REL: August 2, 2019

ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2019

2180004

Jean C. May

v.

Stephanie Azar, as commissioner of the Alabama Medicaid Agency

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2180033

Stephanie Azar, as commissioner of the Alabama Medicaid Agency

v.

Jean C. May

Appeals from Montgomery Court (CV-18-900178)

EDWARDS, Judge.

In appeal number 2180004, Jean C. May ("Jean"), who is a resident of the John Knox Manor nursing home ("the nursing home"), appeals from a judgment of the Montgomery Circuit Court ("the trial court") affirming a decision of the Alabama Medicaid Agency ("the Agency") that denied Jean's application for medical assistance ("Medicaid benefits") under the State Medicaid Plan ("Alabama's State Plan") adopted pursuant to 42 U.S.C. § 1396 et seq., Title XIX of the Social Security Act. In appeal number 2180033, Stephanie Azar, as commissioner of the Agency, cross-appeals from the trial court's order denying the Agency's motion to vacate an order granting Jean's motion to waive the cost bond for preparation of the transcript of the proceedings before the Agency pursuant to Ala. Code 1975, § 41-22-20(b).

Contextual Background, Facts, and Procedural History

At issue in Jean's appeal is whether the Agency properly included certain property belonging to her husband, Isaac W. May ("Isaac"), as a resource available to Jean for the purpose of determining her eligibility for Medicaid benefits under Alabama's State Plan. However, before discussing the facts and procedural history that are relevant to Jean's appeal and

the cross-appeal, we give a general discussion of the history and purposes of the federal Medicaid program ("the Medicaid program"). The Medicaid program was established to enable each state

> "to furnish (1) medical assistance on behalf of families with dependent children and of aged, blind, or disabled individuals, whose income and resources are insufficient to meet the costs of necessary medical services, and (2) rehabilitation and other services to help such families and individuals attain or retain capability for independence or self-care."

42 U.S.C. § 1396-1. In pertinent part, "medical assistance" includes nursing-home care. See 42 U.S.C. § 1396d(a) (defining "medical assistance");[1] see also 42 U.S.C. §

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[1] "The term 'medical assistance' means payment of part or all of the cost of the following care and services or the care and services themselves, or both (if provided in or after the third month before the month in which the recipient makes application for assistance or, in the case of medicare cost-sharing with respect to a qualified medicare beneficiary described in subsection (p)(1) of this section, if provided after the month in which the individual becomes such a beneficiary) for individuals, and, with respect to physicians' or dentists' services, at the option of the State, to individuals (other than individuals with respect to whom there is being paid, or who are eligible, or would be eligible if they were not in a

1396d(f) (defining "nursing facility services"); 42 U.S.C. § 1396r(a) (defining "nursing facility").

Funds appropriated by the federal government for the Medicaid program are "used for making payments to States which

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> medical institution, to have paid with respect to them a State supplementary payment and are eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in section 1396a(a)(10)(A) of this title) not receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV, and with respect to whom supplemental security income benefits are not being paid under subchapter XVI of this chapter, who are --
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> "...
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> "(iii) 65 years of age or older,
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> "but whose income and resources are insufficient to meet all such cost --
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> "...
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> "(4)(A) nursing facility services (other than services in an institution for mental diseases) for individuals 21 years of age or older ...."

42 U.S.C. § 1396d(a) (prior to amendment effective October 24, 2018).

have submitted, and had approved by the Secretary [of the United States Department of Health and Human Services], State plans for medical assistance." 42 U.S.C. § 1396-1; see also 42 C.F.R. § 430.10. The Agency administers Alabama's State Plan. See Ala. Admin. Code (Alabama Medicaid Agency), r. 560-X-1-.02;[2] see also Ala. Code 1975, § 22-6-150(6). The Agency is authorized to "adopt rules necessary ... to administer the Alabama Medicaid Program in a manner consistent with state and federal law ...." Ala. Code 1975, § 22-6-164; see also 42 U.S.C. § 1396a (discussing state-plan requirements and options).

As the Supreme Court summarized in Schweiker v. Gray Panthers, 453 U.S. 34, 36-38 (1981):

> "The Medicaid program, established in 1965 as Title XIX of the Social Security Act (Act), 79 Stat. 343, as amended, 42 U.S.C. § 1396 et seq. (1976 ed. and Supp. III), 'provid[es] federal financial assistance to States that choose to reimburse certain costs of medical treatment for needy persons.' Harris v. McRae, 448 U.S. 297, 301 (1980). Each participating State develops a plan containing 'reasonable standards ... for determining eligibility for and the extent of medical

[2]The Agency amended its regulations effective October 26, 2018, after its denial of Jean's application for Medicaid benefits. All cites and quotes to the Agency's regulations are to those regulations in effect before those amendments.

assistance.' 42 U.S.C. § 1396a(a)(17). An individual is entitled to Medicaid if he fulfills the criteria established by the State in which he lives. State Medicaid plans must comply with requirements imposed both by the Act itself and by the Secretary of Health and Human Services (Secretary). See id., § 1396a (1976 ed. and Supp. III).

"....

"As originally enacted, Medicaid required participating States to provide medical assistance to 'categorically needy' individuals who received cash payments under one of four welfare programs established elsewhere in the Act. See § 1396a(a)(10) (1970 ed.). The categorically needy were persons whom Congress considered especially deserving of public assistance because of family circumstances, age, or disability. States, if they wished, were permitted to offer assistance also to the 'medically needy' -- persons lacking the ability to pay for medical expenses, but with incomes too large to qualify for categorical assistance. In either case, the Act required the States to base assessments of financial need only on 'such income and resources as are, as determined in accordance with standards prescribed by the Secretary, available to the applicant or recipient.' § 1396a(a)(17)(B) (emphasis added). Specifically, eligibility decisions could 'not take into account the financial responsibility of any individual for any applicant or recipient of assistance ... unless such applicant or recipient is such individual's spouse' or minor, blind, or disabled child. § 1396a(a)(17)(D).

"Believing it reasonable to expect an applicant's spouse to help pay medical expenses, some States adopted plans that considered the spouse's income in determining Medicaid eligibility and benefits. These States calculated an amount

> considered necessary to pay the basic living expenses of the spouse and 'deemed' any of the spouse's remaining income to be 'available' to the applicant, even where the applicant was institutionalized and thus no longer living with the spouse.
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> "....
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> "In 1972, Congress replaced three of the four categorical assistance programs with a new program called Supplemental Security Income for the Aged, Blind, and Disabled (SSI), 42 U.S.C. § 1381 et seq., Pub. L. 92-603, 86 Stat. 1465. Under SSI, the Federal Government displaced the States by assuming responsibility for both funding payments and setting standards of need."

(Footnotes omitted.) See also Alabama Medicaid Agency v. Primo, 579 So. 2d 1355, 1357 (Ala. Civ. App. 1991).

In 1988, Congress enacted The Medicare Catastrophic Coverage Act ("the MCCA"), which amended portions of the statutes governing the federal Medicare program, see 42 U.S.C. § 1395 et seq. (Title XVIII of the Social Security Act), and the Medicaid program. See Pub. L. No. 100-360, 102 Stat. 683 (1988). Regarding the latter, 42 U.S.C. § 1396r-5 was enacted, in part, to provide certain protections to a noninstitutionalized spouse ("the community spouse," as defined in 42 U.S.C. § 1396r-5(h)(2)) when the other spouse is institutionalized ("the institutionalized spouse," as defined

in 42 U.S.C. § 1396r-5(h)(1)) in a nursing facility or medical institution. See Wisconsin Dep't of Health & Family Servs. v. Blumer, 534 U.S. 473, 480 (2002) (quoting H.R. Rep. No. 100-105, pt. 2, p. 65 (1987)). In summarizing the history behind the enactment of the MCCA, the United States Supreme Court stated:

> "Because spouses typically possess assets and income jointly and bear financial responsibility for each other, Medicaid eligibility determinations for married applicants have resisted simple solutions. See, e.g., [Schweiker v. Gray Panthers], [453 U.S.] at 44-48 [(1981)]. Until 1989, the year the MCCA took effect, States generally considered the income of either spouse to be 'available' to the other. We upheld this approach in [Schweiker], observing that 'from the beginning of the Medicaid program, Congress authorized States to presume spousal support.' Id., at 44; see id., at 45 (quoting passage from S. Rep. No. 404, 89th Cong., 1st Sess., pt. 1, p. 78 (1965), U.S. Code Cong. & Admin. News 1965, pp. 1943, 2018, including statement that 'it is proper to expect spouses to support each other'). Similarly, assets held jointly by the couple were commonly deemed 'available' in full to the institutionalized spouse.
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> "At the same time, States generally did not treat resources held individually by the community spouse as available to the institutionalized spouse. Accordingly, assets titled solely in the name of the community spouse often escaped consideration in determining the institutionalized spouse's Medicaid eligibility. See H.R. Rep. No. 100-105, pt. 2, pp. 66-67 (1987).

