

Petitioner must pay as part of a settlement agreement with the current nursing home facility and the cost of his monthly homeowner's insurance payment. Petitioner asserts that his obligation under the settlement agreement constitutes an "exceptional circumstance resulting in financial duress" pursuant to N.J.A.C. 10:71-5.7(e).

Based on my review of the record and the relevant statutes and case, I hereby ADOPT the Initial Decision in its entirety and incorporate the same herein. I FIND that Petitioner has not demonstrated exceptional circumstances resulting in financial duress.

Under the federal statute, additional income is permitted when there is a showing of exceptional circumstances resulting in financial duress. 42 U.S.C. § 1396r-5(e)(2)(B). It is clear that Congress did not intend for every expense to be covered. The federal statute intended only to prevent the impoverishment of a community spouse and not to guarantee the amenities of the current lifestyle. See H.R. Rep. No. 100-105(II), 100th Cong. 2d Sess. 69-71 (1988), reprinted in 1988 U.S.C.C.A.N. 857, 892-94. As Senator Barbara Mikulski, who sponsored the federal spousal impoverishment provision, stated: "The community spouse will be entitled to retain a modest, but adequate standard of living. A couple will be able to cut back and scale down so as to meet the family's responsibilities for the costs of institutionalization, but it will not be forced to spend down into poverty." 132 Cong. Rec. 1849-02 99th Cong., 2nd Sess. (1986). Consequently, Congress set forth the exceptional circumstances resulting in financial duress standard for any increases above the calculated allowance.

Ordinary and regular expenses have been rejected as a basis to meet the exceptional circumstances threshold. Dorn v. DMAHS, OAL Dkt. No. HMA 7609-04, affirmed 2006 WL 2033940 (N.J. Superior Court, Appellate Division), J.M.A. v. DMAHS and Union County Board of Social Services, OAL Dkt No. HMA 5549-02, Contra., M.G. v. DMAHS and Union County Board of Social Services, 95 N.J.A.R. (DMA) 47 (1995) (the community spouse had a leaking roof, electrical damage and was being sued by "several of

her doctors for non-payment of her expenses"). See also Schachner v. Perales 85 N.Y. 2d 316, 322 (1995) ("voluntarily assumed expenses of a private secondary and college education are not the sort of 'exceptional expenses' contemplated"). In Dorn, the Appellate Division found that the "distinction between 'everyday expenses' (which cannot constitute a basis for increasing the spousal allowance); and the unexpected expenses, exemplified by 'medical bills, home repair bills for significant structural problems or credit card arrears that are related to the medical situation' (which might support an increase in the allowance) is a proper interpretation of the" federal statute.

In a more recent unpublished Appellate Division case, the court found that the federal statute "requires a causal connection between the exceptional circumstances and the financial duress." C.H. v. DMAHS and Camden County Board of Social Services, Dkt. No. A-6129-08T2 (decided August 12, 2010). Merely having financial duress is not sufficient to warrant additional money from the institutionalized spouse.

Petitioner has not shown that there is anything extraordinary or exceptional about his and his wife's expenses that is causing significant financial duress. While medical bills were the basis of the settlement agreement which resulted in a monthly payment of \$777 to the nursing facility, Petitioner and his wife voluntarily entered into the agreement knowing they might not be able to make the payments. Furthermore, the record is devoid of any evidence supporting Petitioner's claims that his wife is unable to meet her monthly expenses or is in danger of losing her home.

However, I FIND that the ALJ correctly determined that Petitioner's monthly homeowner's insurance payments should have been included in the shelter cost calculation.

THEREFORE, it is on this ^{26th} day of JULY 2020

ORDERED:

That the Initial Decision is hereby ADOPTED.



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