

IN THE SUPREME COURT OF THE STATE OF MISSISSIPI

JO CAROL ALFORD

APPELLANT

V.

NO. 2008-CA-01984

ARTHUR RANDALL ALFORD and
the DIVISION OF MEDICAID

APPELLEES

REPLY BRIEF OF THE DIVISION OF MEDICAID, APPELLEE

ORAL ARGUMENT IS NOT REQUESTED

On Appeal from the Madison County Chancery Court, Canton, Mississippi
Cause No. 2008-993-B
The Honorable Cynthia L. Brewer Presiding

Respectfully Submitted,

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State of Mississippi

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ARGUMENT

I. THE APPEAL SHOULD BE DENIED AS THE ISSUE IS NOW MOOT.

The purpose of the Community Spouse Resource Allowance and the Minimum Monthly Maintenance Needs Allowance is to allow the Community Spouse to have sufficient assets and income to be able to live in the community while the spouse who is receiving Medicaid long-term care benefits, the Institutionalized Spouse, resides in a nursing home.

As indicated in Appellant's Brief, Arthur Randall Alford, the original defendant in this case, passed away on February 9, 2009. At the time of his death, Mr. Alford had not applied for Medicaid benefits and his widow, the Appellant in this case serving as Executrix of Mr. Alford's will, did not submit an application for Medicaid benefits within the appropriate time period after his death. Since Mr. Alford cannot become a Medicaid recipient, the issue of whether the Community Spouse Resource Allowance and/or the Minimum Monthly Maintenance Needs Allowance should be increased is moot.

In the case of *C & D Investment Co. v. Gulf Transportation Co.*, 526 So. 2d 526 (Miss. 1988), the Mississippi Supreme Court held that "[w]here relief, other than an injunction is sought, a case is moot so long as a judgment on the merits, if rendered, would be on no practical benefit to the plaintiff or detriment to the defendant". In the case of *McDaniel v. Hurt*, 92 Miss. 197, 41 So. 381 (1907), the Court held that "[t]his court cannot entertain an appeal where there is no actual controversy" and stated further "where the cause on appeal relates to questions involved in rights which have ceased to exist, the appeal will be dismissed". In the case of *Allred v. Webb*, 641 So. 2d 1218, the Court held "[c]ases in which an actual controversy existed at trial but the controversy has expired at the time of

review, become moot.” The Court stated further “[w]e have held that the review procedure should not be allowed for the purpose of settling abstract or academic questions, and that we have no power to issue advisory opinions”. The Supreme Court in the case of *Gartrell v. Gartrell*, 936 So. 2d 915 (Miss 2006) stated that “[a]ny action taken by this Court, in affirming or reversing the chancellor’s decision, would be of no consequence to either party. Any review undertaken by this Court as to this issue will not resolve a live dispute that could result in a benefit to the plaintiff or a detriment to the defendant and this it is merely an academic exercise. Therefore, this appeal is moot.”

Medicaid eligibility is determined on a case by case basis. Since this case is a case of first impression in Mississippi a decision that would affect all future Medicaid applicants should not be rendered in this case and the appeal should be denied.

II. THE APPEAL SHOULD BE DENIED AS THE TRIAL COURT DID NOT HAVE JURISDICTION OF THE MATTER AND THUS NO AUTHORITY TO GRANT THE REQUEST FOR AN INCREASE IN THE COMMUNITY SPOUSE RESOURCE ALLOWANCE AND/OR THE MINIMUM MONTHLY MAINTENANCE NEEDS ALLOWANCE.

In the State of Mississippi the Division of Medicaid is granted sole authority to determine the “eligibility of those persons who qualify for medical assistance” according to §43-13-116 of the Mississippi Code. As stated in the case of *State Oil & Gas Board v. McGowan*, 542 So. 2d 244, 249 (Miss. 1989), the Mississippi Supreme Court held that “[j]udicial review may be had [only] of any **final** rule, regulation or order of the Board” (emphasis added). Acknowledging that the appropriate appellate avenue to challenge an agency action is an appeal of a final rule, the Supreme Court further held that “[p]rior to [such] appeal from a final rule...*the Chancery Court has no jurisdiction to participate in the administrative process*” noting that the Chancellor’s actions in instructing the agency on how to run its own proceedings amounted to an intervention in a pending administrative hearing (emphasis added). *McGowan*, 542 So. 2d at 249. The Supreme Court further explained its rationale holding that because “the matter substantively at issue” was “committed to the authority and jurisdiction” of the agency, the Chancery Court’s authority was limited to “judicial review” of a final decision. *ID.*

Here, as indicated previously, Mr. Alford never applied for Medicaid eligibility. As a result, Medicaid was denied the opportunity to determine Mr. Alford’s eligibility. Had Mr. Alford applied and then been determined to be ineligible for Medicaid benefits he could have appealed that final decision to the Chancery Court and at the same time asked the Court to increase the Community Spouse Resource Allowance and/or the Monthly Maintenance Needs Allowance.

