



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

VALERIE HARR
Director

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

T.D., :
:
PETITIONER, : ADMINISTRATIVE ACTION
:
v. : FINAL AGENCY DECISION
:
DIVISION OF MEDICAL ASSISTANCE : OAL DKT. NO. HMA 4799-2015
:
& HEALTH SERVICES and :
:
OCEAN COUNTY BOARD OF SOCIAL :
:
SERVICES, :
:
RESPONDENTS. :

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. Petitioner filed exceptions in this matter. Procedurally, the time period for the Agency Head to file a Final Agency Decision is August 10, 2015, 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 in this matter was received on June 25, 2015.

Petitioner was found eligible for Medicaid benefits effective October 2012. He resided at Atlantic Coast Rehabilitation and Health Care from September 2012 through May 2014. The law firm, representing Petitioner, was hired by his authorized representative who is an employee of either Atlantic Coast or its parent company. See October 2, 2014 letter from law firm. Petitioner must contribute to his cost of care. 42 CFR § 435.725. This amount is listed on what is referred to as the PR-1 form and varied from \$1,077 to \$1,216.90 a month during the time period in question. P-C. There is no indication if Atlantic Coast, which claims to be owed \$18,558.20, has initiated litigation against Petitioner's wife due to her failure to make any of those payments.

During the period in question, Petitioner had a monthly Social Security benefit that ranged from \$1,112 to \$1251.90. P-C. His wife receives approximately \$600 in Social Security. She also receives \$3,000 a month from an individual described as a "family friend." P-D. According to the wife's affidavit, this friend pays her \$3,000 each month "out of kindness and compassion" with no obligation to repay. While the wife says the \$3,000 a month payment could "cease at any time," the affidavit, dated May 14, 2015, makes no mention that these payments have ceased. As a result Petitioner's wife receives \$3,600 a month, an amount in excess of the maximum Minimum Monthly Maintenance Needs Allowance (MMMNA) of \$2,980.50. See [http://medicaid.gov/medicaid-chip-program-information/by topics/eligibility/downloads/2015-ssi-and-spousal-impoverishment-standards.pdf](http://medicaid.gov/medicaid-chip-program-information/by%20topics/eligibility/downloads/2015-ssi-and-spousal-impoverishment-standards.pdf).

Petitioner's arguments are not applicable in this case and ignore the federal law established the MMMNA. 42 U.S.C.A. § 1395r-5. Enacted in 1988 as the Medicare Catastrophic Coverage Act (MCCA), the statute's chief purpose was to end the "pauperization [of the community spouse] by assuring that [she] has a sufficient--but not

excessive--amount of income and resources available while the other spouse is institutionalized." H.R. Rep. No. 105 (II) 1988 U.S.C.C.A.N. at 888. To that end the provisions sought to ensure that the community spouse receives a minimum of income well above the poverty level and requiring couples to bear a reasonable amount of the costs of institutionalized care and thereby preserve limited Medicaid resources. See Cleary v. Waldman, 959 F.Supp. 222, 232 (D.NJ 1997). The MCCA was not intended to create a windfall for community spouses or their heirs, indeed, the public needs protection from diversion of public funds. Id. at 229, 232.

As part of the post-eligibility income provisions, the MCCA also provides, in general, that each spouse's monthly income belongs to that spouse unless it is joint income, in which case it is to be split. 42 U.S.C.A. § 1396r-5(b). "To achieve this aim, Congress installed a set of intricate and interlocking requirements with which States must comply in allocating a couple's income and resources." Wisconsin Dep't of Health and Family Servs. v. Blumer, 534 U.S. 473, 480, 122 S. Ct. 962, 967, 151 L. Ed. 2d 935, 944 (2002). A community spouse's income "shall [not] be deemed available to the institutionalized spouse." 42 U.S.C.A. § 1396r-5(b)(1). Congress intended that an "adequate" amount of resources to provide for the monthly need would occur after *taking into account any other **income** attributable to the community spouse*. House Conf. Rep. No. 100-661, at 256, *reprinted in* 1988 U.S.C.C.A.N. 923, 1043.

Here Petitioner argues that these monthly gifts of \$3,000 should be ignored as part of his wife's monthly income. There is no doubt that gifts are considered unearned income and are calculated when determining Medicaid eligibility. See 20 C.F.R. § 416.1121(g) "[a] gift is something you receive which is not repayment to you for goods or services you provided and which is not given to you because of a legal obligation on

the giver's part." Petitioner's wife does not dispute that she receives \$3,000 a month as a gift and claims that it is given to her so that she can "afford to stay in [her] home." P-D. She provides no other information about this generosity or why she needs this amount to remain in her home. Rather, she argues that Ocean County should ignore the \$3,000 a month income and permit her to retain all of Petitioner's income. This would bring her monthly income to a minimum of \$4,677 (\$3,000 + \$600 + \$1,077).

In support of this contention she cites to 42 U.S.C. 1382(a)(2)(A)(i) which addresses support and maintenance given to an individual and his **eligible** spouse while living in a residential facility or another's household. Petitioner's wife is not an eligible spouse nor is she living in a residential facility or another household maintained by another person. Rather the spousal impoverishment rules govern the calculations in this case and Ocean County properly used the \$3,000 she receives each month to determine that she was not entitled to Petitioner's income.

Thus, I hereby ADOPT the Initial Decision upholding the calculation of Petitioner's MMMNA.

THEREFORE, it is on this <sup>5<sup>th</sup></sup> day of AUGUST 2015

ORDERED:

That the Initial Decision is hereby ADOPTED.



---

Valerie Harr, Director  
Division of Medical Assistance  
and Health Services