



**State of New Jersey**

DEPARTMENT OF HUMAN SERVICES  
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES  
P.O. Box 712  
Trenton, NJ 08625-0712

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**

M.K.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

SOMERSET COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

**ADMINISTRATIVE ACTION**

**FINAL AGENCY DECISION**

**OAL DKT. NO. HMA 12083-16**

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 February 17, 2017, in accordance with an Order of Extension. The Initial Decision in this matter was received on November 16, 2016.

M.K. sought Medicaid eligibility as of January 1, 2016. At that time Petitioner and his wife had \$95,290.48 in resources. The Somerset County Board of Social Services (SCBSS) denied Medicaid eligibility on the ground that Petitioner had not spent down half the countable resources plus \$2,000 to \$86,861.91. SCBSS calculated the excess resources at \$8,428.57.

Petitioner is seeking a modification of the spousal share due to a shortfall in the couple's income. He has \$1,469.90 in Social Security benefits. His wife, A.K., receives \$662.90 a month. Under the regulations, A.K. 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. Here the MMMNA was calculated to be \$1,742.60.

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 added). The

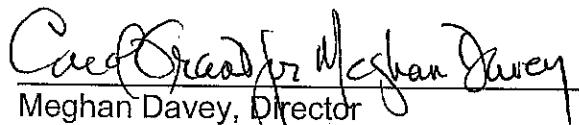
federal statute upon which this regulation is based states that this increase can only be done through a fair hearing. 42 U.S.C.A. § 1399r-5(e)(2)(C).

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 A.K.'s income to the MMMNA. Thus, I concur with the ALJ's determination that A.K. is permitted to retain additional resources in the amount of \$8,428.57 which is the amount they had upon application for Medicaid.

THEREFORE, it is on this <sup>6<sup>th</sup></sup> day of FEBRUARY 2017,

ORDERED:

That the Initial Decision is hereby ADOPTED.

  
Meghan Davey, Director  
Division of Medical Assistance  
and Health Services