> "As Congress later found when it enacted the MCCA in 1988, these existing practices for determining a married applicant's income and resources produced unintended consequences. Many community spouses were left destitute by the drain on the couple's assets necessary to qualify the institutionalized spouse for Medicaid and by the diminution of the couple's income posteligibility to reduce the amount payable by Medicaid for institutional care. See id., at 66-68. Conversely, couples with ample means could qualify for assistance when their assets were held solely in the community spouse's name.
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> "In the MCCA Congress sought to protect community spouses from 'pauperization' while preventing financially secure couples from obtaining Medicaid assistance. See id., at 65 (bill seeks to 'end th[e] pauperization' of the community spouse 'by assuring that the community spouse has a sufficient -- but not excessive -- amount of income and resources available'). To achieve this aim, Congress installed a set of intricate and interlocking requirements with which States must comply in allocating a couple's income and resources.
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> "Income allocation is governed by §§ 1396r-5(b) and (d). Covering any month in which 'an institutionalized spouse is in the institution,' § 1396r-5(b)(1) provides that 'no income of the community spouse shall be deemed available to the institutionalized spouse.' The community spouse's income is thus preserved for that spouse and does not affect the determination whether the institutionalized spouse qualifies for Medicaid. In general, such income is also disregarded in calculating the amount Medicaid will pay for the institutionalized spouse's care after eligibility is established.

"Other provisions specifically address income allocation in the period after the institutionalized spouse becomes Medicaid eligible. Section 1396r-5(b)(2)(A) prescribes, as a main rule, that if payment of income is made solely in the name of one spouse, that income is treated as available only to the named spouse (the 'name-on-the-check' rule). Section 1396r-5(d) provides a number of exceptions to that main rule designed to ensure that the community spouse and other dependents have income sufficient to meet basic needs. Among the exceptions, § 1396r-5(d)(3) establishes for the community spouse a 'minimum monthly maintenance needs allowance,' or MMMNA. The MMMNA is calculated by multiplying the federal poverty level for a couple by a percentage set by the State. Since 1992, that percentage must be at least 150%, §§ 1396r-5(d)(3)(A)-(B), but the resulting MMMNA may not exceed $1,500 per month in 1988 dollars ($2,175 in 2001 dollars), §§ 1396r-5(d)(3)(C), (g).[2]

"If the income of the community spouse determined under § 1396r-5(b)(2), which states the 'name-on-the-check' rule, is insufficient to yield income equal to or above the MMMNA, § 1396r-5(d)(1)(B) comes into play. Under that provision, the amount of the shortfall is 'deducted' from the income of the institutionalized spouse -- reducing the amount of income that would otherwise be considered available for the institutionalized spouse's care -- so long as that income is actually made available to the community spouse. The amount thus reallocated from the institutionalized spouse to the community spouse is called the 'community spouse monthly income allowance,' or CSMIA, § 1396r-5(d)(1)(B). The provision for this allowance ensures that income transferred from the institutionalized spouse to the community spouse to meet the latter's basic needs is not also considered available for the former's care. As a result, Medicaid will pay a greater portion of the

institutionalized spouse's medical expenses than it would absent the CSMIA provision.

"Resource allocation is controlled by §§ 1396r-5(c) and (f). For purposes of establishing the institutionalized spouse's Medicaid eligibility, a portion of the couple's assets is reserved for the benefit of the community spouse. § 1396r-5(c)(2). To determine that reserved amount (the CSRA [community spouse resource allowance]), the total of all of the couple's resources (whether owned jointly or separately) is calculated as of the time the institutionalized spouse's institutionalization commenced; half of that total is then allocated to each spouse (the 'spousal share'). § 1396r-5(c)(1)(A). The spousal share allocated to the community spouse qualifies as the CSRA, subject to a ceiling of $60,000 indexed for inflation (in 2001, the ceiling was $87,000) and a floor, set by the State, between $12,000 and $60,000 (also indexed for inflation; in 2001, the amounts were $17,400 and $87,000). §§ 1396r-5(c)(2)(B), (f)(2)(A), (g). The CSRA is considered unavailable to the institutionalized spouse in the eligibility determination, but all resources above the CSRA (excluding a small sum set aside as a personal allowance for the institutionalized spouse, currently $2,000, see 20 CFR § 416.1205 (2001)) must be spent before eligibility can be achieved. § 1396r-5(c)(2).

"The MCCA provides for a 'fair hearing' mechanism through which a couple may challenge the State's determination of a number of elements that affect eligibility for, or the extent of assistance provided under, Medicaid. §[] 1396r-5(e). The dispute in this case centers on § 1396r-5(e)(2)(C), which allows a couple to request a higher CSRA. That section provides in relevant part:

> "'If either ... spouse establishes that the [CSRA] (in relation to the amount of income

> generated by such an allowance) is inadequate to raise the community spouse's income to the [MMMNA], there shall be substituted, for the [CSRA] under subsection (f)(2) of this section, an amount adequate to provide [the MMMNA].'
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> "If the couple succeeds in obtaining a higher CSRA, the institutionalized spouse may reserve additional resources for posteligibility transfer to the community spouse. The enhanced CSRA will reduce the resources the statute deems available for the payment of medical expenses; accordingly, the institutionalized spouse will become eligible for Medicaid sooner.
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> "_____
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> "[2]The State must also provide for an 'excess shelter allowance' if necessary to cover, inter alia, unusually high rent or mortgage payments. §§ 1396r-5(d)(3)(A)(ii), (d)(4). Either spouse may request a hearing to seek a higher MMMNA for the community spouse; such an increase will be allowed if the couple establishes 'exceptional circumstances resulting in significant financial duress.' § 1396r-5(e)(2)(B)."

Blumer, 534 U.S. at 479-484 (some footnotes omitted); see also Hutcherson v. Arizona Health Care Cost Containment Sys. Admin., 667 F.3d 1066, 1069 (9th Cir. 2012) ("The CSRA [community spouse resource allowance] is designed to ensure that the community spouse can meet his or her minimum monthly maintenance needs. All assets above the CSRA must be spent before the institutionalized individual can be eligible for

Medicaid assistance." (internal citation omitted)). The United States Supreme Court further noted that the resource allocation under 42 U.S.C. § 1396r-5 provides for certain exclusions: "[E]xclude[d] from the definition of 'resources' [are] the couple's home, one automobile, personal belongings, and certain other forms of property. §§ 1382b(a) (1994 ed. and Supp. V), 1396r-5(c)(5) (1994 ed.)." Blumer, 534 U.S. at 482 n.3.

As the foregoing illustrates, and not surprisingly, adding the complexities of the Medicaid program into the federal government's amalgamation of several other welfare programs addressed to somewhat different concerns, developing the eligibility criteria that must be met to qualify for the Medicaid program and those other programs, attempting to efficiently allocate the limited available public resources among those programs, and adjusting for the different and changing responsibilities of the federal government and state governments in relation to those programs has resulted in statutory and regulatory framework of mythical-hydra-like complexity. As one commentator has noted:

> "'One of the few pleasant aspects of slogging through the federal Medicaid

> statute, regulations, and guidelines, and trying to understand their interrelationship with a given state's Medicaid program, is that the natural confusion which this effort engenders places one in the company of numerous distinguished jurists. The list of judges who have figuratively wept in the face of this program's complexity is a decidedly impressive one. Judge Friendly, describing a particularly arcane portion of the statute, called it 'almost unintelligible to the uninitiated.'[3] Justice Powell, discussing the Social Security Act in the context of a Medicaid case, described it as 'Byzantine' and 'among the most intricate ever drafted by Congress.'[4] Chief Justice Burger, in the unusual posture of the sole dissenter opposing a majority opinion authored by Justice Rehnquist, termed 'the Medicaid program ... a morass of bureaucratic complexity,' and accused the Court majority of 'get[ting] lost in the Medicaid maze.'[5] District court judges have been no less kind; one called the Medicaid statute 'an aggravated assault on the English language, resistant to attempts to understand it,'[6] while another, in perhaps the most abstruse and literary reference, referred to the federal Medicaid regulations as 'so drawn that they have created a Serbonian bog from which the

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[3]Friedman v. Berger, 547 F.2d 724, 727 n.7 (2d Cir. 1976).

[4]Schweiker, 453 U.S. at 43.

[5]Herweg v. Ray, 455 U.S. 265, 279 (1982) (Burger, C.J., dissenting).

[6]Friedman v. Berger, 409 F. Supp. 1225, 1225-26 (S.D.N.Y. 1976).

> agencies are unable to extricate themselves.'[7]
>
> "... The Serbonian Bog is 'a bog or marsh once surrounding Lake Serbonis (now dry), famous for swallowing up in its shifting sands those attempting to cross it.'"

Joel C. Dobris, Medicaid Asset Planning by the Elderly: A Policy View of Expectations, Entitlement and Inheritance, 24 Real Prop. Prob. & Tr. J. 1, 11-12 (1989) (quoting National Senior Citizens Law Center, Representing Older Persons 23 (1985), and Funk & Wagnalls New Standard Dictionary of the Eng. Language 2231 (1963) (definition of "Serbonian Bog"), respectively) (footnotes omitted). Soberly prepared for the task at hand, we turn our attention to the facts and issues before us.

On January 13, 2016, Jean was admitted into the nursing home, which is located in Montgomery County. Jean was approximately 83 years old when she was admitted to the nursing home. Isaac continued to reside in their marital residence, which is also located in Montgomery County. Isaac was approximately 85 years old when Jean was admitted to the nursing home.

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[7]Feld v. Berger, 424 F. Supp. 1356, 1357 (S.D.N.Y. 1976).

When Jean was admitted to the nursing home, she and Isaac owned resources valued at approximately $517,599.19. Those resources included their marital residence; life-insurance and burial-insurance policies; bank accounts; Southern Company stock; automobiles; and a one-half interest owned by Isaac in a commercial property hereinafter referred to as the "Wagnon property."[8] Jean and Isaac's son owns an automobile-parts business that operates on the Wagnon property, which also contains an automobile-salvage yard. The automobile-parts business had originally been owned by Isaac, who conveyed that business to his son on January 1, 2010.

