



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
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Director

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

R.L.W.,
PETITIONER,
v.
DIVISION OF MEDICAL ASSISTANCE
& HEALTH SERVICES &
OCEAN COUNTY BOARD OF
SOCIAL SERVICES,
RESPONDENTS.
ADMINISTRATIVE ACTION
FINAL AGENCY DECISION
OAL DKT. NO. HMA 8511-2010

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 Agency Decision in this matter is March 16, 2015.

Petitioner was found eligible under the Medically Needy program March 2010 with retroactive eligibility beginning February 1, 2010. He has monthly income of \$2,356.95. Ocean County calculated that Petitioner's wife was entitled to a Minimum

Monthly Maintenance Needs Allowance (MMMNA) of \$2,886.21 under the spousal impoverishment rules. Based on her own income of \$2,804.68, Petitioner's wife is entitled to retain \$81.53 of Petitioner's income to bring her combined income to the MMMNA. Petitioner's minor child, who receives income of \$828, is also entitled to a family member maintenance deduction pursuant to N.J.A.C. 10:71-5.7(g) in the amount of \$331.08.

Under the federal statute, additional income is only permitted when there is a showing of exceptional circumstances resulting in financial duress. 42 U.S.C. § 1396r-5(e)(2)(B). It is Petitioner's burden to demonstrate that the circumstances meet this standard. To that end, Petitioner produced financial records, bills and other documents.

Ordinary and regular expenses have been rejected as a basis to meet the exceptional circumstance threshold. Dorn v. DMAHS, OAL Dkt. No. HMA 7609-04, affirmed 2006 WL 2033940 (N.J. Superior Court, Appellate Division), J.M.A. v. DMAHS and Union County Board of Social Services, OAL Dkt No. HMA 5549-02, Contra., M.G. v. DMAHS and Union County Board of Social Services, 95 N.J.A.R. (DMA) 47 (1995) (the community spouse had a leaking roof, electrical damage and was being sued by "several of her doctors for non-payment of her expenses"). See also Schachner v. Perales 85 N.Y. 2d 316, 322 (1995) ("voluntarily assumed expenses of a private secondary and college education are not the sort of 'exceptional expenses' contemplated"). In Dorn, the Appellate Division found that the "distinction between 'everyday expenses' (which cannot constitute a basis for increasing the spousal allowance), and the unexpected expenses, exemplified by 'medical bills, home repair bills for significant structural problems or credit card arrears that are related to the medical situation' (which might support an increase in the allowance) is a proper

interpretation of the" federal statute. In a more recent unpublished Appellate Division case, the court found that the federal statute "requires a causal connection between the exceptional circumstances and the financial duress." C.H. v. DMAHS and Camden County Board of Social Services, Dkt. No. A-6129-08T2 (decided August 12, 2010). Merely having financial duress is not sufficient to warrant additional money for the institutionalized spouse.

At the fair hearing the ALJ found that Petitioner demonstrated exceptional circumstances resulting in financial duress. Not only is Petitioner suffering from Huntingdon's Disease but his young daughter is also afflicted and would eventually succumb in July 2011. Prior to that time Petitioner's wife has made accommodations to the home for both her husband and daughter including electrical repairs to maintain their daughter's life support. As her husband was stricken in his early forties, she has lost him as a wage earner. The family took on additional debt for medical bills that were incurred prior to Medicaid eligibility. Moreover, due to their daughter's extremely rare diagnosis of Huntingdon's Disease in juveniles, the family had to seek specialized care that was not reimbursed.

I am satisfied that the facts and circumstances of this case rise to the level of exceptional circumstances resulting in financial duress. Petitioner and his family have been burdened with medical and financial hardships that warrant an increase in the MMMNA to permit his wife to pay down the debt. As the increase of the MMMNA can only occur for exceptional circumstances resulting in financial duress and since Petitioner's own calculations show the financial duress abating through 2014, the increase must be reevaluated. At the time of Petitioner's redetermination in February 2016, Ocean County shall calculate the MMMNA pursuant to the regulations and using

the current amounts. Should Petitioner's wife continue to experience exceptional circumstances resulting in financial duress, she may appeal the MMMNA calculation at that time.

Thus, due to the unique circumstances of this case I ADOPT the Initial Decision's finding that Petitioner's wife has demonstrated exceptional circumstances resulting in financial duress and is entitled to that portion of his income that would have been paid to the nursing home from February 1, 2010 through January 31, 2016. At that time Ocean County shall through the redetermination process, recalculate Petitioner's eligibility including the MMMNA using Petitioner's wife's current income and expenses. At that time she can challenge the MMMNA by demonstrating that she continues to experience exceptional circumstances resulting in financial duress.

THEREFORE, it is on this 13<sup>th</sup> day of MARCH 2015

ORDERED:

That the Initial Decision is hereby ADOPTED in that Petitioner's community spouse is entitled to an increased MMMNA as set forth in the Initial Decision from February 1, 2010 through January 31, 2016; and

That Ocean County shall recalculate the MMMNA as of February 1, 2016 as set forth in the Medicaid regulations.



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Valerie Harr, Director  
Division of Medical Assistance  
and Health Services