



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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Acting Commissioner

JENNIFER LANGER JACOBS
Assistant Commissioner

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

B.F.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE :

AND HEALTH SERVICES AND :

OCEAN COUNTY BOARD OF :

SOCIAL SERVICES, :

RESPONDENTS. :

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 7789-2021

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 April 4, 2022 in accordance with an Order of Extension.

The matter arises regarding the determination of Petitioner's Post Eligibility

Treatment of Income (PETI). In July 2019 Petitioner had been found eligible effective May 2019. R-2. At that time she was residing in a nursing facility. Petitioner was notified she was responsible for contributing to her cost of care from her monthly income of \$1,025. Ibid. This amount was calculated after proscribed deductions to her income for such things as a personal needs allowance. R-2. N.J.A.C. 10:71-5.7. See also 42 CFR § 435.725. She was also notified that she was responsible to report any changes in her finances or living arrangement. R-2.

In November 2019, Petitioner moved into an assisted living facility. She executed a number of admission agreements and disclosures issued by the assisted living facility. See P-2, P-5 and P-9. One of those documents discussed her responsibility to pay room and board, which was set at \$806.55 plus \$20 in utility fees and contribute to her cost of care. See Medicaid Communication No. 20-01 and Medicaid Communication No. 21-01 which increased the monthly room and board rate for assisted living facilities to \$816.70 in 2020 and \$826.30 in 2021. These were the only funds Petitioner paid to the assisted living facility.

The assisted living facility sent a change of address to Ocean County in November 2019, however, Ocean County does not have any record of this. ID at 10. Petitioner's Medicaid redetermination form was sent to the nursing facility in September 2020 but nothing was returned. This would have resulted in termination of Petitioner's benefits but, due to the Families First Coronavirus Response Act enacted on March 18, 2020, all Medicaid terminations during the course of the public health emergency caused by COVID-19 were suspended and Petitioner continued to receive Medicaid benefits. See Medicaid Communication 20-04.

In May 2021, Ocean County learned that Petitioner had moved to an assisted living

facility and issued a PR-2 which sets forth the post-eligibility treatment of income and amongst other things, permitted Petitioner to retain more of her income for her needs. Petitioner sought an appeal of the post-eligibility calculation.

Petitioner contends that change in the contribution of care amount when she moved from the nursing facility to the assisted living facility could not be back dated. In reviewing Petitioner's arguments, the Initial Decision determined that Ocean County acted correctly and that Petitioner's claims seem centered around the assisted living facility's interactions with Petitioner. ID at 13. For the reasons set forth in the Initial Decision, I concur.

The rules regarding contribution to the cost of care are well documents and updates on changes to the cost of room and board and the resident's needs allowance are publically available. See Medicaid Communication Nos. 20-01 and 21-01. Even if these rules were miscommunicated by the facility to Petitioner, it cannot for the basis of overturning the regulatory requirements. Petitioner had previously been contributing to her cost of care and had been paying over much more of her income when she resided in the nursing facility. When she move to the assisted living facility, she was likewise required to pay over her income but could retain twice the amount for her personal needs. See DMAHS Newsletter Volume 28 No. 3 (April 2018) which sets for examples on contribution to care in both a nursing home and assisted living facility and Medicaid Communication No. 21-01.

Moreover, Petitioner's contention that the calculation of the contribution to care can only occur prospectively is not supported by the enumerated actions in 42 CFR § 431.201 that require prior notice. Indeed, individuals can be found eligible as of the month of application and for the three months prior. N.J.A.C. 10:71-2.16. Any determination on

the contribution to care is only done after eligibility is determined which could be months later. Nothing in Petitioner's argument stands for the idea that contribution to care is excluded for those prior months. See N.J.A.C. 10:71-5.7 and 42 C.F.R. § 435.726.

Thus for the reasons set forth above and those contained in the Initial Decision, I hereby ADOPT the Initial Decision.

THEREFORE, it is on this 29th day of MARCH 2022,

ORDERED:

That the Initial Decision is hereby ADOPTED.



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