After Jean was admitted to the nursing home, Isaac began liquidating some of his and Jean's resources to pay for Jean's nursing-home care. On February 28, 2017, Jean filed an application with the Agency for Medicaid benefits.[9] It is

[8]The remaining one-half interest in the Wagnon property is apparently owned by the estate of Johnny McInnis.

[9]Isaac executed the application as Jean's appointed representative and sponsor; Jean's son and daughter-in-law were later added as additional appointed representatives for Jean. See Ala. Admin. Code (Alabama Medicaid Agency), r. 560-X-25-.04. Also, Isaac, who is Jean's attorney-in-fact, subsequently retained an attorney to represent Jean regarding her application for Medicaid benefits.

undisputed that, for purposes of determining Jean's eligibility for Medicaid benefits, the maximum value of resources available to Jean, subject to certain exclusions discussed infra, could not exceed $2,000. It is also undisputed that, in making its resource assessment, the Agency was required to consider resources of both Jean, as the institutionalized spouse, and Isaac, as the community spouse, subject to certain exclusions discussed infra. Further, it is undisputed that the maximum allowable community spouse resource allowance ("CSRA") when Jean filed her application for Medicaid benefits was $120,900.

As part of the documentation submitted to the Agency in support of Jean's application for Medicaid benefits, she included a copy of a Montgomery County ad valorem tax assessment for the Wagnon property; that assessment valued the Wagnon property at approximately $382,300. Jean also supplied the Agency with a copy of a document entitled "Exclusive Right to Sell & Lease" ("the listing agreement"). The listing agreement purportedly authorized Hodges Commercial Real Estate, LLC, to sell or lease the Wagnon property "[a]t the sales price of $675,000 or at the annual rental of $50,000-

$60,000 or at such price and terms as shall be acceptable to" the owners of the Wagnon property. The listing agreement further provided that the "[c]urrent business would have at least 60 days to move out."[10] In addition to a copy of the listing agreement, Jean also supplied the Agency with an "Addendum to Exclusive Authorization to Sell Listing Agreement." The addendum was dated March 6, 2017, and purportedly reduced the offering price of the Wagnon property from $675,000 to $575,000.

Also, during the Agency's evaluation of Jean's application for Medicaid benefits, the Agency supplied her with an "Agreement to Sell Property" form (Alabama Medicaid Agency Form 226) ("the ATSP form"). According to Carolyn C. Smith, the Medicaid eligibility specialist that the Agency assigned to review Jean's application, the ATSP form is supplied by the Agency when an applicant seeks to exclude real property from consideration as an available resource for purposes of determining the applicant's eligibility for

[10]When Jean filed her application for Medicaid benefits, it does not appear that the automobile-parts business owned and operated by Jean and Isaac's son was paying rent for its use of the Wagnon property. Materials in the record suggest that the business may have had financial difficulties.

Medicaid benefits. Isaac completed and executed the ATSP form regarding his interest in the Wagnon property. That form is dated March 20, 2017, and stated that the estimated current market value of the Wagnon property was $450,000. The ATSP form indicates that the "Medicaid Claimant" was Jean.[11]

According to the Agency, it was required to apply a special set of laws to determine Jean's eligibility for Medicaid benefits. See 42 U.S.C. § 1396r-5, and Ala. Admin. Code (Alabama Medicaid Agency), r. 560-X-25-.16, discussed infra. Purportedly pursuant to those laws, the Agency determined the value of Jean's and Isaac's resources when Jean entered the nursing home, a process which colloquially is referred to as a "snapshot." See 42 U.S.C. § 1396r-5(c)(1)(A) and (c)(2); Ala. Admin. Code (Alabama Medicaid Agency), r. 560-X-25-.16(3)(a) and (9)(b). A snapshot is used to

[11]The ATSP form includes references to several regulations that are part of the eligibility requirements for the program for Supplemental Security Income for the Aged, Blind, and Disabled, 42 U.S.C. § 1381 et seq. (Title XVI of the Social Security Act), which, as hereinafter discussed, are applicable to many applicants for Medicaid benefits through the pertinent state-plan requirements under § 1396a(a) (part of Title XIX). The regulations referenced in the ATSP form do not appear to be pertinent to the Agency's determination of Jean's eligibility for the reasons discussed infra, among others.

determine the value of the nonexcluded resources that the community spouse may retain upon a determination of the institutionalized spouse's eligibility for Medicaid benefits, i.e., the CSRA, see 42 U.S.C. § 1396r-5(c)(1) and (f)(2); Ala. Admin. Code (Alabama Medicaid Agency), r. 560-X-25-.16(9)(b), and the value of the remaining nonexcluded resources that are considered to be available to the institutionalized spouse for purposes of determining that spouse's eligibility for Medicaid benefits. See 42 U.S.C. § 1396r-5(c)(2); Ala. Admin. Code (Alabama Medicaid Agency), r. 560-X-25-.16(9)(b). The value of any excess nonexcluded resources must be "spent down" on qualified expenses -- after the date of institutionalization -- before the institutionalized spouse will be eligible to receive Medicaid benefits. See, e.g., Singleton v. Commonwealth of Kentucky, 843 F.3d 238, 240 (6th Cir. 2016) ("By statutory design, an individual who needs custodial care must spend down any assets that exceed the Medicaid eligibility threshold before the government will pick up the tab.").

By letter dated August 4, 2017, the Agency informed Jean and Isaac that it was denying Jean's application for Medicaid

benefits because Jean purportedly had excess resources.[12] According to a "Resource Assessment Notice" prepared by the Agency and also dated August 4, 2017, when Jean entered the nursing home, she and Isaac owned nonexcluded resources valued at $335,599.19, including $191,500 for the value of Isaac's one-half interest in the Wagnon property, $4,073.10 in a bank account, $62,933.52 in "excess" cash value in a life-insurance policy, $1,410.74 in a savings account, $67,237.63 in Southern Company stock, $1,444.20 in an individual-retirement account, and an automobile valued at $7,000.[13] Also, the Agency determined that Isaac was entitled to protect $120,900 as his CSRA. Thus, according to the August 2017 notice,

> "[t]he remaining amount $ $214,699.19 is a countable resource for the institutionalized spouse [J.C.M.] and is used to determine [her] eligibility for Medicaid [benefits]. When the total countable

[12]The August 4, 2017, denial was actually a denial of Jean's reapplication for Mediciad benefits; her application initially had been denied on June 9, 2017, based on Jean's alleged failure to provide adequate information in support of her application. The initial denial, however, is not pertinent to the present case.

[13]The excess resources did not include the marital residence or a small life-insurance policy, both of which were subject to applicable exclusions for purposes of determining Isaac's CSRA and the remaining resources considered available to Jean.

> resources have been spent down to the amount that can be protected for the community spouse plus $2,000.00 for the institutionalized spouse, an application should be made to the local Medicaid District Office."

Jean timely filed a request for a fair hearing regarding the Agency's denial of her application for Medicaid benefits. See Ala. Code 1975, § 41-22-12; Ala. Admin. Code (Alabama Medicaid Agency), r. 560-X-3-.01 et seq. (discussing the fair-hearing procedures). An administrative-law judge ("ALJ") was appointed to conduct Jean's fair hearing. The ALJ held an ore tenus proceeding on October 13, 2017. At the hearing, the Agency argued that Isaac's one-half interest in the Wagnon property was a nonexcluded resource for purposes of determining both the value of Isaac's CSRA and Jean's eligibility for Medicaid benefits. See Ala. Admin. Code (Alabama Medicaid Agency), r. 560-X-25-.16(9)(b)1. ("The following types of otherwise excluded resources ... shall be included in the assessment: Equity value of real property normally excluded from assets due to a bona fide effort to sell ...."); see also 42 U.S.C. § 1396r-5(c)(2) and (5), discussed infra. According to Jean, however, Isaac's one-half interest in the Wagnon property was an included resource for

purposes of determining his CSRA (thus increasing the value of the resources Isaac could retain), but an excluded resource for purposes of determining Jean's eligibility for Medicaid benefits. Jean contended that the Agency could not consider Isaac's one-half interest in the Wagnon property as an available resource to her because, pursuant to what she claimed was an applicable exclusion, Isaac had listed the Wagnon property for sale in March 2016 and had thereafter made, and was continuing to make, a bona fide effort to sell the property. See Ala. Admin. Code (Alabama Medicaid Agency), r. 560-X-25-.06(2)(e)5 (describing the bona-fide-effort-to-sell-interest-in-real-property exclusion); see also 42 U.S.C. § 1382b(b) (describing the "reasonable efforts to sell" exclusion for purposes of conditional eligibility for Supplemental Security Income for the Aged, Blind, and Disabled, 42 U.S.C. § 1381 et seq. (Title XVI of the Social Security Act)); 20 C.F.R. § 416.1245(b)(1).[14] As discussed

[14]In Jean's appellate brief, she notes that the August 4, 2017, letter informing her of the denial of her application references Ala. Admin. Code (Alabama Medicaid Agency), r. 560-X-25-.06 as the basis for the Agency's decision. She argues that the Agency thereafter changed the basis for its decision to Ala. Admin. Code (Alabama Medicaid Agency), r. 560-X-25-.16. That argument, however, is without merit. Rule 560-X-

infra, eligibility criteria for the Supplemental Security Income for the Aged, Blind, and Disabled program ("the SSI program") are generally made applicable to the Medicaid program pursuant to the state-plan requirements described in 42 U.S.C. § 1396a. Resolution of the issues Jean raises on appeal essentially depend on a determination whether § 1396r-5 (which is part of Title XIX governing the Medicaid program) establishes an exception to the application of the exclusion described in § 1382b(b) (which is part of Title XVI governing the SSI program).

