enforcing or administering it, is to be given great weight and deference. Hospital Authority of Gwinnett County v. State Health Agency, 211 Ga. App. 407, 408 (1993); Kelly v. Lloyd's of London, 255 Ga. 291, 293 (1985); Rebeis v. L.E.A.F., Inc., 216 Ga. App. 699, 702 (1995); Georgia Real Estate Commission v. Peavy, 229 Ga. App. 201, 203 (1997); and Commissioner of Insurance v. Stryker, 218 Ga. App. 716, 718 (1995).

Decision

The Respondent's denial of vendor payments is **AFFIRMED**.

SO ORDERED, this 27 day of October, 2008.

A handwritten signature in black ink, appearing to read 'D. Langston', written over a horizontal line.

DAVID C. LANGSTON
Administrative Law Judge

GEORGIA DEPARTMENT OF COMMUNITY HEALTH
OFFICE OF THE COMMISSIONER
AGENCY APPEAL REVIEW

INA B. PRICE, *
Petitioner, * OSAH-DFCS-NH-0829137-110-LANGSTON
*
v. *
*
Department of Human Resources, * Agency Reference No. 459460016
Division of Family and Children *
Services *
Respondent. *

NOTICE OF FINAL DECISION
AFFIRMING INITIAL DECISION
RIGHT OF APPEAL

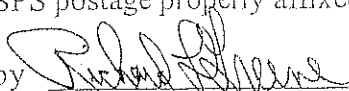
PLEASE READ CAREFULLY:

Enclosed is the Final Administrative Decision of the Commissioner of the Georgia Department of Community Health (DCH) pursuant to the authority granted in O.C.G.A § 49-4-153 (b)(1). The Commissioner, pursuant to the authority conferred on her and through the undersigned as her designated representative, has AFFIRMED the Initial Decision of the Administrative Law Judge as indicated in the attached Final Administrative Decision.

If you desire to contest this Final Decision, you may do so only by filing a timely petition for judicial review in accordance with the provisions of O. C. G. A. §§ 49-4-153(c) and 50-13-19.

This Notice and enclosed copy of the Final Administrative Decision is hereby:
Issued and mailed with adequate USPS postage properly affixed or hand delivered.

This 23rd day of December, 2008, by



Richard L. Greene
Agency Appeal Officer
Georgia Department of Community Health
Designated Representative of
Commissioner Rhonda M. Medows, M.D.

cc: Honorable David Langston, Administrative Law Judge, OSAH
Mr. John Rasheed, Clerk, OSAH
DCH Long Term Care Unit
DCH Legal Services Office



**GEORGIA DEPARTMENT OF COMMUNITY HEALTH
OFFICE OF THE COMMISSIONER
AGENCY APPEAL REVIEW**

INA B. PRICE,	*	
	*	OSAH-DFCS-NH-0829137-110-LANGSTON
	*	
v.	*	
	*	
Department of Human Resources,	*	Agency Reference No. 459460016
Division of Family and Children	*	
Services	*	
	*	
Respondent.	*	

FINAL ADMINISTRATIVE DECISION

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. INTRODUCTION

This appeal is before the undersigned as the Commissioner's designated representative upon the Petitioner's Request for Agency Review of the Initial Decision issued by the Office of State Administrative Hearings (OSAH) Administrative Law Judge (ALJ) David C. Langston on October 27, 2008. The administrative hearing was conducted on or about September 5, 2008. The Initial Decision denied Petitioner's appeal of the decision of the Respondent. The Petitioner's Request for Agency Review was timely filed on November 26, 2008 and received by the Department of Community Health (DCH) on November 26, 2008. The entire available record has been reviewed and all issues have been considered by the Agency Appeals Reviewer. The record reviewed included, but was not limited to, Petitioner's Request of Agency Review, the audio recording of the administrative hearing, all documents submitted to DCH Office of Legal Services by the parties (exhibits submitted by both parties as part of the administrative hearing process were not forwarded to DCH by OSAH; however, each document was sufficiently described in detail during the oral hearing or specifically mentioned in the ALJ's Initial Decision; thus, indirectly available for this review), Petitioner's Request for Hearing, Petitioner's Motion for Summary Determination, Respondent's Response to Petitioner's Motion for Summary Determination, as well as the relevant state and Federal statutes, Rules, Regulations and policy manuals. The lack of the actual Exhibits is completely compensated by the audio recording of the hearing, the contents of Petitioner's excellently proffered Request for Agency Review that gives the Petitioner's arguments in a thoughtful, logically presented manner; and by Administrative Law Judge David Langston's comprehensive Initial Decision that is inclusive of salient facts found within

the various exhibits. Based upon the entire record and in accord with *Greene v. DCH*, 293 Ga. App. 201, the undersigned, on behalf of the Commissioner, AFFIRMS the decision of DFCS and the ALJ's Initial Decision and finds the following:

II. FINDINGS OF FACT

1. The Petitioner timely filed with DCH a Request for Agency Review of the OSAH Initial Decision in the above captioned case. The Request for Agency Review was filed on behalf of the Petitioner through legal counsel.

