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

E.M., PETITIONER, V. ESSEX COUNTY BOARD OF SOCIAL SERVICES, RESPONDENTS.	**ADMINISTRATIVE ACTION** **FINAL AGENCY DECISION** **OAL DKT. NO. HMA 09002-18**

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this matter, consisting of the Initial Decision, the documents in evidence and the entire contents of the OAL case file. No exceptions to the Initial Decision were filed. Procedurally, the time period for the Agency Head to render a Final Agency Decision is November 19, 2018 in accordance with an Order of Extension. The Initial Decision in this case was received on August 20, 2018.

This matter arises from the Essex County Board of Social Services (ECBSS) July 28, 2017 termination of Medicaid benefits for being over income. The matter was transmitted to the Office of Administrative Law (OAL) on September 7, 2017. Both

Petitioner and Respondent filed briefs on February 16, 2017 which were accepted as motions for summary decision. Summary disposition may be entered where there is no genuine issue as to any material fact and where the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.1 et seq. See also Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995). The briefs submitted by the parties each claimed different income amounts for Petitioner. Because the amount of Petitioner's countable income was a materially disputed fact necessary to determine eligibility pursuant to N.J.A.C. 10:72-4.4(a), the matter was remanded to the OAL for additional evidence regarding Petitioner's income. Upon remand, the parties agreed that Petitioner's monthly income totaled $1193 and the Administrative Law Judge determined that although Petitioner was over income, he was, in fact, eligible because N.J.A.C. 10:72-4.4(d)1 violated 42 U.S.C.A. 1396a(m).

The Division of Medical Assistance and Health Services in the New Jersey Department of Human Services (DMAHS) oversees and administers the state and federally funded Medicaid program for certain groups of low to moderate income individuals. New Jersey is considered a Supplemental Security Income (SSI) state, which means that the State's methodology for determining an individual's income and resources can be no more restrictive than SSI. 42 U.S.C.A. § 1396a(a)(10)(C)(i)(III). Therefore, when determining eligibility for the ABD program, as with all of its programs, DMAHS relies on SSI.

N.J.A.C. 10:72-4.1 sets financial limits on eligibility for the Medicaid program. N.J.A.C. 10:72-4.4 specifically addresses the financial limits on eligibility for those applying to the Aged, Blind and Disabled (ABD) program. Specifically, the regulation states that "if the countable income (before deeming) of the aged, blind or disabled individual exceeds the poverty income guideline for one person he or she is ineligible for benefits and income deeming does not apply." N.J.A..C. 10:72-4.4(d)(1). The directive in this regulation is rooted in U.S. Social Security Administration (SSA), Code of Federal Regulations (CFR)

and Program Operations Manual System (POMS).[1]

The CFR instructs how to deem income from an ineligible spouse living in the same household. 20 C.F.R. 416.1163. Specifically, it provides:

> (1) If the amount of your ineligible spouse's income that remains after appropriate allocations is not more than the difference between the Federal benefit rate for an eligible couple and the Federal benefit rate for an eligible individual, there is no income to deem to you from your spouse. In this situation, we subtract only your own countable income from the Federal benefit rate for an individual to determine whether you are eligible for SSI benefits.
> (2) If the amount of your ineligible spouse's income that remains after appropriate allocations is more than the difference between the Federal benefit rate for an eligible couple and the Federal benefit rate for an eligible individual, we treat you and your ineligible spouse as an eligible couple.

20 C.F.R. 416.1163(d)(1)and (2).

The CFR also provides examples to illustrate how income is deemed from an ineligible spouse to an eligible individual in cases, like this one, which do not have any of the exceptions in §416.1160(b)(2). Example 1 is as follows:

> In September 1986, Mr. Todd, an aged individual, lives with his ineligible spouse, Mrs. Todd, and their ineligible child, Mike. Mr. Todd has a Federal benefit rate of $336 per month. Mrs. Todd receives $252 unearned income per month. She has no earned income and Mike has no income at all. Before we deem any income, we allocate to Mike $168 (the difference between the September Federal benefit rate for an eligible couple and the September Federal benefit rate for an eligible individual). We subtract the $168 allocation from Mrs. Todd's $252 unearned income, leaving $84. Since Mrs. Todd's $84 remaining income is not more than $168, which is the difference between the September Federal benefit rate for an eligible couple and the September Federal benefit rate for an eligible individual, we do not deem any income to Mr. Todd. Instead, we compare only Mr. Todd's own countable income with the Federal benefit rate for an eligible individual to determine whether he is eligible. If Mr. Todd's own countable income is less than his Federal benefit rate, he is eligible. To determine the amount of his benefit, we determine his countable income, including any income deemed from Mrs. Todd, in July and subtract this income from the appropriate Federal benefit rate for September.

See 20 C.F.R. 416.1163(g).

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[1] Section 1614(f)(1) and (2) of the SSA gives the Secretary the authority to determine the circumstances under which it would be inequitable to deem from an ineligible spouse or parent.