On December 14, 2017, the ALJ issued a recommendation to the commissioner of the Agency, Stephanie Azar ("Commissioner Azar"), regarding the Agency's denial of Jean's application for Medicaid benefits. The December 2017 recommendation

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25-.06 describes both the $2,000 resource cap, r. 560-X-25-.06(1), and resource exclusions, r. 560-X-25-.06(2). The August 4, 2017, letter clearly states that the Agency's denial of Jean's application was based on "excess resources," i.e., resources in excess of the resource cap. Also, at the hearing before the ALJ and in Jean's post-hearing briefs, Jean did not object to the Agency's reliance on r. 560-X-25-.16 and 42 U.S.C. § 1396r-5 as the basis for its determination that she had excess resources; nor did Jean make any argument to the ALJ that the Agency should be or could be estopped from relying on r. 560-X-25-.16 and § 1396r-5. Instead, Jean argued that r. 560-X-25-.16 was not controlling and was inconsistent with federal law.

discusses the evidence presented at the hearing and various state regulations, federal regulations, and federal statutes governing the Agency and its eligibility determinations. The December 2017 recommendation then concludes "that the Agency's August 4, 2017, excess resource determination be reevaluated and that [Isaac]'s ownership interest in the Wagnon Property be excluded, under the bona fide effort to sell exclusion, as a countable resource for eligibility purposes."

The ALJ submitted the December 2017 recommendation to Commissioner Azar for final administrative decision. See Ala. Admin. Code (Alabama Medicaid Agency), r. 560-X-3-.01(2). On January 12, 2018, Commissioner Azar issued a final administrative decision rejecting the ALJ's recommendation and upholding the Agency's denial of Jean's application for Medicaid benefits:

> "It is ... the recommendation of the ALJ that the Agency's August 4, 2017, excess resource determination be reevaluated and that [Isaac's] ownership interest in the Wagnon property be excluded, under the bona fide effort to sell exclusion, as a countable resource for eligibility purposes.
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> "....
>
> "As you are aware, the Medicaid program requires applicants to meet specific income and resource

> limits to obtain financial eligibility for Medicaid benefits. Medicaid acknowledges resource and income exclusions exist in certain circumstances. One of these is the bona fide effort to sell exclusion. With this exclusion an individual may, in some cases, receive a property exclusion in exchange for agreeing to reimburse the Agency for any expenditures during the period for which the property, which would otherwise be a countable resource, is excluded by Medicaid as a countable asset.
>
> "... Rule 560-X-25-.16(9)(b), [Ala. Admin. Code (Alabama Medicaid Agency),] specifically addresses the bona fide effort to sell exclusion as the same pertains to married couples during a resource assessment. Specifically, Step 1 of the resource assessment states: 'The following type of otherwise excluded resources ... shall be included in the assessment: Equity value of real property normally excluded from assets due to a bona fide effort to sell....' (Emphasis added.) The ALJ discussed this rule in the recommendation. However, I do not concur with the ALJ's application of the rule.
>
> "The Agency followed federal and state rules and regulations by including the resource amount in the resource assessment. The Agency correctly assessed a protected amount of resources to the community spouse while leaving the 'remaining amount ... a countable resource ... to be used for the institutionalized spouse.' Id. Therefore, regarding this issue, I do not concur with the ALJ and reinstate the Agency's determination of excess resources."

On January 26, 2018, Jean filed a notice of appeal with the Agency, informing it that she intended to seek judicial review of the January 2018 decision. On January 29, 2018,

Jean filed a petition in the trial court seeking judicial review of the Agency's decision pursuant to the Alabama Administrative Procedure Act, Ala. Code 1975, § 41-22-1 et seq. See Ala. Code 1975, § 41-22-20(d). Jean also filed a motion for waiver of the requirement that she file "a cost bond with the [A]gency to cover the reasonable costs of preparing the transcript of the proceeding" before the ALJ. Ala. Code 1975, § 41-22-20(b) (indicating that the cost bond may be "waived by the agency or the court on a showing of substantial hardship"). In Jean's motion, she alleged that she was "impoverished" and that "requiring [her] to furnish a cost bond from her meager resources as a condition of appeal would cause her undue hardship." In support of her motion, Jean submitted an affidavit from Isaac, as her attorney-in-fact. In addition to stating that Jean was a resident in the nursing home and that the Agency had denied her application for Medicaid benefits, Isaac's affidavit states:

> "[Jean] was required to spend down her own resources below $2,000 in order to seek Medicaid eligibility in the first place; therefore, she is impoverished and has almost no assets to her name. Requiring her to pay a cost bond from her meager resources in order to initiate this appeal would be a substantial hardship.

> "I further swear that the following is true relating to [Jean's] ability to pay the cost of prosecuting the appeal: [Jean] is not presently employed. Within the last 12 months her sole source of income was $759.00 per month of Social Security benefits. This income is applied toward the cost of her nursing home care, which is approximately $6,000 per month. [Jean] has less than $2,000 on deposit in a bank account which receives her Social Security funds. She owns a one-half interest in a 2007 Chevrolet Tahoe jointly owned with me; this vehicle is my sole source of transportation. As her husband, I am [Jean's] sole dependent."

On February 1, 2018, the trial court entered an order finding that Jean was "impoverished[] and that requiring [her] to post a cost bond as a condition of appeal would cause her undue hardship." The order then waived the cost bond and decreed that Jean "shall proceed in forma pauperis without prepayment of costs or fees or the necessity of giving security therefor."

On February 23, 2018, the Agency filed a motion requesting that the trial court vacate its February 2018 order waiving the cost bond. Among the reasons offered in support of the motion, the Agency alleged that Jean had "failed to prove both her indigent status and a substantial hardship." Specifically, the Agency contended that Isaac's affidavit "neglected ... to indicate [to the trial court] any of [Jean's

and Isaac's] resources that [had] resulted in [the Agency's] denying [Jean's] eligibility" and that the Agency had

> "denied [Jean]'s application for Medicaid eligibility after it determined that the substantial $335,599.19 value of the undisputed resources of [Jean] and [Isaac] -- for which neither ownership nor values were ever objected -- far exceeded the federal Medicaid eligibility resource limit of $2,000.00. The $335,599.19 valuation of the couple's resources did not include the value of the home (valued at $181,300.00) or [Jean]'s life insurance policy (valued at $700.00). [The Agency]'s denial of [Jean]'s eligibility, which was based on a restricted calculation of resources, should therefore be prima facie evidence that [Jean] is not indigent and does not have a substantial hardship."

The Agency's motion to vacate continued: "[E]ven if this Court does not accept [the Agency]'s determinations as prima facie just and reasonable, [Jean] still failed to prove to this Court both her indigent status and a substantial hardship to waive the statutorily required cost bond." The Agency made no evidentiary submission in conjunction with its motion to vacate.

On March 29, 2018, the Agency filed the transcript of the proceedings before the ALJ, along with the exhibits filed in that proceeding. Along with that filing, the Agency filed a notice renewing its motion to vacate the trial court's order waiving the cost bond. The Agency did not request that the

trial court impose costs on Jean should her petition for judicial review be unsuccessful.

On April 2, 2018, the trial court held a hearing on the Agency's motion to vacate. At the hearing, counsel for Jean noted that the Agency had offered no evidence regarding Jean's financial situation and that the values it had referenced were not the present values of Jean's resources, but the values of those resources owned by her and Isaac when Jean entered the nursing home. The court then asked counsel for the Agency: "Is the State questioning [Isaac's] affidavit?" Counsel for the Agency responded: "Your Honor, I think the crux of the issue really falls down to we never had the chance to discuss this before an order was issued" waiving the cost bond. After further discussions, counsel for the Agency later agreed with the trial court's characterization of the "crux of the issue" regarding the waiver of the cost bond: That "is also kind of the crux of the whole issue in this case." Counsel for Jean then responded that "resources for Medicaid purposes ... is not the same as what [Jean] owns in the eyes of the laws of the state of Alabama."

After the hearing, the Agency filed a brief in support of its motion to vacate, and Jean filed an opposition to that motion. The Agency requested that the trial court enter an order vacating the order waiving the cost bond, and it noted that cost of the administrative-hearing transcript was $1,872.75. On April 20, 2018, the trial court entered an order denying the Agency's motion to vacate. In pertinent part, that order states that "there is a separate standard in determining whether [Jean] is required to post a bond to maintain an appeal than what the requirements may be for eligibility of Medicaid benefits."[15]

The parties filed briefs with the trial court regarding their respective positions on the Agency's denial of Jean's application for Medicaid benefits. On August 20, 2018, the trial court held a hearing, at which it received arguments of counsel for the parties. On August 30, 2018, the trial court

[15]Also on April 20, 2018, the trial court entered an order referring Jean's appeal to a special master. The Agency filed a petition for a writ of mandamus with this court regarding the referral order, and we ordered the trial court to vacate that order. See Ex parte Alabama Medicaid Agency, 267 So. 3d 326 (Ala. Civ. App. 2018).

entered an order upholding the Agency's denial of Jean's application.

Jean timely filed a notice of appeal to this court, see Ala. Code 1975, § 12-3-10, and Commissioner Azar timely filed the cross-appeal. On October 9, 2018, this court entered an order consolidating the appeal and the cross-appeal.

