

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

GENEVA WORLEY,
Petitioner,

v.

DEPARTMENT OF HUMAN SERVICES,
DIVISION OF FAMILY AND CHILDREN
SERVICES,

Respondent.

Docket No.: 1816966
1816966-OSAH-DFCS-M-QMB-8-Walker-
Russell

Agency Reference No.: 110964977



INITIAL DECISION

Appearances: For Petitioner: David L. McGuffey, *Esquire*
For Respondent: Malcolm L.H. Wells, *Esquire*

JAN 10 2018

A handwritten signature in cursive script, appearing to read "John Rasheed".

John Rasheed, Legal Assistant

I. INTRODUCTION:

Petitioner, Geneva Worley, appeals the Georgia Department of Human Services' ("Respondent") decision to deny her application for Nursing Home Medicaid for being over the Nursing Home Medicaid limit (\$2,000). The parties were provided an opportunity to present sworn testimony and documentary evidence at the hearing held on December 22, 2017.¹ During a pre-hearing conference, the parties stipulated that, with exception to the purchased vehicle at issue in this matter, Petitioner otherwise meets all eligibility requirements of Nursing Home Medicaid. For the reasons indicated below, Respondent's decision is **REVERSED** and this matter is **REMANDED** to Respondent for immediate action in approving Petitioner's Nursing Home Medicaid application.

II. FINDINGS OF FACT:

The undersigned has considered the entire evidence in this case and, based upon a preponderance of the credible evidence, makes the following specific findings of fact:

1.

Petitioner, Geneva Worley, is a ninety two (92) year old resident of Springdale Health Care Nursing Home in Bartow County, since March 6, 2017. On or around March 9, 2017, Petitioner applied for Nursing Home Medicaid. Respondent denied the application for being over the \$2,000 resource limit. On or around June 2, 2017, Petitioner re-applied for Nursing Home Medicaid for Qualified Medicare Beneficiary (QMB) and Nursing Home Medicaid for June 2, 2017, and on-going. Respondent approved the QMB Medicaid application on September 17, 2017, using the "client statement." However, in a final determination letter, dated September 26, 2017, Respondent denied the QMB and Nursing Home Medicaid Application for being over the QMB resource limit of \$7,390 and the Nursing Home Medicaid resource limit of \$2,000. (Testimony of Deanna Bates, former ABD Eligibility Specialist, II; Petitioner's Exhibits A and L).

¹At the request of Respondent's attorney, Malcolm Wells, the record was held open until January 5, 2018, for the parties to submit a Proposed Order, including Findings of Fact and Conclusions of Law.

2.

Deanna Bates was the Eligibility Worker assigned to Petitioner's case. Ms. Bates denied Petitioner's Nursing Home Medicaid application based on the purchase of a 2017 Ford Escape by Petitioner and her daughter, Carolyn Squires, after Petitioner was admitted in the nursing home on March 6, 2017. Specifically, Ms. Bates determined that Petitioner used \$53,891.48 in reported resources from the previously denied Nursing Home Medicaid application to purchase the vehicle in an attempt to shelter assets for Petitioner to meet Nursing Home Medicaid eligibility and provide a vehicle for Petitioner's daughter, Carolyn Squires. Respondent determined that the vehicle expenditure totaled \$25,747 (\$24,998 for the vehicle purchase, plus \$749 for automobile insurance). Petitioner and Carolyn Squires are listed as the co-owners of the vehicle on the Retail Purchase Agreement, Georgia Certificate of Title, and Motor Vehicle Tag Application. (Testimony of Deanna Bates, former ABD Eligibility Specialist, II; Respondent's Exhibits 1, 2, 3 and 4).

3.

On or around July 3, 2017, Carolyn Squires submitted a notarized affidavit to Respondent explaining the purpose of the vehicle purchase that stated the following:

"My name is Carolyn Squires. I am over the age of eighteen (18) and have personal knowledge concerning the matters herein. My mother is Geneva Worley. I am responsible for transporting my mother to and from doctor's appointments, family gatherings and meals outside of the Nursing Home facility. My mother purchased a vehicle for her transportation, and the one purchased is easier for her to get in and out of when she is going to doctors and other places. My name is on the title with her because I contributed \$2,775 of my own money toward the purchase price so I could be listed as a co-owner so we could get automobile insurance." (Testimony of Deanna Bates, former ABD Eligibility Specialist, II; July 3, 2017, Affidavit of Carolyn Squires).

