



State of New Jersey

DEPARTMENT OF HUMAN SERVICES  
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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CHRIS CHRISTIE  
Governor

ELIZABETH CONNOLLY  
Acting Commissioner

KIM GUADAGNO  
Lt. Governor

MEGHAN DAVEY  
Director

STATE OF NEW JERSEY  
DEPARTMENT OF HUMAN SERVICES  
DIVISION OF MEDICAL ASSISTANCE  
AND HEALTH SERVICES

A.P.,	:	
	:	
PETITIONER,	:	<b>ADMINISTRATIVE ACTION</b>
	:	
v.	:	<b>FINAL AGENCY DECISION</b>
	:	
DIVISION OF MEDICAL ASSISTANCE	:	<b>OAL DKT. NO. HMA 04887-15</b>
	:	
AND HEALTH SERVICES AND	:	
	:	
OCEAN COUNTY BOARD OF	:	
	:	
SOCIAL SERVICES,	:	
	:	
RESPONDENTS.	:	

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this matter, consisting of the Initial Decision, the documents in evidence, the entire contents of the OAL case file and Petitioner's exceptions. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is June 24, 2016 in accordance with N.J.S.A. 52:14B-10 which requires an Agency Head to adopt, reject or modify the Initial Decision within 45 days of receipt. The Initial Decision in this matter was received on May 10, 2016.

2013 denial of benefits. Without this information, OCBSS was unable to complete its eligibility determination and the denial was appropriate.

The Petitioner also claims that the ALJ incorrectly determined that he was not eligible for a spousal waiver that would allow Petitioner's application to proceed without information regarding his or his wife's assets. The federal statute, 42 U.S.C. § 1396r-5(c)(1)(A), provides that an "institutionalized spouse shall not be ineligible by reason of resources determined under paragraph (2) to be available for the cost of care where . . . (C) the State determines that denial of eligibility would work an undue hardship." 42 U.S.C. § 1396r-5(c)(3). DMAHS does provide for a waiver of the resource assessment in certain instances when there has been a break in the marital ties and the community spouse refuses to cooperate with the resource eligibility determination. Petitioner's willingness to assign any right to support from her community spouse to the State is also a factor that would be considered. Such a waiver is not a guarantee of continuous eligibility and eligibility will be re-determined if circumstances change.

There is no evidence in the record to support a finding that there was a break in marital ties between Petitioner and his wife. It appears that Petitioner and his wife remain married and are subject to the Medicaid rules for institutionalized spouses. Nor is there evidence in the record to support that either Petitioner or his family was not in contact with his wife. Furthermore, Petitioner's wife's uncooperativeness is inadequately documented in the record.<sup>5</sup> The only document submitted in support of this assertion is a March 4, 2013 email from SPS to Petitioner's son with an employee's account of Petitioner's wife's unwillingness to cooperate. The record contains no

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in SPS' March 4, 2013 email to Petitioner's son (P-4).

<sup>5</sup> The post hearing brief submitted by Petitioner's counsel suggests that Petitioner's wife was not cooperating with them on the advice of counsel, leading to an even more confusing picture regarding Petitioner's representation in this matter.

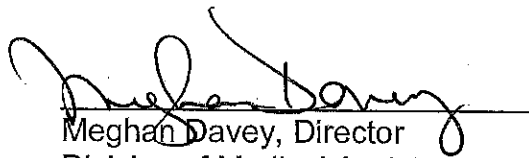
letters, emails, or phone calls to Petitioner's wife by SPS, Petitioner or other family members requesting her assistance in locating the requested verifications. There is no email from SPS to OCBSS indicating that they are having difficulty obtaining information from Petitioner's wife. There is no request from SPS for an extension of time to provide the missing verifications. All the record contains is an email, sent two days before the March 2013 deadline, summarizing SPS' position. Based upon my review of the case file, I FIND that the documents and the testimony do not show that Petitioner's wife was uncooperative. As Petitioner's sixth application was approved and he is currently receiving Medicaid benefits, he, his wife, his representative or some combination of the three were able to produce the verifications needed to establish eligibility.

Based on my review of the record, I concur with the ALJ's findings and hereby ADOPT the Initial Decision.

THEREFORE, it is on this <sup>22<sup>nd</sup></sup> day of JULY 2016

ORDERED:

That the Initial Decision is hereby ADOPTED.

  
Meghan Davey, Director  
Division of Medical Assistance  
and Health Services