



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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MEGHAN DAVEY
Director

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

P.C.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

WARREN COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 19137-2016

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 Decision is June 1, 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 was received on April 17, 2017.

The matter arises regarding the denial of Petitioner's Medicaid application due to excess resources. Petitioner applied in July 2016. He entered the nursing home in August of 2016. He died in November 2016. On October 3, 2016, Warren County issued notice that Petitioner's community spouse could retain \$23,844 in assets as well as \$2,000 for Petitioner. R-1. Petitioner purchased an irrevocable funeral arrangement for \$7,000. However as of November 2016, the couple had excess resources and Medicaid eligibility was not established prior to Petitioner's death. Warren County denied the case by letter dated December 6, 2016.

Petitioner claimed that the payment of \$7,000 for funeral services was the difference between the couple's total assets and the amount they were permitted to spend down. However, that calculation was based on Petitioner's assets as of August 2016 when he entered the institution. During the intervening months, the value of the couple's assets grew so that their total income exceeded the \$25,844 they were permitted to keep.

A community spouse is entitled to keep a share of the couple's total combined resources and permitted to retain any growth in those resources or in resources she later acquired in her name only after eligibility was established. See 42 U.S.C. § 1396r-5 (c)(4) "[A]fter the month in which an institutionalized spouse is determined to be eligible for benefits under this title, no resources of the community spouse shall be deemed available to the institutionalized spouse." Ibid.

Medicaid regulations use the combined resources both to establish the community spouse's resource allowance and to determine eligibility:

(a) In the determination of resource eligibility for an individual requiring long-term care, the county welfare agency shall establish the **combined** countable resources of a couple as of the first period of continuous institutionalization beginning on or after September 30, 1989. This

determination shall be made upon request for a resource assessment in accordance with N.J.A.C. 10:71-4.9 or at the time of application for Medicaid benefits. The total countable resources of the couple shall include all resources owned by either member of the couple individually or together. The county welfare agency shall establish a share of the resources to be attributed to the community spouse in accordance with this section. (No community spouse's share of resources may be established if the institutionalized individual's current continuous period of institutionalization began at any time before September 30, 1989.)

1. The community spouse's share of the couple's combined countable resources is based on the couple's countable resources as of the first moment of the first day of the month of the current period of institutionalization beginning on or after September 30, 1989 and shall not exceed \$119,220, as indexed annually in accordance with 42 U.S.C. § 1396r-5(g) and published as a notice in the New Jersey Register, and unless authorized in (a)4 or 5 below. The community spouse's share of the couple's resources shall be the greater of:

- i. \$ 23,844, as indexed annually in accordance with 42 U.S.C. § 1396r-5(g) and published as a notice in the New Jersey Register; or
- ii. One half of the couple's combined countable resources.

2. In determining the resource eligibility of the institutionalized spouse, **the community spouse's share of the resources is subtracted from couple's total combined resources as of the first moment of the first day of the month of application for Medicaid.** If the remaining resources are less than or equal to \$ 2,000, the institutionalized spouse is resource eligible. If the remaining resources exceed \$ 2,000, eligibility may not be established.

N.J.A.C. 10:71-4.8.

This method was affirmed in A.K. v. Division of Medical Assistance and Health Services, 350 N.J. Super. 175 (App. Div. 2002). The initial snapshot of the couple's resources at the first month of institutionalization is done to preserve funds prior to paying privately for care. The snapshot sets the amount the community spouse can retain regardless of when the Medicaid application is filed. Fluctuations in the value of the couple's assets do not change the protected share. The spousal assessment sheet states that the couple must spend down to \$25,844 prior to establishing Medicaid. R-1. While Petitioner spent some of the resources, the value of the couple's resources exceeded this amount.

The Initial Decision concurred that Warren County had correctly assessed and denied Petitioner's Medicaid application. Based on my review of the record, I ADOPT the Initial Decision.

THEREFORE, it is on this ^{30th} day of MAY 2017,

ORDERED:

That the Initial Decision is hereby ADOPTED.



Meghan Davey, Director
Division of Medical Assistance
and Health Services