BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

[redacted],	:	
Petitioner,	:	
	:	**Docket No.:**
v.	:	**OSAH-DFCS-QI1-[redacted]Miller**
	:	
DHS, FAMILY & CHILDREN SERVICES,	:	**Agency Reference No.:** [redacted]
Respondent.	:	

INITIAL DECISION

I. Overview

This matter is the Petitioner's appeal of the Respondent's adverse action denying his application for Medicaid benefits. A hearing was scheduled on June 21, 2016, before the undersigned administrative law judge. The Petitioner, [redacted] was represented by Mark E. Franklin, Esq. Kelly Chandler, a Medicaid caseworker for the Respondent, appeared as the Respondent's representative.

At the hearing, the Petitioner filed a memorandum of law, in which he argued that the Respondent's policy in determining family size for purposes of Medicaid Q Track eligibility violated federal law. The parties agreed to stipulate to the facts of the case as set forth in the Petitioner's memorandum, and the Respondent filed a timely response to the memorandum's legal arguments on July 1, 2016.[1]

After consideration of the stipulated facts and the parties' legal arguments, and for the reasons set forth below, the Respondent's decision is **REVERSED** and **REMANDED**.

[1] The hearing record closed on July 1, 2016, when the Respondent's response brief was received.

II. Findings of Fact

The parties jointly stipulate to the following facts:

1.

The Petitioner is a 62-year-old man with disabilities. He has received Social Security Disability Insurance ("SSDI") benefits since August 2013. (Memorandum of Law in Support of Petitioner's Eligibility for SLIMB Medicaid Benefits ("Petitioner's Memorandum") at unmarked p. 1.)

2.

The Petitioner's current gross monthly income totals $1,441.00 and consists solely of his monthly SSDI benefits. (Petitioner's Memorandum at unmarked p. 1.)

3.

The Petitioner resides with his wife, [redacted], a 61-year-old woman with disabilities.[2] Mrs. [redacted] has not worked in twenty years and spent the majority of this time as a mother and homemaker. She does not have her own source of income and relies on her husband for financial support. (Petitioner's Memorandum at unmarked pp. 1, 2.)

4.

The Petitioner became eligible for Medicare Part B in August 2015. Mrs. [redacted] currently is not eligible for Medicare. (Petitioner's Memorandum at unmarked p. 1.)

5.

On April 11, 2016, the Petitioner applied to have his Medicare Part B premium paid under Georgia's Q Track Medicare Savings Program, which is a component of the Medicaid Program. (Petitioner's Memorandum at unmarked p. 1.)

[2] Although the parties stipulated that Mrs. [redacted] has disabilities, it appears that she has not been found legally disabled by a government agency such as the Respondent or the Social Security Administration. (See generally Petitioner's Memorandum.)

6.

The Respondent denied the Petitioner's application for Q Track benefits, after determining that his "income for the month(s) did not fall within the limits set for this program" after we gave you all the income deductions allowed under this program." (Petitioner's Memorandum at unmarked pp. 1-2.)

7.

The Petitioner timely appealed the denial of his application. In support of his appeal, the Petitioner argues that the Respondent's Medicaid policy manual, which requires its caseworkers to determine his Medicaid eligibility based on an income standard for an individual, rather than a couple, violates federal law.

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. Comp. R. & Regs. 616-1-2-.21(1). 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).

Statutory Framework of Medicaid Program

3.

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. at 502.

4.

Under the federal Medicaid Program, states that receive federal Medicaid funds must make assistance payments to certain low-income Medicare beneficiaries. 42 U.S.C. § 1396a(a).

5.

Specifically, a state Medicaid plan must make assistance available for Medicare cost-sharing to "qualified medicare beneficiaries." 42 U.S.C. § 1396a(a)(10(E)(i). The parameters of this assistance are described in 42 U.S.C. § 1396d(p) as follows:

(1) The term "qualified medicare beneficiary" means an individual—

(A) who is entitled to hospital insurance benefits under part A of title XVIII [42 U.S.C. §§ 1395c *et seq.*] (including an individual entitled to such benefits pursuant to an enrollment under section 1818 [42 U.S.C. § 1395i-2], but not including an individual entitled to such benefits only pursuant to an enrollment under section 1818A [42 U.S.C. § 1395i-2a]),

(B) whose income (as determined under section 1612 [42 U.S.C. § 1382a] for purposes of the supplemental security income program, except as provided in paragraph (2)(D) does not exceed an income level established by the State consistent with paragraph (2), and

(C) whose resources (as determined under section 1613 [42 U.S.C. § 1382b] for purposes of the supplemental security income program) do not exceed twice the maximum amount of resources that an individual may have and obtain benefits under that program or, effective beginning with January 1, 2010, whose resources (as

so determined) do not exceed the maximum resource level applied for the year under subparagraph (D) of section 1860D-14(a)(3)[42 USCS § 1395w-114(a)(3)] (determined without regard to the life insurance policy exclusion provided under subparagraph (G) of such section) applicable to an individual or to the individual and the individual's spouse (as the case may be).

