



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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Governor

SHEILA Y. OLIVER  
Lt. Governor

CAROLE JOHNSON  
Commissioner

MEGHAN DAVEY  
Director

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

R.K.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

MIDDLESEX COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 18304-2017

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.<sup>1</sup> Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is September 20, 2018, in accordance with and Order of Extension.

<sup>1</sup> A copy of a letter addressed to Governor Phillip Murphy from Petitioner's daughter was received by my office. In addition to the fact that Petitioner's daughter is not his authorized representative, the letter raises issues and allegations not presented in the record below. As such it was not considered pursuant to N.J.A.C. 1:1-18.4(c).

The matter arises regarding the denial of Petitioner's April 2017 application for Medicaid benefits due to excess resources. Petitioner had been residing in a nursing home since September 2016. The application identified two bank accounts. R-3. One was held jointly with his wife while the other was solely in his wife's name. At the time of his institutionalization in September 2016, the couple's combined reported resources were \$12,700. ID at 3.

Medicaid regulations use the combined resources both to establish the community spouse's resource allowance and to determine eligibility:

(a) In the determination of resource eligibility for an individual requiring long-term care, the county welfare agency shall establish the **combined** countable resources of a couple as of the first period of continuous institutionalization beginning on or after September 30, 1989. This determination shall be made upon request for a resource assessment in accordance with N.J.A.C. 10:71-4.9 or at the time of application for Medicaid benefits. The total countable resources of the couple shall include all resources owned by either member of the couple individually or together. The county welfare agency shall establish a share of the resources to be attributed to the community spouse in accordance with this section. (No community spouse's share of resources may be established if the institutionalized individual's current continuous period of institutionalization began at any time before September 30, 1989.)

1. The community spouse's share of the couple's combined countable resources is based on the couple's countable resources as of the first moment of the first day of the month of the current period of institutionalization beginning on or after September 30, 1989 and shall not exceed \$119,220, as indexed annually in accordance with 42 U.S.C. § 1396r-5(g) and published as a notice in the New Jersey Register, and unless authorized in (a)4 or 5 below. The community spouse's share of the couple's resources shall be the greater of:

- i. \$ 23,844, as indexed annually in accordance with 42 U.S.C. § 1396r-5(g) and published as a notice in the New Jersey Register; or
- ii. One half of the couple's combined countable resources.

2. In determining the resource eligibility of the institutionalized spouse, **the community spouse's share of the resources is subtracted from couple's total combined resources as of the first moment of the first day of the month of application for Medicaid.** If the remaining resources are less than or equal to \$ 2,000, the institutionalized spouse is resource eligible. If the remaining resources exceed \$ 2,000, eligibility may not be established.

N.J.A.C. 10:71-4.8.

This method was affirmed in A.K. v. Division of Medical Assistance and Health Services, 350 N.J. Super. 175 (App. Div. 2002). The initial snapshot of the couple's resources at the first month of institutionalization is done to preserve funds prior to paying privately for care. The snapshot sets the amount the community spouse can retain regardless of when the Medicaid application is filed. Fluctuations in the value of the couple's assets do not change the protected share. The spousal assessment sheet states that the couple must spend down to \$26,180 prior to establishing Medicaid. R-4.

The reported accounts show assets below this amount at the time Petitioner applied. However, Petitioner failed to disclose another account, owned by his spouse and opened in September 2016 with a deposit of \$26,805.40.<sup>2</sup> Id at 6. By September 2017, the account had a balance of \$43,593. R-4. Petitioner died in September 2017.

The ALJ concurred that Petitioner failed to spend down assets so as to qualify for Medicaid during his lifetime. Petitioner's arguments concerning his wife's refusal to cooperate or that it would be a hardship to deny benefits is not supported by the record. Petitioner's only witness at the hearing was his authorized representative. There is no evidence that Petitioner's wife failed to cooperate with the spenddown nor did she provide testimony about any hardship. Thus, for the reasons set forth below, I hereby ADOPT the Initial Decision.

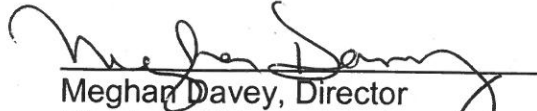
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<sup>2</sup> The unreported bank account was opened with a check dated September 2, 2016 and would not have been part of the snapshot as only the resources owned as of the first moment of September 1, 2016 are part of the snapshot. P-1. However, even if the check had been received earlier so as to be included in the snapshot, the community spouse resource allowance would remain the same.

THEREFORE, it is on this <sup>4th</sup> day of SEPTEMBER 2018,

ORDERED:

That the Initial Decision is hereby ADOPTED.

  
Meghan Davey, Director  
Division of Medical Assistance  
and Health Services