Medicaid policy in regard to the Community Spouse Resource Allowance is found in Section I of the Medicaid Eligibility Manual on Page 9210 (see Appendix page 1) where the manual states:

In order for a CS (Community Spouse) to receive a share larger than the federal maximum, a court order would be required granting the CS a greater share of total resources **after Medicaid has made a decision regarding spousal shares** (emphasis added).

In the case of *Arkansas Department of Health and Human Services v. Smith*, 262 S.W. 3d 167 (Ark 2007), Karen Blaylock's husband, Alan Blaylock, became disabled as the result of a home-invasion robbery and Ms. Blaylock sought an order of support prior to applying for Medicaid. The Arkansas Supreme Court stated "(In Arkansas) DHHS is the sole entity charged with administering Medicaid and determining eligibility for Medicaid benefits. The fact that Congress used language to the effect of 'if a court has entered an order of support' without any further explanation of the circumstances in which such an order might be entered is insufficient to confer jurisdiction". The Arkansas Supreme Court thus determined that the trial court had no jurisdiction and denied the appeal.

Based upon Medicaid policy and the case cited above, it is Medicaid's position that before Appellant could approach the Court to request increases in the Community Spouse Resource Allowance and the Minimum Monthly Maintenance Needs Allowance Mr. Alford would first be required to file an application for Medicaid and have the spousal shares determined by Medicaid.

III. THE APPEAL SHOULD BE DENIED AS THE INCREASES REQUESTED BY APPELLANT IN THE COMMUNITY SPOUSE RESOURCE ALLOWANCE AND/OR THE MINIMUM MONTHLY MAINTENANCE NEEDS ALLOWANCE ARE UNREASONABLE.

Medicaid is a program that that pays for medical assistance for certain individuals and families with low incomes and resources *Centers for Medicare and Medicaid Services Website*, (see Appendix page 2). Each year the Centers for Medicare and Medicaid Services (CMS) sets the maximum amounts of income a Medicaid applicant can have and qualify for eligibility as well as the Maximum Monthly Maintenance Needs Allowance and Maximum Community Spouse Resource Allowances (see Appendix page 3). For the year 2009, an individual applying for Medicaid benefits while a resident of a nursing home (the Institutionalized Spouse) is allowed to have assets of \$4,000.00 exclusive of a home, an automobile and household contents, and the spouse of that individual who is still residing at home (the Community Spouse) is allowed to have assets of \$109,560.00 exclusive of the home, an automobile and household contents. Here, the Appellant is requesting authority to have a total of \$413,147.00 in assets designated as the Community Spouse Resource Allowance, or more than 3.5 times the allowed amount to be considered exempt from consideration in the determination of Medicaid eligibility according to CMS.

In the year 2009, the Institutionalized Spouse is allowed to have a maximum monthly income not to exceed \$2,022.00 monthly according to CMS. If the income of the Institutionalized Spouse exceeds \$2,022.00 monthly, he or she may still qualify for Medicaid eligibility through the use of an income trust as set out in 42 USC §1396p (d) (4) (B) as long as his or her income does not exceed the cost of his or her monthly care in the nursing home. From that income, in 2009, a maximum of \$2,739.00 can be made available to the

Community Spouse for his or her support and maintenance. In this case, the Appellant is asking that she be given more than fifty-five percent (55%) more than the maximum Monthly Maintenance Needs Allowance CMS sets for the Community Spouse. Included in the amount she is requesting are amounts for childcare costs for non dependent family members, gifts, and expenses of dining out.

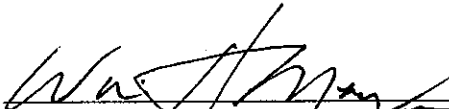
As indicated, Medicaid is intended to assist low-income families. Medicaid experiences significant ongoing difficulties in obtaining sufficient funding to cover the medical expenses of those individuals who meet the criteria set for Medicaid eligibility. If the Court were to allow those who have assets and income significantly above the established maximums to transfer all of their income and assets to the Community Spouse there would be no restrictions on who could qualify for Medicaid and the funds needed to pay the medical expenses of the intended low-income individuals could become available to anyone who sought a Court Order allowing increased allowances over and above the Federal limits thus creating a financially unsustainable program that would eliminate services for those for whom the program was intended. This is fundamentally against the intent of the program.

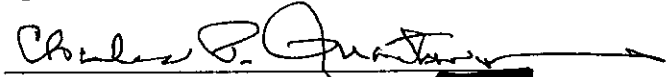
CONCLUSION

The decision of the Chancery Court of Madison County should be upheld and the appeal should be dismissed.

Respectfully submitted, this the 15th day of July, 2009.

