

Petitioner's monthly Veterans Aid and Attendance (A&A), in the amount of \$765, and a special monthly pension issued by the Department of Veterans Affairs (VA), in the amount of \$1,146, as a result of Petitioner's need for A&A. Petitioner contends that A&A benefits are excluded from the calculation of Petitioner's income for both eligibility determinations and as part of the post-eligibility evaluation for purposes of calculating Petitioner's cost of care contribution, pursuant to N.J.A.C. 10:71-5.7; See also 42 CFR § 435.725. The matters were consolidated and an Initial Decision was previously issued on May 13, 2022, which found that Petitioner's A&A and VA special pension were improperly included in MCBSS's post-eligibility evaluation of Petitioner's available income. On August 9, 2022, the matter was reversed and remanded by the undersigned for clarification regarding whether Petitioner advised the VA, pursuant to his February 24, 2020 Rating Decision, that Petitioner was receiving Medicaid benefits, as the notification should have affected the amount of benefits that Petitioner received after Medicaid eligibility was established.

Following the remand, the Initial Decision again agreed with Petitioner and found that the inclusion of A&A funds as available income for post-eligibility on the PR-1s were improperly included, citing C.F.R. § 416.1103(a)(7)(b)(i) and Ginley v. White, 1992 U.S. Dist. LEXIS 866 (E.D. Pa. January 24, 1992). The Initial Decision further found that Petitioner's special VA pension was awarded "based upon the need for aid and attendance . . . effective December 23, 2019", the special pension was also incorrectly included in Petitioner's post-eligibility income calculation. However, the record on remand raised several additional questions regarding the disbursement of Petitioner's A&A and VA special benefit awards and further clarification of the record is required in this matter. For this reason, as detailed below, I REVERSE and REMAND the Initial Decision in this matter for further development of the record.

At the previous remand proceedings, it was determined that Petitioner, through letter dated September 30, 2020, advised the VA that Petitioner was receiving Medicaid benefits.

P-2. However, it is unclear why it took Petitioner approximately six months from the date that the VA approved his A&A and special pension benefits to inform it that Petitioner had begun receiving Medicaid benefits as of March 2020. By letter dated February 19, 2021, the VA reduced Petitioner's VA benefits to \$90. P-3. MCBSS issued a new PR-1 in June 2021, effective March 2021, reducing Petitioner's VA benefits to \$90 per month and recalculated Petitioner's cost of care contribution. P-4. As Petitioner's benefits were reduced by the VA and a revised PR-1 was issued that reflected the reduction of Petitioner's benefits to \$90, which was not included in Petitioner's cost of care contribution calculation, it is unclear what particular relief Petitioner is seeking through the current appeal or what particular months Petitioner feels that the A&A and VA special pension were incorrectly included in his cost of care contribution calculation. It is also unclear from the record when Petitioner began receiving his A&A and VA special pension payments, i.e. did he receive said payments beginning in March 2020 or did he receive a lump sum payment at some point after the benefits were initially awarded? Moreover, as Petitioner was required to keep his resources below \$2,000 to remain eligible for his Medicaid benefits, there is nothing in the record to show how the A&A and the special VA pension were used or spent during any months where Petitioner received such payments or if a Qualified Income Trust (QIT) was created for the receipt and disbursement of any of the funds. It is also unclear whether Petitioner paid the funds he received from the VA to his nursing facility, in accordance with the two PR-1 forms at issue, whether Petitioner voluntarily repaid these payments to the VA, or whether the VA affirmatively sought recoupment of any overpayments made to Petitioner during any periods at issue.

On remand, Petitioner should provide documentation showing when Petitioner began receiving payments related to the A&A and VA special pension benefits and how the A&A and VA special pension funds were spent. Specifically, Petitioner should provide copies of bank statements, receipts, invoices, and other documentation that show how the funds were

distributed, including whether the VA recouped any portion of the funds paid. Petitioner should also provide any documentation related to the establishment of a QIT, should one have been created for the receipt and disbursement of Petitioner's VA benefits. Moreover, additional testimony should be provided explaining the six month lapse between Petitioner receiving Medicaid benefits and Petitioner informing the VA that he was determined eligible for Medicaid benefits. Additional findings should be made regarding the time period of payments at issue in this matter and ultimately, the specific relief that Petitioner is seeking with the present appeal.

THEREFORE, it is on this 25th day of January 2023,

ORDERED:

That the Initial Decision is hereby REVERSED and REMANDED as set forth above.



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