

of Social Services (CCBSS) and was seeking eligibility as of that month.¹ CCBSS determined that Petitioner met eligibility as of September 1, 2019 pending a spenddown of excess resources in the amount of \$32,876.85.

The Initial Decision upholds the September 1, 2019 date pending a spenddown and I concur. When determining whether an institutionalized individual with a spouse is eligible for Medicaid benefits, applicants follow specific rules that assess the allowable resources and allowable income of the institutionalized and the community spouse. The amount of resources that the couple is permitted to retain is based on a "snapshot" of the couple's total combined resources as of the beginning of the continuous period of institutionalization. See Mistrick v. DMAHS and PCBOSS, 154 N.J. 158, 171 (1998); 42 U.S.C.A. § 1396r-5(c)(1)(A); N.J.A.C. 10:71-4.8(a)(1). The community spouse is permitted to keep the lesser of: one-half of the couple's total resources or the maximum amount set forth in N.J.A.C. 10:71-4.8(a)(1) (\$123,600 in 2018, indexed annually). This is called the Community Spouse Resource Allowance (CSRA). Resources above that amount must be spent down before qualifying for benefits. At issue here is the event which triggered the "snapshot" of the couple's resources, ultimately affects Petitioner's eligibility date and the calculation of the CSRA.

For applicants who are being admitted to Title XIX facilities, the "snapshot" of a couple's countable resources is determined "as of the first moment of the first day of the month of the current period of institutionalization. N.J.A.C. 10:71-4.8(a)(1); N.J.A.C. 10:71-5.6(d). However, for applicants, such as Petitioner, who qualify for benefits through the Managed Long Term Services and Supports (MLTSS) waiver program, the "snapshot" does not hinge upon physical admission to a Title XIX facility.

The MLTSS waiver program provides comprehensive services and supports through Medicaid Managed Care Organizations (MCOs) to help eligible individuals remain living in

¹ Petitioner's first application was denied for failure to provide documentation necessary to determine eligibility. That determination was appealed and transmitted to the OAL on October 24, 2019. It was withdrawn from the OAL in December 2019 and is not at issue before the court.

the community, whether at home or in an assisted living facility (ALF), rather than in a nursing facility. While assisted living services are not institutional nursing home services as required by 42 USCA § 1396a(a)(10), they can be provided under a home and community based waiver either under 1915(c) or 1115. See Medicaid Assisted Living Services, Government Accountability Report (GAO) <https://www.gao.gov/assets/690/689302.pdf>. For an applicant to qualify for the MLTSS waiver program, he or she must be in need of nursing home level of care. In order to determine medically necessary services in a nursing home or pursuant to a home and community based waiver requiring nursing home level of care, a pre-admission screening (PAS) is completed by "professional staff designated by the Department, based on a comprehensive needs assessment which demonstrates that the recipient requires, at a minimum, the basic NF services described in N.J.A.C. 8:85-2.2." N.J.A.C. 8:85-2.1(a). See also, N.J.S.A. 30:4D-17.10, et seq. For purposes of MLTSS, it is on that date that the applicant could be considered an institutionalized individual.

Here, Petitioner's PAS was completed on February 20, 2019 while Petitioner resided in the community. The PAS certified that as of February 20, 2019, Petitioner was clinically eligible for "nursing facility level of care in a Nursing home or home and community-based waiver in accordance with N.J.A.C. 8:85-2.1." Therefore, Petitioner's snapshot occurred in February 2019 when she had been determined to be eligible for the level of care provided in a nursing home.

THEREFORE, it is on this ^{4th} day of JUNE 2020,

ORDERED:

That the Initial Decision affirming the CCBSS' determination regarding the CSRA snapshot date and effective date of Petitioner's eligibility is hereby REVERSED; and

That the matter is RETURNED to CCBSS to determine the CSRA and effective date of eligibility in accordance February 20, 2019 snapshot of the couples resources.

A handwritten signature in black ink, appearing to read "Jennifer Langer Jacobs", written over a horizontal line.

Jennifer Langer Jacobs, Assistant Commissioner
Division of Medical Assistance
and Health Services