

Agency Head to adopt, reject or modify the Initial Decision within 45 days of the agency's receipt. The Initial Decision was received on January 6, 2016.

Based upon my review of the record, I hereby ADOPT the Initial Decision in its entirety and incorporate the same herein by reference. The issue presented here is whether Petitioner provided the necessary financial information from her spouse for Essex County to make an eligibility determination. The credible evidence in the record indicates that Petitioner failed to provide the needed verification prior to the November 17, 2015 denial of benefits. Without this information, the County was unable to complete its eligibility determination and the denial was appropriate. Of course, Petitioner may reapply with the needed information. Petitioner may also pursue a spousal waiver which would allow Petitioner's application to proceed without information regarding her husband's assets. The federal statute, 42 U.S.C. § 1396r-5(c)(1)(A), provides that an "institutionalized spouse shall not be ineligible by reason of resources determined under paragraph (2) to be available for the cost of care where- . . . (C) the State determines that denial of eligibility would work an undue hardship." 42 U.S.C. § 1396r-5(c)(3). DMAHS does provide for a waiver of the resource assessment in certain instances when there has been a break in the marital ties and the community spouse refuses to cooperate with the resource eligibility determination. A waiver may be granted in cases where the spouse is deceased but it cannot be verified, the couple is divorced but it cannot be verified, the spouse is uncooperative or the spouse's whereabouts are unknown. Petitioner's willingness to assign any right to support from her community spouse to the

State is also a factor that would be considered. Such a waiver is not a guarantee of continuous eligibility and eligibility will be redetermined if circumstances change. Thus, if Petitioner can adequately demonstrate that her spouse is uncooperative and will not assist in the Medicaid eligibility process, I suggest that she request Essex County's assistance in obtaining a spousal waiver.

THEREFORE, it is on this 18th day of February 2016,

ORDERED:

That the Initial Decision affirming the denial of eligibility is hereby ADOPTED.



Meghan Davey, Director
Division of Medical Assistance
and Health Services