

of denial of Medicaid eligibility issued by the Bergen County Board of Social Services (BCBSS).¹ These cases were consolidated on April 19, 2017 and decided on July 31, 2017. On October 20, 2017, the Final Agency Decision reversed and remanded the Initial Decision to determine whether a September 9, 2016 notice properly terminated Petitioner's Medicaid benefits; whether Petitioner is clinically eligible for Managed Long Term Services and Supports (MLTSS); and whether Petitioner receives services which are duplicative of MLTSS? Hearings were held on September 24, 2018, December 10, 2018 and February 13, 2020. An Initial Decision was issued on April 22, 2020. Based upon my review of the record, I hereby ADOPT the Initial Decision in its entirety and incorporate the same by reference.

The September 9, 2016 Notice Terminating Medicaid Benefits

On September 9, 2016, the BCBSS issued a notice terminating Petitioner's family's Medicaid benefits because the family's income exceeded the Federal Eligibility Guideline (FPG) for benefits under NJ FamilyCare Plan A. The undisputed evidence in the record indicates that the Petitioner's family's monthly income of \$6,408.47 exceeded the maximum income limit of \$2,977 to qualify for coverage. There is simply no authority that permits the relaxation or waiver of the income limits in any individual case. Any typographical errors in the September 9, 2016 notice cannot establish eligibility and Petitioner has had an opportunity to refute the findings at an OAL hearing. Furthermore, Petitioner's father conceded that Petitioner was financially ineligible for Plan A benefits. I FIND that BCBSS correctly terminated Petitioner's eligibility for Medicaid benefits.

The October 17, 2016 Notice Regarding Alternate Coverage

Pursuant to the September 9, 2016 determination, Petitioner's family no longer qualified for Medicaid coverage. Consequently, BCBSS terminated health coverage for the

¹ The issue of whether a fourth notice, dated September 9, 2016, which prompted review of eligibility under higher income plans and ultimately resulted in the October 17, 2016 notice, was remanded to determine if the Medicaid benefits were properly terminated in the first instance.

parents, but forwarded the application to the state vendor to determine possible health coverage for the children.² On October 17, 2016, the state vendor reviewed Petitioner's application for potential coverage under NJ FamilyCare Plans B, C, and D. Both the documentary evidence and testimony of Petitioner's father, E.T., establish that Petitioner was covered by other, private insurance. Pursuant to N.J.A.C. 10:79-3.8(e)(2), Petitioner's coverage under private insurance renders him ineligible for NJ FamilyCare Plans B, C or D. I FIND that Petitioner was appropriately denied eligibility for benefits under these plans.

The January 3, 2017 Notice Denying Clinical Eligibility for MLTSS Benefits

On November 7, 2016, Petitioner, a minor, through his father E.T., submitted an Aged, Blind and Disabled (ABD) MLTSS application. In order to qualify for MLTSS, an applicant must be approved financially and clinically. The application listed only Petitioner's income and resources which totaled \$0. On November 18, 2016, BCBSS determined that Petitioner was financially eligible for MLTSS. Clinical eligibility for nursing facility services is determined by the professional staff designated by the Department based on a comprehensive needs assessment that demonstrates that the beneficiary requires nursing home level of care. N.J.A.C. 8:85-2.1. In this case, the designated party is OCCO, Division of Aging Services. Accordingly, upon its determination of financial eligibility, BCBSS forwarded Petitioner's application to OCCO to determine whether Petitioner was also clinically eligible for MLTSS.

In order for Petitioner to qualify for MLTSS, he must be in need of nursing facility (NF) level of care. N.J.A.C. 8:85-2.1; N.J.A.C. 8:85-2.2. The regulations note that nursing facility residents are dependent in several activities of daily living (ADLs), including bathing,

² BCBSS extended benefits for the children for two months to allow time to process the application. Moreover, Petitioner has continued to receive Plan A benefits through BCBSS while this matter is pending. Petitioner also receives forty hours of weekly Personal Care Assistant (PCA) services, provided by his parents through the Personal Preference Program (PPP) administered by the Division of Disability Services; a 1:1 aide for an in-home school program; an in-home Applied Behavioral Analysis teacher; physical therapy; play therapy and numerous services from CSOC (Department of Children and Family's Children's System of Care).