4.

Deanna Bates reviewed the July 3, 2017, Affidavit of Carolyn Squires and determined that the explanation of the vehicle purchase was insufficient. Ms. Bates requested that Carolyn Squires provide the dates, times, and mileage that was used to transport Petitioner. (Testimony of Deanna Bates, former ABD Eligibility Specialist, II).

5.

On or around September 21, 2017, Carolyn Squires submitted another notarized affidavit to Respondent explaining the purpose of the vehicle purchase and that she had not kept records of the specific times and dates that Petitioner was transported in the vehicle. The affidavit stated the following:

"My name is Carolyn Squires. I am over the age of eighteen (18) and have personal knowledge concerning the matters herein. My mother is Geneva Worley. I am responsible for transporting my mother to and from doctor's appointments, family gatherings and meals outside of the facility. I have not kept records of the specific times and dates when my mother was transported in her vehicle because it was my understanding, based on advice from counsel, that I was not required to keep specific records concerning mileage driving my mother, dates and times I drove her, and similar matters. I can begin keeping a mileage journal on a going forward basis if I was misinformed. When my mother's vehicle is not being used to transport Mrs. Worley, the primary use of the vehicle is to transport care advocates to and from the nursing home so they can check on Mrs. Worley's condition and status, and so they can participate in her care plan. Any other usage is nominal." (September 21, 2017, Affidavit of Carolyn Squires).

6.

On or around September 26, 2017, Respondent denied Petitioner's June 2, 2017, application for Medicaid benefits. The denial letter stated that the value of Petitioner's resources is more than the resource limit for this program. (Testimonies of Deanna Bates, former ABD Eligibility Specialist, II and Donna Johnson, Compliance Specialist, III; Respondent's exhibit 7).

7.

On or around October 31, 2017, Carolyn Squires submitted another notarized affidavit with photographs to Respondent depicting Petitioner seated inside of the vehicle, and getting out of the vehicle with the assistance of Carolyn Squires. The notarized affidavit stated the following:

“My name is Carolyn Squires. I am over the age of eighteen (18) and have personal knowledge concerning the matters stated herein. My mother is Geneva Worley, who is depicted in the photographs below. I was present when the following photographs were taken. I am familiar with the scenes depicted in the photographs included in this affidavit. I recognize each scene; I am in the first two photographs and I was present when the third photographs were taken. Each photograph is an accurate depiction of my mother being transported in her 2017 Ford Escape.” (October 31, 2017, Affidavit of Carolyn Squires).

8.

Carolyn Squires gave credible testimony at the hearing that she is Petitioner’s daughter, retired, and serves as Petitioner’s health care advocate. Petitioner and Ms. Squires and are co-owners of the 2017 Ford Escape. The vehicle was purchased to transport Petitioner to and from doctor’s appointments, family gatherings and meals outside of the nursing home facility. The 2017 Ford Escape is currently used to transport Petitioner. (Testimony of Carolyn Squires). Upon careful consideration, I find Carolyn Squire’s testimony to be credible and persuasive.

9.

Petitioner timely appealed the denial of her application and seeks approval of her June 2 2017, Nursing Home Medicaid Application.

III. CONCLUSIONS OF LAW:

1.

Because this matter involves an application for public assistance benefits, the burden of proof is on the Petitioner. Ga. Comp R. & Regs. 616-1-2-.07(1)(e). The standard of proof is a preponderance of the evidence. Ga. Comp R. & Regs. 616-1-2-.21(4).

2.

When a contested case is referred to the Office of State Administrative Hearings, the Administrative Law Judge assigned to the case has "all the powers of the referring agency .. " O.C.G.A. § 50-13-41(b). The evidentiary hearing is de novo, and the administrative law judge "shall make an independent determination on the basis of the competent evidence presented at the hearing." Ga. Compo R. & Regs. 616-1-2-.21 (I). To the extent an issue involves the interpretation of a Federal statute, "it is a question of law which is reviewed de novo." Draper v. Atlanta Indep. Sch. Sys., 518 F.3d 1275, 1284 (11th Cir. 2008).

