

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA

BETTY CAGLE,

Petitioner,

v.



FILED  
OSAH

MAY 27 2014

: Docket No:  
: OSAH-DFCS-NH-1438764-64-Walker-  
: Russell  
: OSAH-DFCS-NH-1452235-44-Walker-  
: Russell

DHS, FAMILY & CHILDREN  
SERVICES,

Respondent: *Jenna J. Judy*  
Jenna Judy, Legal Assistant

: Agency Reference No: 719058536

INITIAL DECISION

ORDER GRANTING PETITIONER'S  
MOTION FOR SUMMARAY DETERMINATION

I. INTRODUCTION:

Petitioner appeals the Department of Human Services' (Respondent's) denial of Petitioner's January 23, 2014, Medicaid application for being over the resource limit. A hearing in this matter was scheduled for April 24, 2014. Petitioner filed a Motion for Summary Determination on April 18, 2014, alleging that there is no genuine issue of material fact to be determined in this matter; Petitioner is eligible for Medicaid for January, February and March 2014; and Petitioner is also entitled to Incurred Medical Expense (IME) coverage during those months.<sup>1</sup> Respondent failed to file a response to the Motion. The record was held open until May 8, 2014, for the parties to submit a Proposed Order. Petitioner submitted her Proposed Order via facsimile on May 8, 2014. Respondent failed to submit a Proposed Order and has not responded to Petitioner's Motion for Summary Determination. Upon reviewing all of the documentary evidence received, and for the reasons stated herein, Petitioner's Motion for Summary Determination is **HEREBY GRANTED.**<sup>2</sup>

II. STANDARD OF REVIEW:

To prevail at Summary Judgment, 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

<sup>1</sup> The hearing in this matter has been stayed pending a ruling on the Motion for Summary Determination. OSAH Rule 15.

<sup>2</sup> On May 21, 2014, Petitioner filed a Motion for Change of Venue in OSAH-DFCS-NH-1452235-44-Walker-Russell and requests consolidation with this case, OSAH-DFCS-NH-1438764-64-Walker-Russell. Upon review of the Motion, the Court finds that the issues in both cases are identical and hereby consolidates the two (2) separate cases into this Order Granting Petitioner's Motion for Summary Determination for resolution of the issues.

nonmoving party, warrant judgment as a matter of law. Lau's Corp. v. Haskins, 261 Ga. 491 (1991); Rule 15 of the Rules of the Office of State Administrative Hearings. As shown below, the record does not contain disputed material facts. Therefore, Petitioner is entitled to Summary Judgment on the record.

**III. STATEMENT OF UNDISPUTED MATERIAL FACTS:**

1.

Petitioner has dementia and is a resident of Gordon Healthcare Nursing Home. On behalf of Petitioner, Gordon Health & Rehab Nursing Home filed an application on October 25, 2013, for Medicaid coverage for October 2013 and ongoing. (Petitioner's Exhibit A). Petitioner's countable resources for October, November and December 2013, were as follows:

<u>Value as of</u> <u>10/1/2013</u>	<u>Value as of</u> <u>11/1/2013</u>	<u>Value as of</u> <u>12/1/2013</u>
\$6,818.56	\$8,509.62	\$9,590.71

2.

Respondent denied Petitioner's October 25, 2013, application on November 8, 2013, because Petitioner's countable resources for October, November and December 2013, were over the resource limit of \$2,000 for aged, blind, or disabled individuals who live in nursing homes and have low income and limited assets. (Petitioner's Exhibit A).

3.