dressings, toilet use, transfer, locomotion, bed mobility and eating. N.J.A.C. 8:85-2.1(a)(1). Additionally, children requiring NJ services exhibit functional limitations identified either in terms of developmental delay requiring nursing care over and above routine parenting or are limited in terms of specific age-appropriate physical and cognitive activities, functional abilities (ADL) or abnormal behavior, as demonstrated by performance at home, school or recreational activities. N.J.A.C. 8:85-2.1(a)1i. These needs must go beyond routine parenting. It is Petitioner's burden to prove that he is clinically eligible for MLTSS benefits. Levine v. Milne, 424 U.S. 577, 583-84 (1976); Schaffer v. Weast, 546 U.S. 49 (2005).

On December 30, 2016, OCCO nurse Tara Morris, R.N., conducted a comprehensive needs assessment of Petitioner. At the time of assessment, Petitioner was a seven-year-old child. Based on her observations and information provided by E.T., Nurse Morris was able to determine that Petitioner did not exhibit any need for care above and beyond routine parenting. Moreover, she found that Petitioner was able to perform all age appropriate ADLs for a seven year old child without assistance.

Nurse Morris observed Petitioner perform several ADLs and other activities. She personally observed Petitioner transfer without assistance, ambulate without assistance, and dress without assistance. She also observed Petitioner used scissors to cut shapes from paper without assistance and take direction from his father to alter his behavior without issue. She also remarked that Petitioner was "well-behaved and pleasant." Furthermore, Nurse Morris noted that Petitioner lives with his parents, has no difficulty hearing or seeing, and had no hospitalizations or emergency room visits in the last ninety days. She also noted that Petitioner required supervision while managing full flights of stairs and was otherwise dependent on his parents with regard to Instrumental Activities of Daily Living (IADLs), such as meal preparation, ordinary housework, managing medications, phone use, shopping and transportation and two ADLs, namely bathing and personal hygiene. However, Morris clarified that Petitioner's dependency was not due to any disability or medical need. Rather,

she determined that Petitioner's dependence on his parents for the above listed ADLs and IADLs were typical of a seven-year-old child and did not exceed assistance provided through routine parenting. In contrast, E.T. testified only to the Petitioner's need for supervision, not to a need for care exceeding that provided through routine parenting.

I agree with Nurse Morris' assessment that Petitioner is able to perform age appropriate ADLs for a seven year old child without assistance. I FIND that the record supports Nurse Morris' conclusion that Petitioner's limited dependence on his parents for certain ADLs and IADLs are typical of a seven-year-old child and that such supervision and care does not exceed routine parenting. I FIND that none of Petitioner's issues require nursing facility level of care pursuant to N.J.A.C. 8:85-2.1 and N.J.A.C. 8:85-2.2. Therefore, I FIND that Petitioner is clinically ineligible for MLTSS.

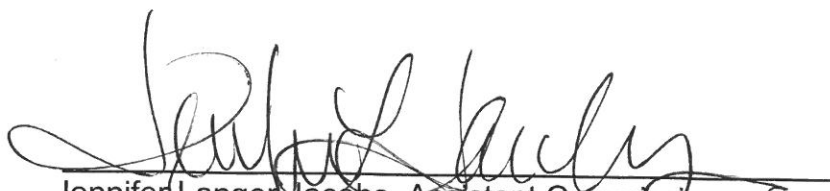
The January 9, 2017 Notice Regarding MLTSS Ineligibility

In order to be eligible for MLTSS, an applicant must be both financially and clinically eligible. Although BCBSS concluded that Petitioner was financially eligible, his clinical ineligibility prohibits him from receiving MLTSS benefits. Consequently, BCBSS issued a notice denying Petitioner's application for MLTSS benefits. I FIND that Petitioner's application was appropriately denied.

THEREFORE, it is on this ^{21st} day of JULY 2020,

ORDERED:

That the Initial Decision is hereby ADOPTED.


Jennifer Langer Jacobs, Assistant Commissioner
Division of Medical Assistance
and Health Services