(2)

(A) The income level established under paragraph (1)(B) shall be at least the percent provided under subparagraph (B) (but not more than 100 percent) of the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981 [42 U.S.C. § 9902(2)]) applicable to **a family of the size involved**.

. . .

42 U.S.C. § 1396d(p) (emphasis added).

6.

States receiving Medicaid funds also must make a smaller range of assistance payments available to other Medicare beneficiaries. 42 U.S.C. § 1396a(a)(10)(E)(iii), (iv). Specifically, a state plan must provide:

(iii) for making medical assistance available for medicare cost sharing described in section 1905(p)(3)(A)(ii) [42 U.S.C. § 1396d(p)(3)(A)(ii)] subject to section 1905(p)(4) [42 U.S.C. § 1396d(p)(4)], for individuals who would be qualified medicare beneficiaries described in section 1905(p)(1) [42 U.S.C. § 1396d(p)(1)] but for the fact that their income exceeds the income level established by the State under section 1905(p)(2) [42 U.S.C. § 1396d(p)(2)] but is less than 110 percent in 1993 and 1994, and 120 percent in 1995 and years thereafter of the official poverty line (referred to in such section) for **a family of the size involved**; and

(iv) subject to sections 1933 and 1905(p)(4) [42 U.S.C. §§ 1396u-3, 1396d(p)(4)], for making medical assistance available for medicare cost-sharing described in section 1905(p)(3)(A)(ii) [42 U.S.C. § 1396d(p)(3)(A)(ii)] for individuals who would be qualified medicare beneficiaries described in section 1905(p)(1) [42 U.S.C. § 1396d(p)(1)] but for the fact that their income exceeds the income level established by the State under section 1905(p)(2) [42 U.S.C. § 1396d(p)(2)] and is at least 120 percent, but less than 135 percent, of the official poverty line

(referred to in such section) for **a family of the size involved** and who are not otherwise eligible for medical assistance under the State plan;

. . .

42 U.S.C. § 1396a(a)(10)(E)(iii), (iv) (emphasis added).

Provisions of Medicaid Manual

7.

In implementing the assistance payments outlined in 42 U.S.C. § 1396a(a), Georgia has created Medicare Savings Programs known as Q Track classes of assistance, whereby low-income Medicare beneficiaries who do not qualify for full Medicaid coverage may receive limited assistance. The Respondent's policy manual specifies three Q Track classes of assistance that will pay all or a portion of the cost of Medicare Part B coverage: Qualified Medicare Beneficiary ("QMB"); Specified Low-Income Medicare Beneficiary ("SLMB"); and Qualifying Individual 1 ("QI-1"). Medicaid Manual (Volume II, MAN 3480) § 2101-1.

8.

QMB provides a Medicare supplement to individuals or couples who have countable net income that is less than or equal to 100% of the Federal Poverty Level ("FPL"), plus $20.00. The gross monthly income limits are $1,010.00 for individuals and $1,355.00 for couples. Medicaid Manual § 2143-1 and Appx. A1 2016. QMB corresponds to the benefits described in 42 U.S.C. § 1396d(p).

9.

SLMB pays the monthly premium for Medicare Part B for individuals or couples who have countable net income that is greater than 100% of the FPL plus $20.00, but less than or equal to 120% of the FPL plus $20.00. The monthly income limits are $1,208.00 for individuals and $1,622.00 for couples. Medicaid Manual § 2144-1 and Appx. A1 2016. SLMB corresponds to the benefits described in 42 U.S.C. § 1396a(10)(E)(iii).

10.

QI-1 pays the monthly premium for Medicare Part B for individuals or couples who have countable net income that is greater than 120% of the FPL plus $20.00, but less than 135% of the FPL plus $20.00. Also, unlike QMB or SLMB, coverage is time-limited depending on availability of state funds. The monthly income limits are $1,357.00 for individuals and $1,823.00 for couples. Medicaid Manual § 2145-1 and Appx. A1 2016. QI-1 corresponds to the benefits described in 42 U.S.C. § 1396a(10)(E)(iv).

11.

