



State of New Jersey
DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
PO Box 712

TRENTON, NJ 08625-0712

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

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

JENNIFER VELEZ
Commissioner

VALERIE HARR
Director

S.M.,	:	
	:	
PETITIONER,	:	ADMINISTRATIVE ACTION
	:	
v.	:	FINAL AGENCY DECISION
	:	
DIVISION OF MEDICAL ASSISTANCE	:	OAL DKT. NO. HMA 9749-2014
	:	
& HEALTH SERVICES &	:	
	:	
ATLANTIC 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. 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, 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 January 28, 2015.

Petitioner was found eligible under the Medicaid Needy program. She has monthly income of \$4,809.53. Atlantic County calculated that Petitioner's husband was entitled to a Minimum Monthly Maintenance Needs Allowance (MMMNA) of \$2,495.47

under the spousal impoverishment rules. Based on his income of \$1,215, he is entitled to retain \$1,280.47 of Petitioner's income to bring this combined income to the MMMNA.

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 did not demonstrate exceptional circumstances resulting in financial duress. With additional time to submit documents post-hearing, Petitioner's husband presented monthly expenditures of \$2,493.70. The ALJ pointed out Petitioner's documents do not show that his expenses exceed his MMMNA. ID at 5. Indeed, by his own calculations, Petitioner's husband has a minimal surplus of \$36.77. Petitioner is concerned about capital expenses such as needing a new roof or heating system he may incur in the future but presented no evidence that the expenses were imminent. Should he find himself facing such exceptional circumstances resulting in financial duress, he can apply for an increase in income at that time.

Thus, I concur with the findings and conclusions contained in the Initial Decision and ADOPT it in its entirety.

THEREFORE, it is on this 24th day of FEBRUARY 2015

ORDERED:

That the Initial Decision is hereby ADOPTED.



Valerie Harr, Director
Division of Medical Assistance
and Health Services