IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

[redacted],
Petitioner,

v.

GEORGIA DEPARTMENT OF COMMUNITY HEALTH,
Respondent.

Docket No.:
OSAH-DFCS-NH-0906126-33-Gatto

Agency Reference Number: 513190716

FILED
SEP 26 2008
OFFICE OF STATE ADMINISTRATIVE HEARINGS

INITIAL DECISION

COUNSEL: Robert Goldberg, for Petitioner.

[redacted] Pro se, for Respondent.

GATTO, Judge.

I. INTRODUCTION

This matter comes before the Court from an appeal of [redacted] ("Petitioner") under the Official Code of Georgia Annotated ("O.C.G.A.") § 49-4-13 from the decision of the Georgia Department of Community Health ("Respondent"), acting through the Georgia Department of Human Resources ("DHR") and the Cobb County Department of Family and Children Services ("DFCS") to deny his application for nursing home Medicaid. The Court has jurisdiction to hear this matter pursuant to Article 2 of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." For the reasons indicated below, the decision of Respondent is **REVERSED** and the case is **REMANDED**.

II. FINDINGS OF FACT

Petitioner applied for nursing home medial assistance. The parties stipulated that the only issue in dispute was whether Respondent properly denied his application based upon the fact that he did not receive distributions from three (3) of his five (5) retirement accounts. Specifically, the parties stipulated that Petitioner has the following five (5) exempt retirement funds:

Bank	Type	Account No.	Value	Required Minimum Distribution[1]	Actual Distribution
BBT	IRA	910	$287.04	$ 20.37	$0
C&M	IRA	10412	$2,476.00	$ 175.60	$0
Regions	CD (IRA)	553462326	$1,699.26	$ 120.51	$0
State Farm	Annuity	1259-2249	$12,000.00	$ 851.06	$ 980.80
State Farm	Annuity	1908-3147	$43,201.93	$3,063.97	$4,147.44
Total				$4,231.51	$5,128.24

Petitioner's application was denied since he did not apply for periodic benefits from his three (3) IRA accounts. Instead, Petitioner chose to take distributions in excess of the minimum required distribution from his two (2) annuities. The total actual distributions taken by Petitioner were in excess of the required minimum distribution from all five (5) accounts in the aggregate.

III. CONCLUSIONS OF LAW

Medicaid is a cooperative federal-state program authorized under Title XIX of the Social Security Act of 1965. *See* 42 U.S.C. § 1396 *et seq*. Under Medicaid, a participating state develops a written plan containing standards regarding eligibility for medical assistance. These standards must be consistent with specified federal guidelines. *Schweiker v. Gray Panthers*, 453 U.S. 34, 36-37, 101 S. Ct. 2633 (1981). The federal Medicaid laws set various limits on an individual's income and resources (assets other than income) for purposes of determining eligibility.

Prior to 1988, when a spouse was institutionalized, the married couple's *jointly-held assets* were combined and that total was considered in determining either spouse's Medicaid eligibility. Thus, the spouse remaining at home (community spouse) had to spend virtually all of the marital assets to trigger the institutionalized spouse's Medicaid eligibility. H.R. Rep. No.

[1] The parties stipulated that to determine the required minimum distributions, the value of each retirement account is divided by a factor of 14.1.

100-105(II), 100th Cong., 2nd Sess., at 65-67, reprinted in 1988 U.S.C.C.A.N. 857, 888-92. As a result, some community spouses became prematurely institutionalized themselves due to a lack of financial self-sufficiency. *Id.* Conversely, any assets that were *held solely* by either spouse were only considered in determining that spouse's Medicaid eligibility. *Id.* at 879-80. Therefore, when a pension check was issued to the husband, all of that income was considered his for the purpose of determining his eligibility if he entered a nursing home. *Id.* at 879. However, if the wife entered a nursing home, none of the husband's pension income was considered in determining the wife's eligibility and federal law did not obligate him to contribute toward the cost of her care. *Id.* As a result, a wealthy community spouse was able to shelter income and resources from inclusion in the calculation of the institutionalized spouse's eligibility.

In 1988, Congress sought to eliminate some of the undesired consequences of the existing eligibility provisions by amending the Medicaid Catastrophic Care Act (MCCA), 42 U.S.C.S. § 1396r-5, provisions of the federal Medicaid Act to include the "spousal impoverishment provisions." 42 U.S.C. § 1396r-5. These amendments resulted in a complex methodology for separately calculating each spouse's resources and income and then using those calculations to determine the institutionalized spouse's Medicaid eligibility. Income allocation is governed by §§ 1396r-5(b) and (d). These sections exclude the community spouse's individual *income* when determining whether the institutionalized spouse qualifies for Medicaid. Sections 1396r-5(c) and (f) address the allocation of *resources*. Under those provisions, the couple's resources are added together when institutionalization begins and one-half of the total is allocated to each spouse as the "spousal share." § 1396r-5(c)(1)(A). After the spousal share is determined, the community spouse is permitted to retain a specified maximum amount indexed to inflation, which is referred to as the community spouse resource allowance (CSRA). §§ 1396r-5(c)(2)(B), (f)(2)(A), (g).

Any and all resources above the CSRA must be spent before the institutionalized spouse will be eligible for Medicaid. § 1396r-5(c)(2).

Respondent's regulation indicates that "to be eligible for ABD Medicaid, an individual must apply for periodic benefits." *Ga. Medicaid Manual*, § 2332-1. However, this provision does not indicate whether an individual may aggregate the retirement accounts for purposes of determining the minimum distribution amounts required to be taken in order to be eligible. Thus, this Court must look to other sources for guidance. The Internal Revenue Services' distribution rule for individual retirement plans provides such guidance. *See* 26 C.F.R. § 1.408-8 (Q-9; A-9). That rule provides that in determining the required minimum distributions from IRAs, an owner is permitted to separately calculate the minimum distribution amounts for each IRA, which may be totaled, and the total distribution may be taken from any one or more of the individual's IRAs. *Id.* Applying that rational to the present case, Petitioner's minimum distribution amounts for all five (5) accounts collectively was $4,231.51. Petitioner's actual distribution amounts for all five (5) accounts collectively was $5,128.24, which was more than he was required to distribute collectively. Therefore, the Court concludes that Petitioner met the periodic retirement benefits requirement of § 2332-1. Accordingly,

IV. CONCLUSION

IT IS HEREBY ORDERED THAT the decision of Respondent is **REVERSED** and the case is **REMANDED** to DFCS to continue with the application process.

SO ORDERED THIS 26th day of September, 2008.

John B. Gatto

JOHN B. GATTO, Judge

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