Standard of Review

Section 41-22-20(k), Ala. Code 1975, governs judicial review of administrative-agency decisions and provides, in pertinent part, that "the agency order shall be taken as prima facie just and reasonable and the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact, except where otherwise authorized by statute." Also, as this court has stated, the Agency's "'determination of noneligibility must be reviewed with a presumption of correctness.'" Alabama Medicaid Agency v. Hardy, 202 So. 3d 690, 694 (Ala. Civ. App. 2016) (quoting Wood v. Baggiano, 509 So. 2d 242, 243 (Ala. Civ. App. 1986)). Section 41-22-20(k) further provides that

> "[t]he court may reverse or modify the decision or grant other appropriate relief from the agency action ... if substantial rights of the petitioner

> have been prejudiced because the agency action is any one or more of the following:
>
> > "(1) In violation of constitutional or statutory provisions;
> >
> > "(2) In excess of the statutory authority of the agency;
> >
> > "(3) In violation of any pertinent agency rule;
> >
> > "....
> >
> > "(5) Affected by other error of law;
> >
> > "(6) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> >
> > "(7) Unreasonable, arbitrary, or capricious, or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion."

We note that the pertinent facts are undisputed, and Commissioner Azar's decision was based solely on her understanding of applicable law. "Our review of [the Agency's] conclusions of law and its application of the law to the facts ... are de novo." Ex parte STV One Nineteen Sr. Living, LLC, 161 So. 3d 196, 202 (Ala. 2014); see also Ex parte Wilbanks Health Care Servs., Inc., 986 So. 2d 422, 425 (Ala. 2007). It is axiomatic that a "regulation[], in order to be valid[,] must be consistent with the statute under which

[it is] promulgated." United States v. Larionoff, 431 U.S. 864, 873 (1977). However, generally "a court accepts an administrative interpretation of the statute by the agency charged with its administration, if the interpretation is reasonable." Ex parte State Dep't of Revenue, 683 So. 2d 980, 983 (Ala. 1996); see also § 41-22-20(k)(1), (2), (3), (5), and (7); Ex parte Torbert, 224 So. 3d 598, 599-600 (Ala. 2016); Alabama Bd. of Nursing v. Herrick, 454 So. 2d 1041, 1043 (Ala. Civ. App. 1984). A court will defer to an agency's reasonable interpretation of its own regulations unless that interpretation "'"is plainly erroneous or inconsistent with the regulation."' United States v. Larionoff, 431 U.S. 864, 872, 97 S. Ct. 2150, 2155, 53 L. Ed. 2d 48 (1977) (quoting Bowles v. Seminole Rock Co., 325 U.S. 410, 414, 65 S. Ct. 1215, 1217, 89 L. Ed. 1700 (1945))." Brunson Constr. & Envtl. Servs., Inc. v. City of Prichard, 664 So. 2d 885, 890 (Ala. 1995). But see Kisor v. Wilkie, 588 U.S. ___, 139 S. Ct. 2400 (2019) (discussing limitations on deference to an agency under Seminole Rock Co.).

Analysis

Jean's Appeal

Jean argues that the Agency has misunderstood federal law and that the Agency's application of its regulations has resulted in an arbitrary and capricious denial of Jean's application for Medicaid benefits. According to Jean, although the Agency properly included Isaac's one-half interest in the Wagnon property in her and Isaac's resources for purposes of determining Isaac's CSRA, the law requires the Agency to exclude Isaac's interest from the resources available to Jean for purposes of determining her eligibility for Medicaid benefits. As a practical matter, Jean's position is that the Agency was required to allow Jean and Isaac to allocate liquid nonexcluded resources to satisfy Isaac's CSRA and to allocate nonliquid and otherwise nonexcluded resources to Jean for purposes of determining her eligibility for Medicaid benefits. According to Jean, using the eligibility criteria established under the SSI program, which are generally incorporated into Medicaid-benefit-eligibility determinations through the state-plan requirements in 42 U.S.C. § 1396a, the particular nonliquid, otherwise

nonexcluded resource at issue (Isaac's one-half interest in the Wagnon property) must, however, be excluded from her resources because Isaac was making a bona fide effort to sell that resource. Thus, according to Jean, she met the eligibility criteria for Medicaid benefits at least as early as December 1, 2016, although she conceded that she and Isaac had approximately $116,909.69 in liquid nonexcluded resources as of that date.[16]

The Agency contends that § 1396r-5, which specifically applies to the Medicaid program, creates a limited, but

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[16]Evidence in the record indicates that, by June 2017, those liquid nonexcluded resources had a value of approximately $85,449.11.

Jean's attorney posited on several occasions that because the value of Isaac's one-half interest in the Wagnon property exceeded his CSRA, the Agency's position would mean that Jean would be ineligible for Medicaid benefits until the sale of the Wagnon property, even if Jean had no other resources available for payment of her nursing-home expenses. As hereinafter discussed, however, the pertinent federal and state law addresses the problem of excess resources that cause an institutionalized spouse to be ineligible for Medicaid benefits. More importantly, however, the posited scenario was merely a hypothetical when the Agency denied Jean's application for Medicaid benefits on August 4, 2017. As of that date, Jean appears to have had access to liquid, nonexcluded resources other than Isaac's one-half interest in the Wagnon property, and it was still possible that the Wagnon property would be sold before those liquid nonexcluded resources were spent down.

important, exception to general eligibility criteria used in the Medicaid program, specifically for purposes of the resource assessment used to determine the eligibility of an institutionalized spouse who has a community spouse. According to the Agency, its regulations correctly incorporate that exception.[17] See, e.g., Baldwin Cty. v. Jenkins, 494 So. 2d 584, 588 (Ala. 1986) ("Special statutory provisions on specific subjects control general provisions on general subjects."). Close examination of § 1396r-5 supports the Agency's position as being both consistent with, and a reasonable interpretation of, the pertinent federal law. See Larionoff and Ex parte State Dep't of Revenue, supra; see also § 41-22-20(k)(1), (5), and (7). The Agency's denial of Jean's application does not reflect an arbitrary and capricious implementation of the Agency's regulations under § 1396r-5. See City of Prichard, supra; see also § 41-22-20(k)(7).

[17]Section 1396r-5 does not purport to address Medicaid-benefit eligibility of an institutionalized unmarried individual or of a married individual when both spouses are institutionalized or when neither spouse is institutionalized. Based on the facts in the present case and the arguments made by Jean, the eligibility qualifications for those persons are not pertinent to our analysis in the present case.

Like the Medicaid plans of most states, Alabama's State Plan provides Medicaid benefits to the "categorically needy," which includes mandatory coverage for certain groups, such as individuals who receive cash assistance under the SSI program, see 42 U.S.C. § 1381 et seq., and 20 C.F.R. § 416.101 et seq.,[18] and may include coverage for certain other groups chosen by the state. See 42 U.S.C. § 1396(a)(10)(A); see also 42 C.F.R. § 435.100 et seq. (categorically needy); 42 C.F.R. § 435.200 et seq. (optional categorically needy).[19] Alabama

[18]A state may agree that the determination of Medicaid eligibility for a person who is receiving cash assistance under the SSI program be made by the United States Social Security Administration; the Agency has such an agreement. See 20 C.F.R. § 416.2116; see also Ala. Admin. Code (Alabama Medicaid Agency), r. 560-X-25.02(2) ("The Social Security Administration determines the eligibility of individuals for Supplemental Security Income under Title XVI of the Act."). Jean did not purport to qualify for cash assistance under the SSI program.

[19]In addition, when Congress restructured the Medicaid program in 1972, each state was allowed to elect whether "to provide Medicaid assistance only to those individuals who would have been eligible under the State's Medicaid plan in effect on January 1, 1972." Herweg v. Ray, 455 U.S. 265, 268 (1982); see also 42 U.S.C. § 1396a(f). That option was referred to as "§ 209(b) option" and allowed a state "to avoid the effect of the link between the SSI and Medicaid programs." 455 U.S. at 268. Like most states, Alabama did not elect the § 209(b) option.

Further, a state may provide Medicaid benefits to individuals who do not qualify as categorically needy; such

is what is sometimes referred to as an "SSI-state"; among the available options for participating in the Medicaid program, Alabama chose the option that generally requires the state "to use the same methodology to determine income and resource eligibility of aged, blind, and disabled Medicaid applicants as would be employed under the SSI program." Alabama Medicaid Agency v. Primo, 579 So. 2d at 1358; see also 42 U.S.C. § 1396a(a)(10)(A). Pursuant to 42 U.S.C. § 1396a(a)(17), Alabama's State Plan generally shall,

> "except as provided in subsections (e)(14), (e)(15), (l)(3), (m)(3), and (m)(4), include reasonable standards (which shall be comparable for all groups and may, in accordance with standards prescribed by the Secretary, differ with respect to income levels, but only in the case of applicants or recipients of assistance under the plan who are not receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV, and with respect to whom supplemental security income benefits are not being paid under subchapter XVI, based on the variations between shelter costs in urban areas and in rural areas) for determining eligibility for and the extent of medical assistance under the plan which (A) are consistent with the objectives of this subchapter, (B) provide for taking into account only such income and resources as are, as determined in accordance with standards prescribed by the Secretary,

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individuals sometimes are referred to as the "medically needy." See 42 C.F.R. § 435.301. It does not appear that Alabama's state plan provides Medicaid benefits for the medically needy.