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CERTIFICATE OF SERVICE

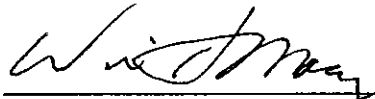
I, the undersigned attorney for the Plaintiff-Appellants, hereby certify that I have this day caused to be mailed, via United States Postal Service, a true and correct copy of this Brief for Appellant to:

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This the 15th day of July, 2009



William H. Mounger, Esq.
Special Assistant Attorney General

INSTITUTIONALIZATION
SPOUSAL IMPOVERISHMENT

**B. IS/CS
RESOURCE
COMPUTATION**

In order to determine spousal shares of resources owned by an IS/CS, determine the couple's countable resources in the month of institutionalization. The first month the IS enters LTC, compute resources as follows:

**1. Combine

Countable
Resources**

To determine resource eligibility for an IS with a CS, combine the value of all countable resources belonging to the IS and/or CS whether owned separately by each spouse or jointly by both spouses. Countable resources include all resources that are counted under ongoing liberalized resource policy.

If a CS or IS own resources jointly with another person or persons, count the proportionate share of the IS or CS ownership interest per ongoing policy for the type of resource involved.

**2. Verify
Resources**

The couple must provide complete resource verification of all countable resources owned as of the month the IS entered LTC. Verify resources per ongoing policy for the type of resource owned. Failure by the CS to verify resources owned by the CS will result in a Medicaid denial for the IS.

**3. CS Share
of Resources
Based on
the Federal
Maximum**

The CS share of total countable resources is the maximum allowed under federal law. In order for a CS to receive a share larger than the federal maximum, a court order would be required granting the CS a greater share of total resources after Medicaid has made a decision regarding spousal shares.

The resource maximum applicable is the resource maximum in effect in the month of institutionalization of the IS, Spousal Impoverishment Resource Maximums in effect since 10-01-89 are located in the Appendix, Page 1.

The CS is assigned his/her share of total countable resources as of the month of IS institutionalization. If total resources are less than the federal maximum, the CS is entitled to all of the total resources owned by the IS/CS.

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***ALERT:** The following are brief summaries of complex subjects. They should be used only as overviews and general guides to the Medicare and Medicaid programs. The views expressed herein do not necessarily reflect the policies or legal positions of the Centers for Medicare & Medicaid Services (CMS) or the Department of Health and Human Services (DHHS). These summaries do not render any legal, accounting, or other professional advice, nor are they intended to explain fully all of the provisions or exclusions of the relevant laws, regulations, and rulings of the Medicare and Medicaid programs. Original sources of authority should be researched and utilized.*

Overview of Medicaid

Title XIX of the Social Security Act is a Federal/State entitlement program that pays for medical assistance for certain individuals and families with low incomes and resources. This program, known as Medicaid, became law in 1965 as a cooperative venture jointly funded by the Federal and State governments (including the District of Columbia and the Territories) to assist States in furnishing medical assistance to eligible needy persons. Medicaid is the largest source of funding for medical and health-related services for America's poorest people.

Within broad national guidelines established by Federal statutes, regulations, and policies, each State (1) establishes its own eligibility standards; (2) determines the type, amount, duration, and scope of services; (3) sets the rate of payment for services; and (4) administers its own program. Medicaid policies for eligibility, services, and payment are complex and vary considerably, even among States of similar size or geographic proximity. Thus, a person who is eligible for Medicaid in one State may not be eligible in another State, and the services provided by one State may differ considerably in amount, duration, or scope from services provided in a similar or neighboring State. In addition, State legislatures may change Medicaid eligibility, services, and/or reimbursement during the year.

Basis of Eligibility and Maintenance Assistance Status

Medicaid does not provide medical assistance for all poor persons. Under the broadest provisions of the Federal statute, Medicaid does not provide health care services even for very poor persons unless they are in one of the groups designated below. Low income is only one test for Medicaid eligibility for those within these groups; their resources also are tested against threshold levels (as determined by each State within Federal guidelines).

States generally have broad discretion in determining which groups their Medicaid programs will cover and the financial criteria for Medicaid eligibility. To be eligible for Federal funds, however, States are required to provide Medicaid coverage for certain individuals who receive federally assisted income-maintenance payments, as well as

2009 SSI and Spousal Impoverishment Standards

Supplemental Security Income (SSI)

Effective 1-1-09

	SSI Federal Benefit Benefit Rate (FBR)	SSI Resource Standard	Income Cap Limit (300%)	Earned Income Break Even Point	Unearned Income Break Even Point
Individual	674.00	2,000.00	2,022.00	1,433.00	694.00
Couple	1,011.00	3,000.00	N/A	2,107.00	1,031.00

Substantial Gainful Activity (SGA) Limit: 980.00

CPI Increase for 2009: 4.9%

CPI Increase Since September 1988: 82.6%

Spousal Impoverishment

Effective 7-1-09 Unless Otherwise Noted

Community Spouse Monthly Income Allowance:

Minimum Monthly Maintenance Needs Allowance (MMMNA):	1,750.00	All States (Except Alaska and Hawaii)
(Effective 7/1/08)	2,187.50	Alaska
	2,012.50	Hawaii
Maximum:	2,739.00	

Community Spouse Monthly Housing Allowance: 525.00 All States (Except Alaska and Hawaii)
(Effective 7/1/08) 656.25 Alaska
603.75 Hawaii

Community Spouse Resources:

Minimum Resource Standard:	21,912.00
Maximum Resource Standard	109,560.00