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State of New Jersey
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
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Commissioner

VALERIE HARR
Director

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

T.K.,	:	
	:	
PETITIONER,	:	ADMINISTRATIVE ACTION
	:	
v.	:	FINAL AGENCY DECISION
	:	
DIVISION OF MEDICAL ASSISTANCE	:	OAL DKT. NO. HMA 8533-2014
& HEALTH SERVICES &	:	
	:	
BERGEN COUNTY BOARD OF	:	
	:	
SOCIAL SERVICES,	:	
	:	
RESPONDENTS.	:	

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision, the OAL case file and the documents filed below. No exceptions were filed in this matter. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is December 15, 2014, 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 October 29, 2014.

Petitioner was found eligible under the Medically Needy program. He has monthly income of \$3,968.51. Bergen County calculated that Petitioner's wife was entitled to a Minimum Monthly Maintenance Needs Allowance (MMMNA) of \$2,404.47 under the spousal impoverishment rules. Based on her low income, she is entitled to retain \$2,175.57 of Petitioner's income to bring her combined income to the MMMNA.

Under the federal statute, additional income is only permitted when there is a showing of exceptional circumstances resulting in financial duress. 42 U.S.C. § 1396r-5(e)(2)(B). It is Petitioner's burden to demonstrate that the circumstances meet this standard. To that end, Petitioner produced financial records, bills and other documents.

Ordinary and regular expenses have been rejected as a basis to meet the exceptional circumstance threshold. Dorn v. DMAHS, OAL Dkt. No. HMA 7609-04, affirmed 2006 WL 2033940 (N.J. Superior Court, Appellate Division), J.M.A. v. DMAHS and Union County Board of Social Services, OAL Dkt No. HMA 5549-02, Contra., M.G. v. DMAHS and Union County Board of Social Services, 95 N.J.A.R. (DMA) 47 (1995) (the community spouse had a leaking roof, electrical damage and was being sued by "several of her doctors for non-payment of her expenses"). See also Schachner v. Perales 85 N.Y. 2d 316, 322 (1995) ("voluntarily assumed expenses of a private secondary and college education are not the sort of 'exceptional expenses' contemplated"). In Dorn, the Appellate Division found that the "distinction between 'everyday expenses' (which cannot constitute a basis for increasing the spousal allowance); and the unexpected expenses, exemplified by 'medical bills, home repair bills for significant structural problems or credit card arrears that are related to the medical situation' (which might support an increase in the allowance) is a proper

interpretation of the" federal statute. In a more recent unpublished Appellate Division case, the court found that the federal statute "requires a causal connection between the exceptional circumstances and the financial duress." C.H. v. DMAHS and Camden County Board of Social Services, Dkt. No. A-6129-08T2 (decided August 12, 2010). Merely having financial duress is not sufficient to warrant additional money for the institutionalized spouse.

At the fair hearing the ALJ found that Petitioner did not demonstrate exceptional circumstances resulting in financial duress. Petitioner's wife is challenged with a diagnosis of multiple sclerosis and her condition had worsened. To that end she provided receipts of expenses such as Life Alert emergency monitoring, home delivery of food and lawn maintenance. By her own calculations, these expenses amount to \$385 a month. However, these expenses are not extraordinary in that it can be expected that a community spouse would incur home maintenance and medical costs. The MMMNA calculation proves for a base amount of \$1,938.75 to cover those expenses. R-2.

Significantly, the ALJ pointed out Petitioner's documents do not show that his wife's expenses exceed her MMMNA of \$2,404.47. ID at 8. While Petitioner's wife is suffering from a serious medical condition that "alone is not dispositive of financial duress." Ibid. Thus, I concur with the findings and conclusions contained in the Initial Decision and ADOPT it in its entirety.

THEREFORE, it is on this 12th day of DECEMBER 2014

ORDERED:

That the Initial Decision is hereby ADOPTED.

A handwritten signature in black ink, appearing to read "Valerie Harr", written over a horizontal line.

Valerie Harr, Director
Division of Medical Assistance
and Health Services