2. This case involved an authorized representative (daughter of the Petitioner holding the Petitioner's Power of Attorney) who allegedly was not given adequate advice by the business office of the nursing home concerning Medicaid eligibility. The individual or family has a responsibility to determine the criteria and actions necessary to establish eligibility. Federal statutes, policies nor regulations require a state to treat pre-eligibility medical or remedial expenses for nursing home care as expenses to be paid by Medicaid once the applicant becomes eligible for Medicaid for more than the month in which eligibility is declared. If the prior months were to be paid by Medicaid as an IME, then the Petitioner would likely be ineligible because those payments could constitute a countable resource for those months.

3. After a detailed review of the record in this matter, including all of the submitted documents filed by the parties, review of the audio recording of the OSAH hearing, the Initial Decision, relevant statutes, rules, regulations and policies, the undersigned hereby incorporates herein and adopts the Introduction and Findings of Fact as set forth in the Initial Decision dated October 27, 2008.

III. CONCLUSIONS OF LAW

4. After a detailed review of the record in this matter, including the submitted documents filed by the parties, review of the audio recording of the OSAH hearing, the Initial Decision, relevant statutes, rules, and policies, the undersigned hereby incorporates herein and adopts the Conclusions of Law and Decision as set forth in the Initial Decision dated October 27, 2008.

IV. DECISION

Based on the foregoing, the Initial Decision of the Administrative Law Judge is hereby AFFIRMED. The Petitioner's Appeal through a Request for Agency Review is DENIED.

SO ORDERED, this 23rd day of December, 2008.

A handwritten signature in cursive script, appearing to read "Richard L. Greene", written over a horizontal line.

Richard L. Greene
Agency Appeal Officer
Georgia Department of Community Health
Designated Representative of
Commissioner Rhonda M. Medows, M.D.

GEORGIA DEPARTMENT OF COMMUNITY HEALTH
OFFICE OF THE COMMISSIONER
AGENCY APPEAL REVIEW

INA B. PRICE, *
Petitioner, * OSAH-DFCS-NH-0829137-110-LANGSTON
*
v. *
*
Department of Human Resources, * Agency Reference No. 459460016
Division of Family and Children *
Services *
Respondent. *

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a copy of the within and foregoing Final Administrative Decision, Notice of Final Decision and Right of Appeal on all parties by depositing a copy of same in the United States Postal Service mail, First Class or Certified postage properly affixed to the addresses of the parties or by hand delivery if so noted, each as shown below:

FOR PETITIONER: (USPS mail)

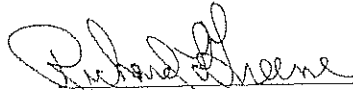
Ms. Billie J. Price
POA for Ina B. Price
5823 Miller's Pond Lane
Power Springs, Georgia 30127

Ms Ina B. Price
C/O Kimberly Nichole Puckett, Esquire
Georgia Legal Services Program, Inc.
104 Marietta Street, Suite 240
Atlanta, GA 30303-1337

FOR RESPONDENT: (USPS mail)

Mr. Doug Forrest
Caseworker, Ref. No. 459460016
Paulding County DFCS Office
P.O. Box 168
Dallas, GA 30132-0168

December 23, 2008
Date


Richard L. Greene

CERTIFICATE OF SERVICE

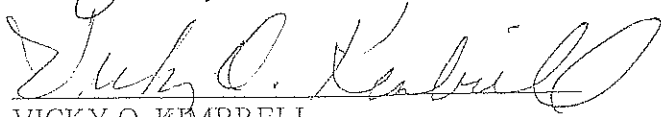
This is to certify that I have this day served upon the opposing counsel a true and correct copy of the foregoing MOTION FOR SUMMARY JUDGMENT, MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT, PLAINTIFFS' STATEMENT OF EACH THEORY SUPPORTING SUMMARY JUDGMENT, PLAINTIFFS' STATEMENT OF FACTS AS TO WHICH THERE IS NO DISPUTE, AFFIDAVIT OF PLAINTIFF WELDON IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT WITH EXHIBITS, AND AFFIDAVIT OF PLAINTIFF PRICE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT WITH EXHIBITS by mailing a copy of the same to:

Office of the Attorney General
Ms. Michelle Townes, Esq.,
Assistant Attorney General
40 Capitol Square S.W.
Atlanta, Georgia 30334

B. J. Walker, Commissioner
Department of Human Resources
2 Peachtree Street, N.W.
Atlanta, Georgia 30303

through the U.S. Mail with sufficient postage thereon to insure delivery.

This 18th day of January, 2009.


VICKY O. KIMBRELL
Attorney at Law
Georgia Bar No. 418850

104 Marietta Street, Suite 250
Atlanta, Georgia 30303
(404) 206-5175