On January 23, 2014, Petitioner submitted a new Medicaid application, including a request for incurred Medical expense coverage for prior months through the COMPASS system. Petitioner's countable resources for January, February, and March 2014, were under the resource limit of \$2,000 as follows:

<u>Value as of</u> <u>1/1/14</u>	<u>Value as</u> <u>of 2/1/14</u>	<u>Value as</u> <u>of 3/1/14</u>
\$1,615.15	\$1,587.16	\$1,561.17

Due to a typographical error, Respondent denied Petitioner's January 23, 2014, application on February 7, 2014, because Petitioner's countable resources for January, February and March 2014, were over the resource limit of \$2,000. (Petitioner's Exhibit D). Petitioner timely filed a request for hearing and a new application subsequent to the denial based on the typographical

error. (Petitioner's uncontested Statement of Fact, Motion for Summary Determination, Paragraph 6).

4.

On March 10, 2014, Respondent issued a notice of delay in processing Petitioner's January 23, 2014, application. In the delay notice, Respondent apologized for the delay and indicated that it would send a notice of its decision as soon as it could. (Petitioner's Exhibit G).

5.

On April 14, 2014, Respondent again denied Petitioner's January 23, 2014, Medicaid application because Petitioner's countable resources for January, February, March 2014, April, and May 2014, were over the resource limit of \$2,000. (Respondent's April 14, 2014, denial letter).

6.

Petitioner filed a new hearing request on April 25, 2014, based on the April 14, 2014, denial letter.<sup>3</sup> Petitioner contends that Respondent denied Petitioner's January 23, 2014, Medicaid application although Petitioner's resources are within the income limit. Petitioner also alleges that the caseworker either counted exempt assets in determining Petitioner's eligibility or failed to accurately determine the value of Petitioner's assets. (Petitioner's April 25, 2014, hearing Request letter).

7.

In addition to her countable assets, Petitioner has the following assets which are exempt under the ABD Medicaid Manual, Volume II/MA, MT 24-01/07, Section 2304-1 and Volume II/MA 32-11/08, Section 2308-6 (Petitioner's Exhibit E):

<u>Description</u>	<u>Location</u>	<u>Account #</u>	<u>Owner</u>	<u>Value</u>
Vehicle	2005 Ford Focus	3FAFP31N25R1452686	Betty Cagle	\$4,725.00 <sup>4</sup>
Pre-Need Burial	Ponders Funeral Home	Betty Cagle	Betty Cagle	\$6,137.00

<sup>3</sup> Petitioner's April 25, 2014, hearing request is the basis of the Motion for Change of Venue in OSAH-DFCS-NH-1452235-44-Walker-Russell, which has been consolidated with this case, OSAH-DFCS-NH-1438764-64-Walker-Russell.

<sup>4</sup> Pursuant to the ABD Medicaid Manual, Volume II/MA 32-11/08, Section 2308-6, the value of one automobile per household is to be excluded as a resource if used for the transportation of the eligible individual or a member of eligible individual's household.

8.

In March 14, 2014, Petitioner submitted to Respondent Incurred Medical Expenses on Form 942 for Eldercare Pharmacy pharmaceutical expenses. (See, Petitioner's Exhibit F). Petitioner submitted the following Incurred Medical Expenses:

January 6, 2014 - \$5.00, for Metoprolol Tartrate  
January 6, 2014 - \$5.00, for Iprat-Albuterol 6.5-3 (2,5) mg 13  
January 7, 2014 - \$5.00, for Cefuroxime Axetil  
January 14, 2014 - \$3.12 for Sertraline HCL 50  
January 15, 2014 - \$3.85, for Atorvastatin 40 mg  
January 19, 2014 - \$5.00, for Metoclopramide 5 mg  
January 19, 2014 - \$3.55 for Ranitidine 150 mg  
January 17, 2014 - \$3.12, for Sertraline HCL 50 mg  
January 27, 2014 - \$3.85, for Atorvastatin 40 mg  
January 28, 2014 - \$5.00, for Metoprolol Tartrate 25 mg  
February 3, 2014 - \$58.01, for total outstanding bill from Eldercare Pharmacy

9.