> available to the applicant or recipient and (in the case of any applicant or recipient who would, except for income and resources, be eligible for aid or assistance in the form of money payments under any plan of the State approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV, or to have paid with respect to him supplemental security income benefits under subchapter XVI) as would not be disregarded (or set aside for future needs) in determining his eligibility for such aid, assistance, or benefits, (C) provide for reasonable evaluation of any such income or resources, and (D) do not take into account the financial responsibility of any individual for any applicant or recipient of assistance under the plan unless such applicant or recipient is such individual's spouse or such individual's child who is under age 21 or (with respect to States eligible to participate in the State program established under subchapter XVI), is blind or permanently and totally disabled, or is blind or disabled as defined in section 1382c of this title (with respect to States which are not eligible to participate in such program); and provide for flexibility in the application of such standards with respect to income by taking into account, except to the extent prescribed by the Secretary, the costs (whether in the form of insurance premiums, payments made to the State under section 1396b(f)(2)(B) of this title, or otherwise and regardless of whether such costs are reimbursed under another public program of the State or political subdivision thereof) incurred for medical care or for any other type of remedial care recognized under State law."[20]

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[20]It is in the context of a case addressing the applicability of § 1396a(a)(17) that Judge Friendly observed:

> "As program after program has evolved, there has developed a degree of complexity in the Social Security Act and particularly the regulations which makes them almost unintelligible to the uninitiated.

(Emphasis added.); see also 42 U.S.C. § 1396a(r)(2). In other words, the Agency "may not establish Medicaid resource and income methodologies which are more restrictive than those under SSI." Primo, 579 So. 2d at 1358. As hereinafter discussed, however, the present case does not involve a resource standard established by the Agency; the present case involves a resource standard established by federal law, specifically § 1396r-5. That standard applies to the limited circumstances described in § 1396r-5, a section that provides unique benefits to an institutionalized spouse and a community spouse, but also provides protections against misuse of the Medicaid program. See Blumer, supra.

Section 1396r-5 provides special rules to be used in "determining the eligibility for medical assistance of an institutionalized spouse." 42 U.S.C. § 1396r-5(a)(1). Indeed § 1396r-5(a)(2) expressly references "paragraph (10) or (17)

> There should be no such form of reference as '45 C.F.R. s 248.3(c)(1)(ii)(B)(2)' discussed below; a draftsman who has gotten himself into a position requiring anything like this should make a fresh start. Such unintelligibility is doubly unfortunate in the case of a statute dealing with the rights of poor people."

Friedman v. Berger, 547 F.2d 724, 727 n.7 (2d Cir. 1976).

of section 1396a(a) of this title" when noting that the application of § 1396r-5 may result in "different treatment" for an institutionalized spouse than would be the case "for other individuals." See also Ala. Admin. Code (Alabama Medicaid Agency), r. 560-X-25-.16(1) (describing the MCCA as providing for "special treatment"). Section 1396r-5(a)(1) also expressly provides that, "[i]n determining the eligibility for medical assistance of an institutionalized spouse ..., the provisions of this section supersede any other provision of this subchapter (including sections 1396a(a)(17) and 1396a(f) of this title) which is inconsistent with them." (Emphasis added.)

As the Supreme Court has observed, § 1396r-5 includes "a set of intricate and interlocking requirements with which States must comply in allocating a couple's income and resources." Blumer, 534 U.S. at 480. A discussion of some of those requirements will provide meaningful insight into why the Agency's interpretation of § 1396r-5 is correct. Regarding income of the institutionalized spouse, 42 U.S.C. § 1396r-5(b)(1), provides that, for purposes of making the initial eligibility determination, "[d]uring any month in

which an institutionalized spouse is in the institution, ... no income of the community spouse shall be deemed available to the institutionalized spouse."[21] See also Ala. Admin. Code (Alabama Medicaid Agency), r. 560-X-25-.16(5)(b). Regarding resources, 42 U.S.C. § 1396r-5(c) states:

> "(1) Computation of spousal share at time of institutionalization
>
> "(A) Total joint resources
>
> "There shall be computed (as of the beginning of the first continuous period of institutionalization (beginning on or after September 30, 1989) of the institutionalized spouse) --
>
> "(i) the total value of the resources to the extent either the institutionalized spouse or the community spouse has an ownership interest, and
>
> "(ii) a spousal share which is equal to [one-half] of such total value.[22]

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[21]After the institutionalized spouse is determined to be eligible for "medical assistance," certain attribution rules apply for purposes of determining the income of both the institutionalized spouse and the community spouse. See § 1396r-5(b)(2) and § 1396r-5(d); see also Ala. Admin. Code (Alabama Medicaid Agency), r. 560-X-25-.16(6).

[22]As described in § 1396r-5, the spousal share is considered in conjunction with the determination of the value

> "....
>
> "(2) Attribution of resources at time of initial eligibility determination
>
> "In determining the resources of an institutionalized spouse at the time of application for benefits under this subchapter, regardless of any State laws relating to community property or the division of marital property --
>
> > "(A) except as provided in subparagraph (B), all the resources held by either the institutionalized spouse, community spouse, or both, shall be considered to be available to the institutionalized spouse, and
> >
> > "(B) resources shall be considered to be available to an institutionalized spouse, but only to the extent that the amount of such resources exceeds [the CSRA] (as of the time of application for benefits)."

(Emphasis added.) See also Ala. Admin. Code (Alabama Medicaid Agency), r. 560-X-25-.16(3)(a) and (9)(b). Section 1396r-5(c)(5) provides a special definition of resources applicable to the determinations made under § 1396r-5:

> "In this section, the term 'resources' does not include --
>
> > "(A) resources excluded under subsection (a) or (d) of section [42 U.S.C.] 1382b of this title, and

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of the CSRA under § 1396r-5(f)(2). See also Ala. Admin. Code (Alabama Medicaid Agency), r. 560-X-25-.16(3)(a) and (9)(b).

> "(B) resources that would be excluded under section 1382b(a)(2)(A) of this title but for the limitation on total value described in such section."

(Emphasis added.)

Before discussing how the paragraphs of § 1382b, as referenced in § 1396r-5(c)(5), affect the determination of resources under § 1396r-5, we first note that it is clear from the language of the provisions already discussed that the determinations to be made under § 1396r-5 include a determination of the eligibility of the institutionalized spouse for Medicaid benefits. Also, it is clear that the foregoing provisions permit of no reasonable construction to the effect that some resources that are included in determining the CSRA for the community spouse are to be subsequently excluded in determining the eligibility of the institutionalized spouse. Further, although § 1396r-5(a)(3) states that,

> "[e]xcept as this section specifically provides, this section does not apply to--
>
> > "(A) the determination of what constitutes income or resources, or
> >
> > "(B) the methodology and standards for determining and evaluating income and resources,"

the language of § 1396r-5(c)(5) is such a specific provision. In short, the language used in § 1396r-5(a)(1) and (3) precludes any argument that a resource exclusion not described in § 1396r-5(c)(5) may be imported into the "available resource" calculus under the guise of a "determination of what constitutes ... resources" or a "methodology and standards" argument.

Regarding § 1382b, which is the federal-law basis for Jean's argument, it must be kept in mind that that section is a part of the statutory framework governing the SSI program (a program designed to provide monthly cash-assistance payments to the poor) and describes the exclusions from resources for purposes of determining eligibility for that program. For purposes of the Medicaid program, although those exclusions generally are incorporated into an SSI-state's state plan pursuant to the provisions of § 1396a(a), § 1396r-5(c)(5)(A) limits the application of the § 1382b exclusions from resources to "subsection (a) or (d) of section [42 U.S.C.] 1382b." See also § 1396r-5(a)(1) ("[T]he provisions of this section supersede any other provision of this subchapter [§

1396 et seq.] ... which is inconsistent with them.").[23] Section 1396r-5(c)(5)(A) specifically references the applicability of § 1382b(a), which provides that

> "[i]n determining the resources of an individual (and his eligible spouse,[24] if any) there shall be excluded --
>
> > "(1) the home (including the land that appertains thereto);
> >
> > "(2)(A) household goods, personal effects, and an automobile,[25] to the extent that their total value does not exceed such amount as the Commissioner of Social Security determines to be reasonable; and

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[23]It may also help to keep in mind that, although all persons qualified to receive benefits under the SSI program may qualify for the Medicaid program, the reverse is not true; all persons who qualify for the Medicaid program will not necessarily qualify for the SSI program. See, e.g., 42 U.S.C. § 1396p(d)(4)(B) (allowing some persons who have too much income to qualify for the SSI program to nevertheless qualify for Medicaid benefits through the use of an authorized trust).

[24]Section 1382c(b) defines "eligible spouse." Isaac is not an eligible spouse.

[25]As noted above, § 1396r-5(c)(5)(B) excludes from "resources" under § 1396r-5 "resources that would be excluded under section 1382b(a)(2)(A) of this title but for the limitation on total value described in such section." Thus, it would appear that Jean and Isaac's automobile was an excluded resource for purposes of determining Isaac's CSRA and Jean's eligibility for Medicaid benefits. Assuming the automobile was erroneously included in the Agency's determination, however, Jean's application was still due to be denied in light of the other nonexcluded resources available to her.

> "(B) the value of any burial space or agreement (including any interest accumulated thereon) representing the purchase of a burial space (subject to such limits as to size or value as the Commissioner of Social Security may by regulation prescribe) held for the purpose of providing a place for the burial of the individual, his spouse, or any other member of his immediate family ...."

and identifies numerous other exclusions not pertinent to our analysis. Section 1382b(a) also states that,

> "[i]n determining the resources of an individual (or eligible spouse), an insurance policy shall be taken into account only to the extent of its cash surrender value; except that if the total face value of all life insurance policies on any person is $1,500 or less, no part of the value of any such policy shall be taken into account."

