



The Delaware Code (31 Del. C. §520) provides for judicial review of hearing decisions. In order to have a review of this decision in Court, a notice of appeal must be filed with the clerk (Prothonotary) of the Superior Court within 30 days of the date of the decision. An appeal may result in a reversal of the decision. Readers are directed to notify the DSS Hearing Office, P.O. Box 906, New Castle, DE 19720 of any formal errors in the text so that corrections can be made.

**DELAWARE DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**

In re:

DCIS No. Redacted

Redacted, Appellant

Appearances: Redacted, Wife and POA of Redacted

Lynette Whealton, Social Worker Supervisor, Division of Medicaid and Medical Assistance
D'Lynn DuVall, Sr. Social Worker/Case Manager, Division of Medicaid and Medical Assistance

I. Summary of Claim

Redacted ("Appellant") has received and continues to receive Medicaid Long Term Care coverage at the Renaissance Health Care ("RHC") in Milford, Delaware. Appellant's wife contends that she is not receiving enough money to meet her expenses with the spousal allowance provided.

The Division of Medicaid and Medical Assistance ("DMMA") contends that the Appellant's patient pay has increased to \$1,803.08 and the Appellant's Community Spouse Income Allocation ("spousal allowance") is capped at \$2,739.00 due to Administrative Notice 07-2009.

II. Procedural History

On May 13, 2010, the Appellant's wife received a Notice to Change the Patient Pay Amount informing her that effective March 1, 2010, the patient payment amount for Medicaid Long Term Care would be \$1,803.08 per month, the spousal allowance would be \$2,739.00 and the personal needs allowance would be \$44.00 per month. (Exhibit 3).

Ms. Redacted filed a request for a fair hearing on May 21, 2010. (Exhibit 2).

The Appellant was notified by certified letter dated July 6, 2010, that a fair hearing would be held on July 12, 2010. The hearing was conducted on that date in Georgetown, Delaware.

This is the decision resulting from that hearing.

III. Findings of Fact

Medicaid recipients/representatives are responsible for providing the "patient pay" to the facility each month as outlined in the documentation signed by Mr. Redacted or his representative prior to entering the

facility. As part of the program, the Appellant also receives a personal needs allowance which is currently \$44.00 per month. The Appellant's wife receives a spousal allowance of \$2,739.00 as calculated by the agency.

While the agency calculations revealed that the spousal allowance amounts to \$2,739.00, their Community Income Worksheet additionally reveals that without applying the requirements of Administrative Notice 07-2009, Ms. Redacted spousal allowance actually calculates to \$3,161.34. (Exhibit 4). Ms. Redacted did not dispute the calculations underlying this matter; instead, she asserts that her living expenses exceed the spousal allowance permitted under Administrative Notice 07-2009 of \$2,739.00, and she seeks additional funds.

Ms. DuVall has been assisting Ms. Redacted with ways to increase her income but they have not made significant inroads. Ms. Redacted testified that several issues have placed additional pressure on her financial situation and she fears that she will be homeless in the future. She testified to the following financial pressures:

- She received a small cost of living adjustment ("COLA") in her husband's pension income of \$133.84 before taxes but no additional COLAs for his Social Security retirement insurance benefits.
- Her household expenses have increased by \$315.00 this year over 2009
- She is unable to work due to a major heart attack she experienced in September 2009. She has undergone two (2) stenting procedures and plans to undergo a third in the near future. She testified that her heart is currently working at twenty (20) percent efficiency.
- She owes Beebe Medical Center for the bills she incurred for procedures she underwent there. Beebe placed Ms. Redacted on a payment plan and waived twenty (20) percent of her outstanding bill to assist her.
- Her prescription drug costs amount to \$150.00 per month and she must pay doctor visit co-pays. She has expenses from cardiac rehabilitation she must undergo.
- Even if Ms. Redacted did work, her income would offset the spousal allowance dollar for dollar and not provide an increase in her household income
- She has not worked in the previous ten (10) years and did not believe that she qualified for Title II disability benefits
- She is not eligible for her full retirement Social Security Retirement Insurance benefits for four (4) more years
- Her house has been up for sale for eighteen (18) months without a buyer and she is not allowed to rent out her home according to her deed restrictions and covenants.
- Her lot rent increases five (5) percent each year.
- She has not been able to pay the new patient pay amount to the nursing home and they have threatened to discharge her husband.

Without applying the patient pay in this instance, Ms. Redacted reported household expenses exceed her spousal allowance by \$6.00 without calculating in her gas, food and clothing budget. Further, agency calculations demonstrate that without the application of the Administrative Notice, Ms. Redacted spousal allowance would calculate at \$3,161.34, which is \$422.34 more than she is currently receiving.

IV. Analysis

Pursuant to Division of Social Services Manual (“DSSM”) 20995, after an institutionalized individual has established eligibility for Medicaid, the state must protect part of the individual’s income for the community spouse. Protect enough income to equal the community spouse income allowance.

The federal “spousal impoverishment” provisions at 42 U.S.C. §1396r–5(e)(2)(B) reveal that:

If either . . . spouse establishes that the community spouse needs income, above the level otherwise provided by the minimum monthly maintenance needs allowance, due to *exceptional circumstances resulting in significant financial duress*, there shall be substituted, for the minimum monthly maintenance needs allowance in subsection (d)(2)(A) of this section, an amount adequate to provide such additional income as is necessary. Id.

42 U.S.C. §1396r–5(e)(2)(B) is given effect in Delaware under DSSM 20995.3.2, which provides that either spouse can appeal the amount of the monthly income allowance or how the income otherwise available to the community spouse was determined. In addition, the allowance can be adjusted higher than that allowed amount if they can show that additional income is necessary due to “*exceptional circumstances resulting in significant financial duress.*”

I conclude that based upon the record before me that Ms. Redacted has established exceptional circumstances resulting in significant financial duress. Her income is not increasing due to many circumstances beyond her control. She has been unable to sell her house due to the housing market and she cannot rent out her home. She is facing significant medical issues with the attendant billing that accompanies her cardiac care. She will not qualify for Medicare for several years so her medical bills will continue to mount as will her lot rent and other expenses. Therefore, I conclude that Ms. Redacted spousal allowance should be increased to \$3,161.34 effective March 1, 2010. The Appellant’s patient pay will continue at \$1,803.08.

V. Conclusion

For these reasons, the May 13, 2010 decision of the Division of Medicaid and Medical Assistance to change the Appellant’s Medicaid Long Term Care patient pay amount is AFFIRMED and the change in Ms. Redacted spousal allowance is REVERSED and REMANDED for further consideration consistent with this decision.

Date: July 19, 2010



MICHAEL L. STEINBERG, J.D.
HEARING OFFICER

THE FOREGOING IS THE FINAL DECISION OF THE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES

August 10, 2010
POSTED

cc: Redacted POA Redacted

Lynette Whealton, Pool 920
D'Lynn DuVall, Pool 920

EXHIBITS FILED IN OR FOR THE PROCEEDING

EXHIBIT #1 - DSS Hearing Summary consisting of two (2) pages date stamped June 14, 2010.

EXHIBIT #2 - The Appellant's request for a fair hearing date-stamped May 21, 2010, consisting of one (1) page.

EXHIBIT #3 – Copy of Notice to Change Your Patient Pay dated May 13, 2010, consisting of two (2) pages.

EXHIBIT #4 – Copy of Community Spouse Income Worksheet, consisting of one (1) page.

EXHIBIT #5 – Copy of Appellant's financial documentation consisting of ten (10) pages.