



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

E.J.

PETITIONER,

V.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES &

BURLINGTON COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 7245-2017

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 in evidence. No exceptions were filed. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is December 28, 2017, 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 November 13, 2017.

Petitioner applied for Medicaid benefits in June 2016. At the time of institutionalization in May 2016, he and his wife had \$246,645.65 in countable assets. That application was denied for failure to provide verifications. A second application was filed in October 2016. As a community spouse, Petitioner's wife was entitled to retain \$119,220.00 while Petitioner could retain \$2,000. Medicaid Communication No. 16-07. The couple had resources of \$189,613.20 at the time of the second application and the application was denied for excess resources.

Petitioner is seeking a modification of the spousal resource amount due to a shortfall in the couple's income. He has \$880 in Social Security benefits. His wife receives \$365 a month. Under the regulations, his wife is entitled to a Minimum Monthly Maintenance Needs Allowance (MMMNA), which is calculated using some of her actual costs and some preset standards. After that is calculated, her income is deducted from that amount and the difference is made up to the extent the institutionalized spouse has income.<sup>1</sup> Here the MMMNA was calculated to be \$2,729.75.

In order to compensate when there is not enough income from both spouses and "either member can establish at the fair hearing that the income generated from the community spouse's share of the couples' resources is inadequate to raise the community spouse's income . . . to the maximum authorized level, additional resources . . . may be set aside for the community spouse." N.J.A.C. 10:71-5.7(d) (emphasis

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<sup>1</sup> It also appears that Petitioner argued that there were exceptional circumstances resulting in financial duress so as to increase the MMMNA. See 42 U.S.C. § 1396r-5(e)(2)(B) and N.J.A.C. 10:71-5.7(c). As Petitioner and his wife had such low income to begin with, increasing the minimum income for his wife would not change the outcome as the couple's total income and imputing a rate of return from the assets does not even meet the MMMNA as calculated.


added). The federal statute upon which this regulation is based states that this increase can only be done through a fair hearing. 42 U.S.C.A. § 1399r-5(e)(2)(C).

I am satisfied that Petitioner has demonstrated that the couple's combined income, including any interest imputed from the spouse's share of the resources, is insufficient to raise his wife's income to the MMMNA. Thus, I concur with the ALJ's determination that Petitioner's wife is permitted to protect additional resources for a total of \$189,613.20, which is the amount they had upon the second application for Medicaid.

THEREFORE, it is on this 18<sup>th</sup> day of DECEMBER 2017

ORDERED:

That the Initial Decision is hereby ADOPTED.

  
Meghan Davey, Director  
Division of Medical Assistance  
and Health Services