According to the Medicaid Manual, if an applicant for Q Track assistance has a spouse who is ineligible for Medicaid, the applicant must meet the individual income limits, rather than the couple limits. Medicaid Manual § 2509-1. Thus, the income of both spouses may be considered jointly only when both spouses are eligible for Medicaid. Id.; see also Medicaid Manual § 2503-1 and Appendix F, Form 172.[3]

Analysis

12.

As an initial matter, the Respondent asserts that it has the authority to set the criteria for Q Track eligibility, and thus has discretion to assess applicants with Medicaid-ineligible spouses based on the individual income limits. However, any Q Track policy set by the Respondent

[3] The "ABD Medicaid Individual/Couple/Spouse to Spouse Deeming Budget Sheet," which is used to calculate income, states the following:

> **For Q Track eligibility, A/R [applicant/recipient] must be eligible for the COA [class of assistance] as an individual (Section A), in order to meet eligibility for the same COA as an individual with an ineligible spouse (Section C).** Example: A/R is SLMB eligible as an individual (Section A) but appears to be QMB eligible under Spouse to Spouse Deeming budget (Section C). A/R will only [be] eligible for SLMB, since s/he is ineligible for QMB as an individual.

Medicaid Manual Appendix F, Form 172 (emphasis added). See also Medicaid Manual § 2502-9 (instructing that Form 172 must be completed to calculate Spouse to Spouse Deeming of Income "when the A/R is a Medicaid individual living with an ineligible spouse in LA-A or B"); Medicaid Manual § 2507-1 (instructing that Form 172 may be used for spouse to spouse deeming for the Q Track programs).

nonetheless must comply with federal requirements for Medicare Savings Programs. See Ga. Dep't of Behavioral Health & Developmental Disabilities v. United Cerebral Palsy of Ga., Inc., 298 Ga. 779, 780 (2016) (holding that states that elect to join Medicaid must administer state Medicaid plans that meet federal requirements); cf. Dep't of Human Resources v. Anderson, 218 Ga. App. 528, 529 (1995) ("An administrative rule which exceeds the scope of or is inconsistent with the authority of the statute upon which it is predicated is invalid.").

13.

Thus, the question presented is whether the Respondent's existing policies for Q Track programs—which measure an applicant's income by individual rather than couple standards when said applicant's spouse is ineligible for Medicaid—comply with 42 U.S.C. § 1396a(a)(E)(10) and § 1396d(p), which require a state to compare a beneficiary's income with the poverty level for "a family of the size involved."

14.

""The judiciary is the final authority on issues of statutory construction and must reject administrative constructions which are contrary to clear congressional intent.'" Cook v. Glover, 295 Ga. 495, 500 (2014) (quoting Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 843 n.9 (1984)). "While judicial deference is afforded an agency's interpretation of statutes it is charged with enforcing or administering, the agency's interpretation is not binding on the courts, which have the ultimate authority to construe statutes." Handel v Powell, 284 Ga. 500, 553 (2008).

15.

Here, federal Medicaid statutes do not define the phrase "a family of the size involved." See 42 U.S.C. § 2 *et seq.*; see also Wheaton v. McCarthy, 800 F.3d 282, 286 (6th Cir. 2015); Martin v. N.C. HHS, 194 N.C. App. 716, 722 (2009). Moreover, federal statutes do not provide

definitions for "family" or "family size" that would be applicable to the Q Track provisions in § 1396a(a)(10)(E) and § 1396d(p).[4] See 42 U.S.C. § 2 *et seq.* Federal Medicaid regulations are likewise silent on this matter.

16.

However, the plain meaning of "family" in § 1396d(p)(2)(A) and § 1396a(a)(10)(E)(iii)-(iv) indicates that Congress intended for a beneficiary's spouse to be counted among a beneficiary's family members for purposes of determining eligibility for Medicare Savings Programs. See Ga. Dep't of Natural Res. v. Ctr. for a Sustainable Coast, Inc., 294 Ga. 593, 603 (2014) (holding that fundamental rules of statutory construction require giving words their plain and ordinary meaning). The online Merriam-Webster Dictionary expressly defines "family" as "**spouse** and children," as well "a group of individuals living under one roof and usually under one head. See *http://www.merriam-webster.com/dictionary/family* (emphasis added). Similarly, Black's Law Dictionary defines "family" as "a group of persons connected by blood, by affinity, or **by law**," and "immediate family" is defined as "a person's parents, **spouse**, children, and siblings." BLACK' LAW DICTIONARY 620 (7th ed. 1990) (emphasis added). In this case, whether or not Mrs. Howard is eligible for Medicaid is simply irrelevant to her status as a member of the Petitioner's family.

