



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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

A.O.,
PETITIONER,
v.
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES AND
CUMBERLAND COUNTY BOARD OF
SOCIAL SERVICES,
RESPONDENTS.
ADMINISTRATIVE ACTION
FINAL AGENCY DECISION
OAL DKT. NO. HMA 1893-2015

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the OAL case file, the documents in evidence and the Initial Decision in this matter. No exceptions were filed. Procedurally, the time period for the Agency Head to file a Final Agency Decision is May 4, 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 was received on March 18, 2015.

This matter concerns the termination of Petitioner's benefits as he is over the income limit for the Jersey Care Program. Petitioner receives Social Security in the amount of \$1,033. The Jersey Care income limit is \$973. Therefore, Petitioner is \$60 over the income limit.

The Initial Decision found that since Petitioner's Social Security is being reduced due to an overpayment, Medicaid should use the \$865 a month that remains after garnishment when determining his eligibility. For the reasons that follow, I hereby REVERSE the Initial Decision and reinstate Petitioner's termination.

As New Jersey is a Supplemental Security Income (SSI) state, it is bound by the SSI rules. Eligibility is determined by a gross income test. N.J.A.C. 10:71-5.7(c). SSI regulations on income provide that "(1) We include more than you actually receive where another benefit payment (such as a social security insurance benefit) (see § 416.1121) has been reduced to recover a previous overpayment. You are repaying a legal obligation through the withholding of portions of your benefit amount, and the amount of the debt reduction is also part of your unearned income." 20 CFR § 416.1123(b)(2).

In Baer v. Klagholz, 339 N.J. Super. 168, 191 (App. Div. 2001), the court, citing, In re Adoption of Amendments to N.J.A.C. 6:28-2.10, 305 N.J. Super. 402, noted that: "[a]n agency must, of course, act consistently with any applicable federal law, and its regulations, when a federal standard governs, must foster the federal policies." Any confusion with the regulations does not alter how Congress has defined income. Perhaps the best explanation is found in L.M. v. DMAHS, 134 N.J. 304 (1995):

In determining whether income is excessive, Congress has required the states to adopt a methodology that takes "into account only such income . . . as [is], as determined in accordance with standards prescribed by the Secretary, available to the applicant." 42 U.S.C.A. §1396a(a)(17)(B). Because of that delegation of authority, the Supreme Court has stated that the Secretary's definition of available income "is entitled to 'legislative effect' because, '[i]n a situation of this kind, Congress entrusts to the Secretary, rather than to the courts, the primary responsibility for interpreting the statutory term.'" Gray Panthers, *supra*, 453 U.S. at 44, 101 S. Ct. at 2640, 69 L. Ed. 2d at 470 (quoting Batterton v. Francis, 432 U.S. 416, 425, 97 S. Ct. 2399, 2405, 53 L. Ed.2d 448, 456 (1977)). The Secretary has defined "income" under SSI to include "anything you receive in cash or in kind that you can use to meet your needs for food, clothing, and shelter. Sometimes income also includes more or less than you actually receive." 20 C.F.R. § 416.1102 (citations omitted). Specifically, unearned income, such as private-pension benefits, 20 C.F.R. § 416.1121(a), counts toward eligibility "[w]hen you receive it or when it is credited to your account or set aside for your use," 20 C.F.R. § 416.1123(a), "includ[ing] more than you actually receive if amounts are withheld from unearned income because of a garnishment, or to pay a debt or other legal obligation." 20 C.F.R. § 416.1123(b)(2).

A Second Circuit Court of Appeals decision also found that for the purposes of Medicaid eligibility available income included court ordered support payments, mandatory payroll deductions for income taxes, social security and state disability contributions. Himes v. Shalala, 999 F. 2d 684 (2nd Cir 1993). In reaching that decision, the court examined the legislative history of "available income" and determined that Congress did not intend to exclude such deductions from determining Medicaid eligibility. Rather "[w]hen Congress spoke of actually available income, it indicated its concern about the unfounded attribution of income from relatives, a prevalent state practice at the time. See S. Rep. No. 404, 89th Cong., 1st Sess. 78, reprinted in 1965 U.S.C.C.A.N.1943, 2018

("Examples of income assumed include support orders from absent fathers, which have not been paid or contributions from relatives which are not in reality received by the needy individual.")" Hines, supra. at 686.

Turning to New Jersey's regulations, there is evidence that gross income, including deductions, is countable towards the eligibility standard. N.J.A.C. 10:71-5.1(b)(1) states that "Income shall be considered available to an individual when: . . . ii. With the exception of income from self-employment, the income becomes payable but is not received by the individual due to his/her preference for voluntary deferment."

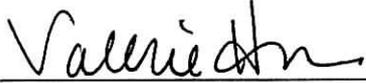
Read as a whole, there is no doubt that Petitioner's gross income is to be applied to the Medicaid standard. This conclusion is supported by regulations and court decisions at both at the state and federal level. It is unfortunate that his income exceeds \$973 by such a small amount but the income threshold is a bright line test. While Petitioner's situation may be sympathetic, there is no statutory or regulatory leeway to grant Medicaid benefits to those who are above the income limit.

THEREFORE, it is on this ^{30th} day of APRIL 2015,

ORDERED:

That the Initial Decision is hereby REVERSED; and

That Petitioner's termination is upheld.



Valerie J. Harr, Director
Division of Medical Assistance
and Health Services