James Cagle is Petitioner's son who has personal knowledge of Petitioner's business affairs. Petitioner has dementia and is unable to communicate with her son. According to his Affidavit, Mr. Cagle was informed that Petitioner owns 643 Shares of Common Stock from Sun Life Financial, Inc. on January 8, 2014. Mr. Cagle was unaware of the stocks and had no prior knowledge of their existence prior to January 8, 2014. Neither Petitioner nor Mr. Cagle possessed a stock certificate. Mr. Cagle requested a new stock certificate, but was told that none would be issued without a medallion signature guarantee. Mr. Cagle had significant trouble securing a medallion signature guarantee and, despite his best efforts, was unable to liquidate the stock prior to April 7, 2014. (Affidavit of James Cagle).

#### **IV. STATEMENT OF ISSUE:**

Petitioner's Motions for Summary Determination sets forth the following issues to be decided: Whether Petitioner meets the eligibility requirements for Medicaid for January, February, and March 2014, and whether Petitioner is entitled to IME coverage during those months.

## V. CONCLUSIONS OF LAW:

1.

As the applicant of Medicaid benefits, Petitioner has the burden of proof in this matter. However, both Petitioner and Respondent bear the burden of proof as to any fact asserted by them, if proof of said fact is essential to their case or affirmative defenses raised by them. OSAH Rule 07(1)(e).

2.

This proceeding is de novo in nature and the standard of proof is by preponderance of the evidence. OSAH Rule 21(4).

3.

A party may move, based on supporting affidavits or other probative evidence, for summary determination in its favor on any of the issues being adjudicated on the basis that there is no genuine issue of material fact for determination. OSAH Rule 616-1-2-.15(1).

4.

When a Motion for Summary Determination is supported as provided in this Rule, a party opposing the motion may not rest upon mere allegations or denials, but must show, by affidavit or other probative evidence, that there is a genuine issue of material fact for determination. OSAH Rule 616-1-2-.15 (3). In this matter, Respondent has failed to submit affidavits or other probative evidence to establish that there is a genuine issue for determination. Therefore, Summary determination is appropriate in this case since there is no genuine issue as to any material fact.

### Standard of Promptness

5.

After an applicant files a Medicaid application, Respondent has a limited period of time to determine eligibility. That time period is known as the Standard of Promptness (SOP). The Standard of Promptness is ninety (90) days for applicants who apply for Medicaid on the basis of disability; and **forty-five (45) days for all other applicants**. 42 C.F.R. § 435.911(a). Respondent must determine eligibility within the standards except in unusual circumstances and must document any reason for delay. 42 C.F.R. § § 435.911(c) and (d). The SOP cannot be used as a waiting period or as a reason for denying eligibility. 42 C.F.R. § 435.911(e). In this matter, Petitioner applied for nursing home Medicaid on January 23, 2014. Therefore, Respondent had forty five (45) days or until March 10, 2014, to determine eligibility. Respondent issued its denial of Petitioner's Medicaid application on April 14, 2014, and has exceeded the Standard of Promptness established by the Medicaid program.

## Resources

6.

Resources are assets available to the assistance Unit (AU) that can be converted to cash to meet daily living expenses. These assets must be taken into consideration in determining eligibility. ABD Medicaid. Economic Support Services Manual (Medicaid Manual), Volume II/MA, MT 33-02/09, Section 2301-8. In order for the value of a resource to be applied to the resource limit, the A/R must have an ownership interest in the resource and have the legal right to the use and/or disposal of the resource. Medicaid Manual, Volume II/MA, MT 1-01/02, Section 2302-2.

7.

There are two (2) types of resources: Liquid and Non-liquid. Liquid resources are any resources in the form of cash or in any other form that can be converted to cash within 20 work days. Non-liquid resources are any resources which are not in the form of cash and which cannot be converted to cash within 20 workdays. Medicaid Manual, Volume II/MA, MT 26-04/07, Section 2300-2. Certain non-liquid resources that would normally be counted may be totally or partially excluded if specific conditions are met. Personal or real property which *currently* (or is expected to resume) produces earned income, unearned income, goods, or services, may be partially or totally excluded. Medicaid Manual, Volume II/MA, MT 24-01/07, Section 2304-1. In this matter, the Petitioner's 643 Shares of Common Stock from Sun Life Financial, Inc. discovered by her son on January 8, 2014, but liquidated on April 7, 2014, may be excluded as a non-liquid resource in determining Petitioner's Medicaid eligibility.