17.

Furthermore, the meaning of "size" in the context of "family" is self-explanatory, as it refers to individuals who make up the family unit. The term "involved," moreover, clearly

[4] The only instances in which Title 42 seeks to specify the meaning of "family" are in the statutory provisions for Medicare Part D. 42 U.S.C. § 1395w-114. Medicare Part D provides benefits to "a subsidy eligible individual . . . who is determined to have income that is below 135 percent of the poverty line applicable to **a family of the size involved** and who meets the resources requirement . . . ." Id. § 1395w-114(a)(1) (emphasis added). The federal Department of Health and Human Services, in turn, defined "family size" as *including* an applicant's spouse. 42 C.F.R. § 423.772. See also 42 U.S.C. § 1395w-141(f)(1)(B), 42 C.F.R. § 403.802 (defining "family size," in reference to the drug discount card and transitional assistance programs, as "one for individuals who are single, and two for individuals who are married").

identifies which family is being considered—i.e., the beneficiary's family. Nothing in these words' ordinary meanings suggests that their meaning would change when placed together in context. Thus, "a family of the size involved" is clearly intended to include, at the least, spouses who live in the same household with the applicant.[5]

18.

Other courts that have addressed this issue have held that state Medicaid agencies must include an applicant's Medicaid-ineligible spouse when determining the size of the applicant's family. Wheaton, 800 F.3d at 286-88; Martin, 194 N.C. App. at 722. Indeed, as the Sixth Circuit Court of Appeals aptly pointed out:

> In sum, that a statute is complicated does not mean an agency can interpret it any way the agency wants. And the operative term as applied here—"family"—is simple. . . . the Department's use of an individual-need standard to deny the plaintiffs' applications, and specifically the State's exclusion of each plaintiff's spouse in determining the size of his family, was contrary to federal law.

Wheaton, 800 F.3d at 289.

19.

Therefore, in assessing the Petitioner's eligibility for Q Track benefits, the Respondent should have compared the Petitioner's monthly gross income to the FPL applicable to "a family of the size involved," which consists of himself and his wife. See 42 U.S.C. §§ 1396d(p)(2)(A),

[5] This interpretation runs counter to a position previously taken by the federal Centers for Medicare and Medicaid Services ("CMS"). In a 2010 letter to state Medicaid directors, CMS asserted that states were free to craft their own definition of "a family of the size involved" for purposes of Medicare Savings Programs, and that "most States follow the approach of the Supplemental Security Income (SSI) program under which either the standard for an individual or the standard for a couple is used." Letter from Cindy Mann, Director of Center for Medicaid and State Operations, CMS, SMDL # 10-003 (Feb. 18, 2010), *available at https://www.medicaid.gov/Federal-Policy-Guidance/downloads/SMD10003.PDF.* Although this letter offers insight into the federal government's interpretation of a statute, its opinions did not derive from a formal adjudication or notice-and-comment rule-making. Thus, the letter is not entitled to Chevron-style deference, and serves only a persuasive role in any legal analysis. See Christensen v. Harris County, 529 U.S. 576, 587 (2000) (stating that interpretations in agency's opinion letters are entitled to "respect" only to the extent that they have "the power to persuade"); Pruitt Corp., v. Ga. Dep't of Community Health, 284 Ga. 158, 159-60 (2008); see also Wheaton, 800 F.3d at 288-89.

1396a(10)(E)(iii)-(iv). [6] Since the Petitioner's family includes two members, the Petitioner's monthly gross income of $1,441.00 should be compared to the FPL standard for a couple, rather than for an individual. Based on the current income criteria for couples, the Petitioner's gross monthly income, without any applicable deductions, exceeds the limit for the QMB class of assistance but falls below the SLMB limit of $1,662.00.

IV. Decision

In accordance with the foregoing Findings of Fact and Conclusions of Law, the Respondent's denial of the Petitioner's Medicaid application is hereby **REVERSED**, and the matter is **REMANDED** to the Respondent for a redetermination of the Petitioner's eligibility. In redetermining the Petitioner's eligibility for Q Track classes of assistance, the Respondent shall apply the FPL standard for a couple, as specified herein. The Respondent shall notify the Petitioner of the results of the redetermination **within fourteen days** of the entry of this Initial Decision.

SO ORDERED, this JUL 27 2016 day of July, 2016.

KRISTIN L. MILLER
Administrative Law Judge

[6] Further, even if the term "family" is restricted to members who reside together, Mrs. [redacted] meets that qualification.