



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.R. and M.R.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

BERGEN COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 000094-2018

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in these consolidated cases, including the Initial Decision, the OAL case file and the documents filed below. Respondent filed exceptions in this matter. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is November 13, 2018 in accordance with an Order of Extension.

The matter arises regarding the recovery of \$19,188.50 based on incorrectly paid benefits for Petitioners who are husband and wife. Petitioners have been receiving Medicaid since May 2014. They reported resources under \$6,000 through a bank account and income from Social Security. The same information was disclosed on the redetermination application dated May 18, 2016 and eligibility was continued. ID at 2.

Bergen County discovered through the Income Eligibility Verification System (IEVS) that the husband had a retirement annuity that he began receiving in December 2015. At the time Petitioners first applied the annuity was worth over \$63,000. R-1. According to their tax returns, Petitioners received \$7,619 from the annuity in 2015, \$7,785 in 2016 and \$7,596 in 2017 ID at 3 and R-1. The annuity payment resulted in the couple being above the income standard and they were terminated as of October 31, 2017. Bergen County is seeking overpayment from December 1, 2015 through their termination.

Based upon my review of the record, I hereby REVERSE the Administrative Law Judge's recommended decision that the overpayment should be waived. I cannot agree with this based on the record and I do not agree that the matters cited can be established precedent. Cases where the Director has used the discretion afforded to waive overpayments are based on the intrinsic facts of that particular case. While the overpayments in M.B. and K.B. v. DMAHS and Monmouth County Board of Social Services, HMA 15436-14, Initial Decision (June 29, 2015), affirmed, FAD (August 26, 2015) and M.L. v. Division of Medical Assistance and Health Services and the Bergen County Board of Social Services, HMA 01381-01, Initial Decision (September 5, 2001), reversed in part and affirmed in part, FAD (November 2, 2001), were waived, the decisions were exclusively based on the facts of the case. Indeed, in the Acting Director in M.L. stated "that this Final Agency Decision is not intended to set precedent or affect any other decision I may make in the future." Thus, the instant matter should be reviewed on its own merits regarding whether a waiver should be applied.

In this matter Petitioners failed to mention the existence of the annuity on their initial application or that they had received the annuity income on the redetermination form. When queried about where the annuity check was deposited, Petitioners' son stated the check was cashed and not deposited into a bank account. R-1. Petitioners used the annuity "to pay credit card debt and repay money they owe." ID at 2. It is unclear how the

credit card bills were paid as the reported bank account is set up to make payments to American Express, Bloomingdales, Amazon, Discover Card, Costco and Chase Visa. R-1.

Thus, I find no basis to waive the overpayment. I note that this Final Agency Decision is not intended to set precedent or affect any other decision I may make in the future and is based solely on the facts presented in this case. Furthermore, Bergen County should enter into a payment plan with Petitioners.

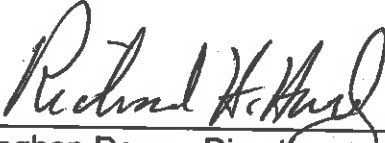
THEREFORE, it is on this 13th day of NOVEMBER 2018,

ORDERED:

That the Initial Decision is hereby REVERSED;

That Petitioners are subject to the overpayment as set forth in the December 5, 2017 letter; and

That Bergen County shall enter a payment plan to recoup the overpayment.


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