8.

The resource limit for an individual in a nursing home to be eligible for Medicaid is \$2,000. The value of an A/R's countable resources cannot exceed the appropriate resource limit in order for the A/R to be eligible for Medicaid. Appendix, A1, ABD Financial Limits; Medicaid Manual, Volume II/MA, MT 26-04/07, Section, 2300-2.

## Petitioner's Eligibility

9.

The countable value of a resource is its equity value as of the first moment of the first day of the month of verification. If the countable value of the resource **does not** exceed the resource limit on the first moment of the first day of the month, the A/R is eligible for the entire month, regardless of fluctuations during the month. Medicaid Manual, Volume II/MA, MT 1-01/02, Section 2303-3.

In this matter, Petitioner has met her burden of establishing that she meets the resource limit for January 2014, February 2014, and March 2014, since her resources were under the \$2,000 limit for those months. Petitioner has established through credible and undisputed evidence that her countable resources were \$1,615.15 for January 2014; \$1,587.16 for February 2014; and \$1,561.17 for March 2014. Accordingly, Petitioner meets the resource limit for Medicaid eligibility.

#### Petitioner's Bona Fide Effort to Sell Property

10.

Exclude personal or real property for any month in which the A/R is making a bona fide effort to sell the property. Medicaid Manual, Volume II/MA, MT 24-01/07, Section 2304-1. In this matter, Petitioner's son made a bona fide effort to sell her 643 Shares of Common Stock from Sun Life Financial, Inc., from January 8, 2014, the date that he became aware of the stock until its liquidation on April 7, 2014. Therefore, the stock is an excluded asset for January 2014 through April 2014 in determining Petitioner's Medicaid eligibility.

11.

If an individual is unaware of his/her ownership of an asset, the asset is not a resource during the period for which the individual was unaware of the ownership. The previously unknown asset, including any monies (such as interest) accumulated on it through the month of discovery by the individual is income **only in the month of discovery**. Medicaid Manual, Volume II/MA, MT 26-04/07, Section 2300-2.

In her Motion for Summary Determination, Petitioner argues that a newly discovered asset came into Petitioner's possession on April 7, 2014, and should not be a factor in Petitioner's Medicaid application prior to the date of discovery.<sup>5</sup> Petitioner owned 643 Shares of Common Stock from Sun Life Financial, Inc. According to his Affidavit, Petitioner's son became aware of the Stock on January 8, 2014. Therefore, the stock is considered an asset only in January 2014, the month of discovery. However, the stock is excluded under ABD Manual Section 2304-1 during the months of January through April 7, 2014, in which Petitioner's son made a bona fide effort to sell the stock.

#### VI. DECISION:

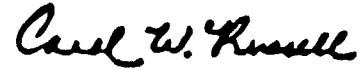
Based upon the foregoing, it is concluded that Petitioner meets Medicaid eligibility requirements for January, February, and March 2014, and is entitled to Incurred Medical Expenses coverage during those months pursuant ABD Manual Section 2555. Accordingly, Petitioner's uncontested

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<sup>5</sup> See, Petitioner's Motion for Summary Determination at paragraph No. 10.

Motion for Summary Determination is **HEREBY GRANTED**. This matter is **REMANDED** to Respondent for immediate action in approving Petitioner's January 23, 2014, Medicaid Application and IME expenses consistent with this decision.

**SO ORDERED** this 27<sup>th</sup> day of May, 2014.



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**CAROL WALKER-RUSSELL**  
**Administrative Law Judge**