3.

In Georgia, Medicaid benefits are provided through a variety of classes of assistance, each with its own specific eligibility criteria. Georgia Department of Human Services Medicaid Manual (Volume II, MAN 3480) ("Medicaid Manual") § 2101 et seq.

Eligibility of Nursing Home Medicaid

4.

Nursing Home Medicaid is a class of assistance that provides Medicaid coverage for individuals who reside in a participating nursing home. Medicaid Manual § 2141. Among other eligibility requirements, a recipient of Nursing Home Medicaid may not retain cash or other countable assets that exceed two thousand dollars (\$2,000) in value. 42 U.S.C.S. § 1382(a)(3)(B); Medicaid Manual, Appx. AI-I.

5.

The Medicaid program is a cooperative venture between the Federal and State governments through which medical care is offered to the needy. Wilder v. Virginia Hosp. Ass'n, 496 U.S. 498, 502 (1990). Although participation in the program is voluntary, a state that chooses to participate must comply with the program requirements found in Federal law. Id.

Exclusion of the Automobile, 20 CFR § 416.1218

6.

Federal law provides that the term "automobile" includes, in addition to passenger cars, other vehicles used to provide necessary transportation. In determining the resources of an individual, automobiles are excluded or counted as follows:

- (1). Total exclusion: One automobile is **totally excluded** regardless of value if it used for **transportation for the individual** or a member of the individual's household, and
- (2). Other automobiles: Any other automobiles are to be non-liquid resources. Your equity in the other automobile is counted as a resource. 20 CFR § 416.1218; 20 CFR § 416.120 (c).

Disposal of Assets for Less Than Fair Market Value

7.

If an individual disposes of resources for less than the fair market value, on or after the look-back date of 36 months, before the date on which the individual applies for benefits under this title, or if later, the date on which the individual (or spouse of the individual) disposes of resources for less than fair market value, the individual is ineligible for benefits. 42 U.S.C. § 1396p(c)(1)(A); 42 USCS § 1382b (C)(1)(A).

8.

In this matter Respondent denied Petitioner's Nursing Home Medicaid application because the Eligibility Worker determined that the vehicle was purchased to shelter assets pursuant to Georgia Medicaid Vehicle policy 2308.3. Upon careful consideration, I find this argument to be unpersuasive. Federal law provides for the total exclusion of one vehicle, regardless of cost, **if it used for transportation for the individual**. In this matter, Carolyn Squires gave credible testimony at the hearing, and submitted affidavits and supporting photographs to Respondent to establish that the 2017 Ford Escape was purchased for the purpose of transporting Petitioner, **and is currently used to transport Petitioner**. In addition, it is undisputed that Petitioner's name is listed as an owner on the Retail Purchase Agreement, Georgia Certificate of Title, and Motor Vehicle Tag Application. Therefore, there is insufficient evidence to establish that there was a transfer or disposition of resources for less than the fair market value. Accordingly, Petitioner has proved, by a preponderance of the evidence that Petitioner has not disposed of resources for less than the fair market value in an attempt to shelter assets in order to meet the \$2,000 Nursing Home Medicaid Eligibility.

9.

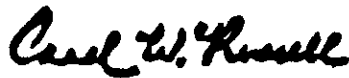
Petitioner has proved, by a preponderance of evidence, that the vehicle in question is owned by Petitioner and used for her transportation pursuant to 20 CFR § 416.1218. Therefore, the vehicle is excluded and should not be counted as a resource. Accordingly, Petitioner meets the requirements for Nursing Home Medicaid eligibility.

III. INITIAL DECISION:

Based upon the foregoing, Respondent's decision to deny Petitioner's application for Nursing Home Medicaid application is **REVERSED**. Accordingly, this matter is **REMANDED** to Respondent for im-

mediate action in approving Petitioner's June 2, 2017, Nursing Home Medicaid application, effective June 1, 2017, and on-going.

SO ORDERED, January 10, 2018



CAROL WALKER-RUSSELL
Administrative Law Judge

