

PHILIP D. MURPHY Governor

SHEILA Y. OLIVER Lt. Governor

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES PO Box 712 TRENTON, NJ 08625-0712

CAROLE JOHNSON Commissioner

JENNIFER LANGER JACOBS Assistant Commissioner

TATE OF NEW JERSEY **DEPARTMENT OF HUMAN SERVICES DIVISION OF MEDICAL ASSISTANCE** AND HEALTH SERVICES

F.M.,

PETITIONER.

V.

DIVISION OF MEDICAL ASSISTANCE:

AND HEALTH SERVICES AND

HUDSON COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

ORDER OF RETURN

OAL DKT. NO. HMA 15795-2019

As Assistant Commissioner 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. Neither party filed exceptions in this matter. Procedurally, the time period for the Agency Head to file a Final Decision is August 20, 2020 n accordance with an Order of Extension.

The matter arises regarding the calculation of Petitioner's post-eligibility treatment of income. Petitioner's spouse reside in the community with her children. His income totals \$1,773 from Social Security and a pension. His wife's income is \$722.25. Her children pay all of her expenses. Hudson County determined that she was not entitled to Petitioner's income because all her expenses were met. However, this is an incorrect interpretation of the spousal impoverishment rules. Thus, I agree with the Initial Decision that Petitioner's post-eligibility income must be recalculated.

The spousal impoverishment rules were enacted in 1988 as the Medicare Catastrophic Coverage Act (MCCA), the statute's chief purpose was to end the "pauperization [of the community spouse] by assuring that [she] has a sufficient--but not excessive--amount of income and resources available while the other spouse is institutionalized." H.R. Rep. No. 105 (II) 1988 <u>U.S.C.C.A.N.</u> at 888. To that end the provisions sought to ensure that the community spouse receives a minimum of income well above the poverty level and requiring couples to bear a reasonable amount of the costs of institutionalized care and thereby preserve limited Medicaid resources. See <u>Cleary v. Waldman</u>, 959 <u>F.Supp.</u> 222, 232 (D.NJ 1997).

In doing this, a Minimum Monthly Maintenance Needs Allowance (MMMNA) was established and is indexed annually. As the name implies it sets a minimum income standard for the community spouse. Additional expenses such as shelter and utilities costs that exceed certain thresholds are used to increase the MMMNA. Once this calculation is done, the result is compared with the community spouse's income.

Here Petitioner's wife has no shelter or utility costs because those costs are borne by her children with whom she lives. So at minimum she is entitled the MMMNA which in 2019 was \$2,113.75. See Medicaid Communication 19-08. MCCA provides that deductions from the institutionalized spouse's income may be paid for the benefit of the community spouse to increase her income to the MMMNA. This is known as a community spouse monthly income

allowance ("CSMIA"). 42 <u>U.S.C.A.</u> § 1396r-5(d)(1)(B). See also <u>N.J.A.C.</u> 10:71-5.7(c). The Initial Decision incorrectly states that states can use either income first or resources first to make up the difference between the MMMNA and the community spouse's income. ID at 9. This was true until 2005 which Congress rejected the resource first method and mandated the income first approach for all 50 states in the Deficit Reduction Act of 2005. 42 U.S.C.A. § 1396r-5(d).

The Initial Decision agreed with Hudson County's argument that Petitioner had gift income that must be used in the CSMIA calculation. That income is characterized as the support her children give her and relies on T.D. v. Ocean County Bd. of Social Services. See https://www.state.nj.us/humanservices/dmahs/info/decisions/2015/TDvDMAHSandOCBOS S.pdf. In that case, Petitioner's spouse received \$3,000 monthly as a gift which is considered income in calculating the CSMIA. Here, there is no indication that Petitioner's children pay Petitioner each month. Rather it appears that they pay her bills directly. This would be considered in-kind support if Petitioner's wife was applying for benefits but it does not constitute income for purposes of determining the CSMIA. See Cleary by Cleary v. Waldman, 959 F. Supp. 222, 233 (D.N.J. 1997) "The conferees explained that in the hearing embodied in subsection (e)(2)(C) the state must allow the community spouse to retain an "adequate" amount of resources to provide the monthly need 'taking into account any other income attributable to the community spouse.' H.R.Conf.Rep. No. 661, supra (emphasis added). For the purposes of resource allocation (as distinguished from income calculations under subsection (b)), the community spouse monthly income allowance provided for in subsection (d)(1)(B) is certainly 'income attributable to the community spouse.'" Thus, I REVERSE the finding that expenses paid on the wife's behalf are attributed to her for this calculation.

Based on the numbers in the record, Petitioner has sufficient income to raise his wife's income to the MMMNA. However, that calculation must be done by Hudson County and the

amounts entered into the PR-1 form. As such the matter is RETURNED to Hudson County to make those calculations.

THEREFORE, it is on this day of AUGUST 2020,

ORDERED:

That the Initial Decision is hereby ADOPTED, in part, and REVERSED, in part, as set forth above; and

That the matter is RETURNED to Hudson County to apply the MMMNA to Petitioner's post-eligibility treatment of income.

Jennifer Langer Jacobs, Assistant Commissioner

Division of Medical Assistance

and Health Services