Section 1382b(d)(1) provides as an exclusion "an amount, not in excess of $1,500 each with respect to such individual and his spouse (if any), that is separately identifiable and has been set aside to meet the burial and related expenses of such individual or spouse," subject to certain conditions not pertinent to our analysis. Conspicuously not referenced in the allowed exclusions described in § 1396r-5(c)(5), however, are the provisions for conditional eligibility exclusions described in § 1382b(b), which states:

> "(1) The Commissioner of Social Security shall prescribe the period or periods of time within which, and the manner in which, various kinds of property must be disposed of in order not to be included in determining an individual's eligibility for benefits. Any portion of the individual's benefits paid for any such period shall be conditioned upon such disposal; and any benefits so paid shall (at the time of the disposal) be considered overpayments to the extent they would not have been paid had the disposal occurred at the beginning of the period for which such benefits were paid.
>
> "(2) Notwithstanding the provisions of paragraph (1), the Commissioner of Social Security shall not require the disposition of any real property for so long as it cannot be sold because (A) it is jointly owned (and its sale would cause undue hardship, due to loss of housing, for the other owner or owners), (B) its sale is barred by a legal impediment, or (C) as determined under regulations issued by the Commissioner of Social Security, the owner's reasonable efforts to sell it have been unsuccessful."

(Emphasis added.) See also 20 C.F.R. § 416.1245.

We note that, Ala. Admin. Code (Alabama Medicaid Agency), r. 560-X-25-.06 -- the Agency regulation that implements § 1382b for purposes of Alabama's State Plan requirements under § 1396a(a) -- states that "[t]he following types of assets may be excluded from countable resources under certain conditions": "Real property may be excluded as long as a bona fide effort is being made to sell the property." Ala. Admin.

Code (Alabama Medicaid Agency), r. 560-X-25-.06(2)(e)5. Thus, the bona-fide-effort-to-sell exclusion is presumably applicable to many, if not most, applicants for Medicaid benefits under Alabama's State Plan. However, as noted above, the present case does not present the issue whether that exclusion applies to any type of applicant for Medicaid benefits other than an institutionalized spouse with a community spouse, the type of applicant at issue for purposes of § 1396r-5. As to that type of applicant, consistent with § 1396r-5(c)(5), Ala. Admin. Code (Alabama Medicaid Agency), r. 560-X-25-.16 -- the Agency regulation implementing § 1396r-5 -- specifically provides that "[t]he following types of otherwise excluded resources ... shall be included in the assessment: Equity value of real property normally excluded from assets due to a bona fide effort to sell ...." Ala. Admin. Code (Alabama Medicaid Agency), r. 560-X-25-.16(9)(b)1 (emphasis added). In other words, r. 560-X-25-.16 reflects the more limited exclusions that are applicable when an institutionalized spouse with a community spouse is attempting to qualify for Medicaid benefits, an approach that is consistent with the underlying federal law and that provides a field of operation both for r. 560-X-25-.16(9)(b)1. and for

r. 560-X-25-.06(2)(e)5.[26] Pursuant to the latter regulation, the bona-fide-effort-to-sell exclusion applies to certain, perhaps most, applicants for Medicaid benefits, but not to an applicant who is an institutionalized spouse with a community spouse, which is governed by the former regulation. Cf. Ex parte King, 59 So. 3d 21, 28 (Ala. 2010)("[S]pecial statutory provisions relating to specific subjects are understood to be exceptions to general provisions relating to general subjects." "[W]herever it is possible reasonably to do so, statutes should be construed together so as to harmonize their provisions as far as practical."); Coan v. State, 224 Ala. 584, 585, 141 So. 263, 263 (1932) ("[S]tatutes relating to the same subject, and adopted at the same time as constituting one system of law, will be construed in pari materia so as to effectuate the legislative intent, giving each, where it is reasonably possible to do so, a field of operation.").

Further, § 1396r-5 acknowledges that the resource determinations made under its special provisions, which

[26]We note that there is no evidence indicating that the Agency's regulations do not accurately reflect Alabama's State Plan that has been submitted to and approved by pertinent federal regulatory authorities, as required by law. See 42 C.F.R. § 430.10.

include a broader class of nonexcluded resources, may cause eligibility problems for an institutionalized spouse. Section 1396r-5(c)(3) specifically addresses such circumstances:

> "The institutionalized spouse shall not be ineligible by reason of resources determined under paragraph (2) to be available for the cost of care where --
>
> > "(A) the institutionalized spouse has assigned to the State any rights to support from the community spouse;
> >
> > "(B) the institutionalized spouse lacks the ability to execute an assignment due to physical or mental impairment but the State has the right to bring a support proceeding against a community spouse without such assignment; or
> >
> > "(C) the State determines that denial of eligibility would work an undue hardship."

See also Ala. Admin. Code (Alabama Medicaid Agency), r. 560-X-25-.16(10) (authorizing the award of Medicaid benefits when undue hardship exists based on excess resources and denial of eligibility "will result in non-receipt of necessary medical services," r. 560-X-25-.16(10)(b)); 42 U.S.C. § 1396-1 (stating that the Medicaid program is "[f]or the purpose of enabling each State ... to furnish ... medical assistance on behalf ... of aged ... individuals, whose income and resources are insufficient to meet the costs of necessary medical

services"). Jean made no argument to the Agency or to the trial court, however, that the Agency erred by denying her application because she qualified for eligibility based on the application of § 1396r-5(c)(3)(A) or (B) or that the Agency erred by not addressing her eligibility under § 1396r-5(c)(3)(C) and r. 560-X-25-.16(10), the latter of which clearly involves the exercise of some discretion on the part of the Agency.[27] Instead, Jean seeks to impose a conditional eligibility exclusion from § 1382b(b) into all eligibility determinations made under § 1396r-5, regardless of the circumstances of the institutionalized spouse and the community spouse or the resources at issue.[28] Such an

[27]Likewise, Jean made no argument that a higher CSRA was necessary for Isaac for purposes of generating the income necessary for his maintenance. See 42 U.S.C. § 1396r-5(e)(2)(C) (allowing either spouse to prove that a higher CSRA amount, i.e., more resources, is necessary for the maintenance needs of the community spouse, thus reducing the value of the available resources attributable to the institutionalized spouse). We note that the purpose of this provision is consistent with that of the SSI program: "The basic purpose underlying the [SSI] program is to assure a minimum level of income for people who are age 65 or over, or who are blind or disabled and who do not have sufficient income and resources to maintain a standard of living at the established Federal minimum income level." 20 C.F.R. § 416.110.

[28]Jean attempts to bolster her argument by noting that Isaac offered the Agency a lien on his one-half interest in the Wagnon property. Even in the absence of any consideration

approach, however, conflicts with both the language of § 1396r-5 and potentially the purpose for which that section was enacted. See Blumer, 534 U.S. at 480 (observing that § 1396r-5 was enacted "to protect community spouses from 'pauperization' while preventing financially secure couples from obtaining Medicaid assistance").[29]

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whether an applicant may force such a lien on the Agency or whether the law authorizes the Agency to accept such a lien, the value of such a lien is questionable. See 42 U.S.C. § 1396r-5(c)(4) ("During the continuous period in which an institutionalized spouse is in an institution and after the month in which an institutionalized spouse is determined to be eligible for benefits under this subchapter, no resources of the community spouse shall be deemed available to the institutionalized spouse."); see also 42 U.S.C. § 1396p(b) and (c) (describing the treatment of liens).

[29]Although § 1396r-5 could have been drafted so as to simply impose SSI program eligibility criteria on all state plans when the applicant is an institutionalized spouse with a community spouse, it appears to have been drafted in a manner to accommodate the various types of state plans (categorically needy only, optional categorically needy, medically needy) and to allow the states some additional flexibility in the implementation of federal law. For example, when applying for the SSI program, the hardship provisions fall within the resource-exclusion rules. See 42 U.S.C. § 1382b(b). Section 1396r-5, however, clearly does not include the hardship provisions in the resource-exclusion rules, an approach that is likewise taken in the regulations governing a state plan incorporating the medically needy, which is a broader group of persons than those who qualify for the SSI program. See 42 C.F.R. § 435.845(b). ("In determining the amount of an individual's resources for Medicaid eligibility, States must count amounts of resources that otherwise would not be counted under the conditional

As the Supreme Court discussed in Blumer, § 1396r-5 includes unique income and resource treatment for an institutionalized spouse with a community spouse, but that treatment is not intended to allow the institutionalized spouse and the community spouse to retain excessive resources. In the context of § 1396r-5, "excessive" refers not to the number or type of resources, but to the monetary value of the resources. See § 1396r-5(c)(2)(B) (entitling the community spouse to retain an amount of "resources" "to the extent that the amount" does not exceed the CSRA, a monetary value, and providing that "resources shall be considered to be available to an institutionalized spouse, but only to the extent that the amount of such resources exceeds the amount [of the CSRA] ... (as of the time of application for benefits)"); § 1396r-

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eligibility provisions of the SSI or AFDC [Aid to Families with Dependent Children] programs."). Instead, any hardship caused by the availability of resources to the institutionalized spouse is considered in the context of the determination of eligibility itself. See § 1396r-5(c)(3)(C). We do not rely on the foregoing as a basis for our analysis and decision, we merely note that there is a reasonable explanation for why § 1396r-5, which addresses a limited subset of Medicaid benefit applicants who pose peculiar issues for the Medicaid program, see Blumer, supra, and which applies in various state-plan contexts, would provide for any hardship adjustment to be made in a different manner than that applicable to the SSI program.