In applying the above example to the facts of this case, Petitioner is not eligible. Here, Petitioner, who lives with his ineligible spouse, receives $1193 in monthly Social Security disability benefits. Petitioner's spouse receives $0 unearned income per month. Since Petitioner's wife's income is not more than the difference between the Federal benefit rate for an eligible couple and the Federal benefit rate for an eligible individual, we do not deem any income to Petitioner. Instead, we compare only Petitioner's own countable income with the Federal benefits rate for an eligible individual to determine whether he is eligible. If Petitioner's own countable income is less than his Federal benefit rate, he is eligible. Petitioner's income, however, exceeds the Federal benefit rate.

Additionally, the SSA has published POMS, which is a statement of the "publicly available operating instructions for processing Social Security claims." Wash. State Dep't of Soc. & Health Servs. v. Guardianship Estate of Keffeler, 537 U.S. 371, 385, 123 S. Ct. 1017, 154 L. Ed. 2d 972 (2003). The United States Supreme Court noted the deference due POMS. Ibid. "While these administrative interpretations are not products of formal rulemaking, they nevertheless warrant respect." Id. at 385. (citing Skidmore v. Swift & Co., 323 U.S. 134, 139-140, 65 S. Ct. 161, 89 L. Ed. 124 (1944)); see also James v. Richman, 547 F.3d 214, 218 n.2 (3d Cir. 2008). Additionally, in Elizabeth Blackwell Health Center for Women v. Knoll, the Third Circuit found that interpretive rules by an agency with lawmaking authority (as opposed to legislative rules) will get deference even if the agency's interpretation is not made pursuant to that lawmaking authority. 61 F.3d 170 (3rd Cir. 1995). In that case, a manual from HCFA, now CMS, providing guidance to States about Medicaid plans was deemed an interpretative rule and given deference. See United States v. Mead Corp., 533 U.S. 218, 229, 121 S. Ct. 2164, 150 L.Ed.2d 292 (2001).("A very good indicator of delegation meriting Chevron treatment [is an] express congressional authorization to engage in the process of rulemaking or adjudication that produces regulations or rulings for which deference is claimed."). The Third Circuit has also cited POMS and afforded it deference in a case regarding the denial of Medicaid eligibility due to

excess resources. Sable v. Velez, 437 Fed. App'x 73, 77 (3d Cir. 2011) (non-precedential) ("Sable II"). Thus, "while POMS cannot thoughtlessly or rigidly be transplanted from the Social Security context to the Medicaid context, it is entitled to consideration." Landy v. Velez, 958 F. Supp. 2d 545, 553 (D. N.J. 2013)

POMS offers guidance with regard to Medicaid applicants and deeming between spouses. According to POMS, in order for spouse to spouse deeming to apply, the SSI applicant or recipient "must first be eligible based on his or her own income." POMS SI 01320.400. Here, Petitioner, a 57 year old male found to be disabled by the SSA, applied for ABD Medicaid in July 2017. He receives $1193 in Social Security Disability benefits. This is his only source of income. Petitioner's wife has no income. Petitioner's income exceeds the $1005 income limit for an individual. Accordingly, I FIND that Petitioner is not income eligible for Medicaid. N.J.A.C. 10:72-4.4(d). The deeming of any other household income is unnecessary because Petitioner was not first eligible in his own right.

An agency's interpretation of its own regulation warrants substantial deference from the court unless it is plainly unreasonable or inconsistent with the governing legislation. See Thurber, supra, 191 N.J. at 502; In re Freshwater Wetlands Prot. Act Rules, 180 N.J. 415, 431 (2004). The Initial Decision found that DMAHS' regulation violated 42 U.S.C.A. 1396a(m) because it did not consider the applicable "family size involved." In so doing, the ALJ found that Petitioner's eligibility should have been determined based on a family size of two (Petitioner and his wife), thus resulting in Medicaid eligibility for Petitioner.

The Initial Decision, however, ignores the fact that DMAHS' regulation, when read together with 42 U.S.C.A. § 1396a(a)(10)(C)(i)(III) and POMS, makes it clear that the applicable family size involved under these circumstances was a family size of one. While calculation based on a family size of two would result in benefits for this Petitioner (because his spouse has no income), it would be more restrictive to another pool of individuals who would have been found income eligible as individuals but not as a family unit. While both

methodologies produce ineligible individuals, the methodology advocated by Petitioner would produce inconsistent results that fly in the face of the requirement that SSI states refrain from being more restrictive than SSI. Thus, I hereby REVERSE the Initial Decision and REINSTATE Petitioner's denial.

THEREFORE, it is on this 13th day of NOVEMBER 2018,

ORDERED:

That the Initial Decision is hereby REVERSED.

Richard H. Hurd Chief of Staff
Meghan Davey, Director
Division of Medical Assistance and Health Services OBO