



modify the Initial Decision within 45 days of receipt. The Initial Decision in this matter was received on January 2, 2015.

E.C. sought Medicaid eligibility as of January 1, 2014. At that time Petitioner and his wife had \$81,655.90 in resources. At the time he entered the nursing facility in November 2013, they had resources worth \$115,674.96. Union County correctly set the protected resources for the community spouse share at \$57,837.48.

Petitioner is seeking a modification of the spousal share due to a shortfall in the couple's income. He has \$1,782.90 in Social Security benefits. His wife, I.C., receives \$638.90 a month. Under the regulations, I.C. 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 \$2,340.24.

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 I.C.'s income to the MMMNA. Thus, I concur with the ALJ's determination that I.C. is permitted to protect additional resources in the amount of \$81,655.90, which is the amount they had upon application for Medicaid.

THEREFORE, it is on this 12<sup>th</sup> day of FEBRUARY 2015

ORDERED:

That the Initial Decision is hereby ADOPTED.



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Valerie Harr, Director  
Division of Medical Assistance  
and Health Services