5(c)(1)(A) (using the "value" of the couple's resources in establishing the amount of the CSRA in conjunction with § 1396r-5(f)(2)); see also Morris v. Oklahoma Dep't of Human Servs., 685 F.3d 925, 937 (10th Cir. 2012) ("When an agency concludes that an individual is ineligible, this decision does not trigger the ownership-based treatment of resources. The couple merely learns they must spend down further in order to become eligible, and all resources -- irrespective of which partner holds title -- continue to affect the institutionalized spouse's eligibility for Medicaid. Thus, an agency's denial of Medicaid benefits is not a watershed moment ...." "The CSRA allotment is a planning tool based on a couples' combined resources at the time of the application for benefits, see § 1396r-5(c)(2)(B). It is not an actual division of resources; nominal resource ownership is simply not relevant in determining the resources available to the applicant."); Cleary ex rel. Cleary v. Waldman, 167 F.3d 801, 805 (3d Cir. 1999) ("[T]he MCCA set aside a protected level of income and resources for the community spouse. This amount is 'protected' since it is not included when determining the institutionalized spouse's eligibility for Medicaid and it

need not be 'spent down' on the institutionalized spouse's care.").

Although it is understandable that Jean has attempted to shift the focus of the issue from the language of § 1396r-5 and to inject the conditional eligibility exception from § 1982b(b) into her Medicaid eligibility determination, we need not go beyond the plain language of § 1396r-5 to reject her arguments. See Schweiker, 453 U.S. at 48-49 ("We are not without sympathy for those with minimal resources for medical care. But our 'sympathy is an insufficient basis for approving a recovery' based on a theory inconsistent with law. Potomac Electric Power Co. v. Director OWCP, 449 U.S. 268, 284 (1980)." (footnote omitted)). Nevertheless, it is not difficult to imagine why Congress might have chosen the approach it did in light of the potentially conflicting objectives of the MCCA, both to prevent the pauperization of the community spouse by allowing that spouse to retain some resources and to close the door to creative attempts for more wealthy applicants to qualify for Medicaid benefits or to shield resources from consideration through creative planning. Not including the § 1982b(b) conditional eligibility exclusion

for hard-to-sell assets in the resource calculation under § 1396r-5 reduces, if not eliminates, the ability of a married couple to retain and allocate substantial trouble-free resources as part of the CSRA (potentially preserving them for heirs), while simultaneously shifting the risks associated with hard-to-sell assets to the Agency -- which had no part in determining the nature or status of those assets -- while forcing the Agency to spend tax dollars on the institutionalized spouse pending any sale. For example, consider the simple context in which (1) the community spouse is entitled to a CSRA of $120,900, has the maximum income allowed for the community spouse, and has no need for an increased CSRA to generate additional income and (2) there are only two nonexcluded resources, $120,900 in cash and a hard-to-sell asset also valued at $120,900. Under Jean's proposed interpretation of federal law, despite the community spouse having sufficient income to satisfy his or her maintenance needs according to the pertinent law, the community spouse nevertheless may retain the $120,900 in cash and the institutionalized spouse may then force the Agency to begin paying Medicaid benefits to the institutionalized spouse pending the sale, if ever, of the hard-to-sell asset,

regardless of whether the community spouse has any need for the cash he or she has retained. The Agency would have no discretion in the matter.

Rather than supporting such a one-size-fits-all approach that could easily be misused, however, § 1396r-5 requires such an institutionalized spouse to assign his or her support rights from the community spouse to the Agency or to establish the legitimate need for such an unusual resource allocation ("undue hardship") before allowing the institutionalized spouse to begin receiving Medicaid benefits. See § 1396r-5(c)(3). In other words, § 1396r-5 appears to recognize that the allocation of resources chosen by the institutionalized spouse and the community spouse might be proper, and there might be good reasons for not requiring a spend down of certain resources before Medicaid benefits are paid, but the contrary might also be true. In providing special treatment for a community spouse whose spouse is institutionalized, Congress appears to have been inclined to give state Medicaid agencies at least some discretionary authority to prevent abuse of that special status. As the Supreme Court of Iowa stated in Ford v. Iowa Department of Human Services, 500 N.W.2d 26, 31 (Iowa 1993):

> "Medicaid is a program for poor people 'whose income and resources are insufficient to meet the costs of necessary medical services.' 42 U.S.C. § 1396. The companion spousal provisions[, 42 U.S.C. § 1396r-5] were enacted to insure that the spouse who remains in the community will have 'a sufficient -- but not excessive -- amount of income and resources available [while the spouse] is in a nursing home at Medicaid expense.' [H.R. Rep. No. 105(II), 100th Cong., 2d Sess. 65-68 (1988), reprinted in 1988 U.S.C.C.A.N. 803,] 888 (emphasis added). To that end, Congress designed a program to benefit welfare recipients, not persons seeking to benefit their heirs at the expense of other taxpayers."

See also Blumer, 534 U.S. at 480 ("In the MCCA, Congress sought to protect community spouses from 'pauperization' while preventing financially secure couples from obtaining Medicaid assistance."). In stating the foregoing, we are not suggesting that Jean or Isaac have some nefarious purpose in the present case, we are simply observing that the law appears to enable the Agency to address that possibility and that such an approach is consistent with the language of, and the purposes behind, § 1396r-5.

Based on the foregoing, Jean has failed to demonstrate that r. 560-X-25-.16(9)(b)1. is unreasonable in relation to the federal law it purports to implement or that that regulation was arbitrarily and capriciously applied in denying her application for Medicaid benefits.

The Cross-Appeal

Commissioner Azar argues that the trial court erred by granting Jean's motion to waive the cost bond to cover the Agency's costs for preparing the transcript of the proceedings before the ALJ and by denying the Agency's motion to vacate that order.[30] We note that the cost bond under § 41-22-20(b) is not a jurisdictional requirement. See State Dep't of Human Res. v. Funk, 651 So. 2d 12, 14 (Ala. Civ. App. 1994); see also Lumpkin v. State, 171 So. 3d 599, 606-09 (Ala. 2014).

Section 41-22-20(g), Ala. Code 1975, states: "Within 30 days after receipt of the notice of appeal or within such additional time as the court may allow, the agency shall transmit to the reviewing court the original or a certified copy of the entire record and transcript of the proceedings under review." In the present case, after the trial court entered its order granting Jean's request to waive the cost bond, the Agency filed the transcript and pertinent exhibits with the trial court, and the Agency thereafter discussed the cost for the transcript in connection with its motion to

[30]Jean paid the $376 filing fee for her petition for judicial review of the Agency's decision denying her application for Medicaid benefits.

vacate the trial court's order. The Agency did not expressly request an award of costs after it filed the transcript and exhibits, however, and it did not seek mandamus review of the trial court's order denying its motion to vacate. Also, in her appellate brief, Commissioner Azar merely argues that the trial court erred, for various reasons, by granting Jean's motion to waive the cost bond based on the evidence Jean submitted in support thereof.

The purpose of filing a cost bond under § 41-22-20(b) is to secure the Agency against "the reasonable costs of preparing the transcript of the proceeding under review." See also Lowrey v. SouthTrust Bank of Huntsville, N.A., 530 So. 2d 844, 845 (Ala. Civ. App. 1988) (noting that the purpose of a cost bond "is to secure the payment of the costs" at issue); Rule 54(d), Ala. R. Civ. P. ("In all cases where costs are adjudged against any party who has given security for costs, execution may be ordered to issue against such security."). In the present case, the costs of preparing the transcript have been incurred by the Agency. Any issue regarding whether Jean should have been required to file a cost bond is now moot; the only justiciable issue is whether Jean should have

been required to pay costs pursuant to Rule 54(d), Ala. R. Civ. P., after the trial court entered its judgment affirming the Agency's decision. As noted above, however, the Agency made no express request for a cost award in the present case, and Commissioner Azar has not argued on appeal that the trial court erred by failing to impose costs on Jean.[31] Thus, although we are inclined to agree with the Agency's argument that the meaning of "substantial hardship" is well settled in our law and that, in order to establish "substantial hardship" under § 41-22-20(b), a party must present the same type of evidence "as required under other statutes and rules of court" applicable to waiver of costs and fees based on indigency, see, e.g., Rule 24(a), Ala. R. App. P., and Form 15 of Appendix I of those Rules ("a suggested affidavit to accompany a motion for application to proceed in forma pauperis," Committee Comments to Rule 24), and Form C-10 to Ala. R. Crim. P., Appendix of Forms, addressing the merits of the issue

[31]The trial court's judgment is final. Holman v. Bane, 698 So. 2d 117, 119 (Ala. 1997) ("Rule 58(c), Ala. R. Civ. P., which outlines the mechanics of entering a final judgment, states that the entry of a judgment or order 'shall not be delayed for the taxing of costs.' This Court has held that, where an order adjudicates all claims against all parties, the later taxing of costs will not affect the finality of the earlier order.").

whether the trial court erred by granting Jean's motion to waive the cost bond under § 41-22-20(b) would serve no purpose.[32]

Conclusion

We affirm the trial court's judgment upholding the Agency's denial of Jean's application for Medicaid benefits. The issue raised in the cross-appeal is moot. Thus, we likewise affirm the trial court's order granting Jean's motion to waive the cost bond pursuant to Ala. Code 1975, § 41-22-20(b).

2180004 -- AFFIRMED.

2180033 -- AFFIRMED.

Thompson, P.J., and Hanson, J., concur.

Moore and Donaldson, JJ., concur in the result, without writings.

[32]Section 41-22-20 applies to appeals from various state agencies, not merely agencies that may have assessed a party's financial condition for some purpose. We are not inclined to think that the legislature intended the standard to be used for determining "substantial hardship" would vary depending on which agency might be at issue. Nor are we inclined to think that the legislature envisioned that each agency would create its own standard for undue hardship, in addition to the standard that would be used by a reviewing court.