



**State of New Jersey**

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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*Lt. Governor*

SARAH ADELMAN  
*Commissioner*

JENNIFER LANGER JACOBS  
*Assistant Commissioner*

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

E.S.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

MIDDLESEX COUNTY BOARD

OF SOCIAL SERVICES

RESPONDENTS.

**ADMINISTRATIVE ACTION**

**ORDER OF REMAND**

**OAL DKT. NO. HMA 11396-2020 and  
HMA 00362-2021  
(CONSOLIDATED)**

As Assistant Commissioner for the Division of Medical Assistance and Health Services (DMAHS), I have reviewed the record in this case, including the Initial Decision and the Office of Administrative Law (OAL) case file. No exceptions were filed in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is August 11, 2022, in accordance with an Order of Extension.

This matter arises from two Statements of Available Income for Medicaid Payment, known as a PR-1 forms, issued by Middlesex County Board of Social Services (MCBSS) on October 27, 2020 and November 25, 2020, respectively. The PR-1 forms included

Petitioner's Veterans Aid and Attendance (A&A) and a special monthly pension issued by the Department of Veterans Affairs (VA) as a result of Petitioner's need for A&A. Petitioner contends that A&A benefits are excluded from the calculation of Petitioner's income for both eligibility determinations and as part of the post-eligibility evaluation for purposes of calculating Petitioner's cost of care contribution, pursuant to N.J.A.C. 10:71-5.7; See also 42 CFR § 435.725. The Initial Decision agreed with Petitioner and found that the inclusion of A&A funds as available income for post-eligibility on the PR-1s were improperly included, citing C.F.R. § 416.1103(a)(7)(b)(i) and Ginley v. White, 1992 U.S. Dist. LEXIS 866 (E.D. Pa. January 24, 1992). Moreover, the Initial Decision found that as Petitioner's special VA pension was awarded "based upon the need for aid and attendance . . . effective December 23, 2019", the special pension was also incorrectly included in Petitioner's post-eligibility income calculation. For the reasons set forth below, I REVERSE and REMAND the Initial Decision in this matter.

A&A benefits provide monthly payments added to the amount of a monthly VA pension for qualified Veterans and survivors and are used to pay for medical expenses such as home care, assisted living care, or nursing home care. Petitioner was awarded A&A benefits as well as a special VA pension because "the evidence shows that [Petitioner] require[d] the assistance of another person with the activities of [his] daily living." P-1. Petitioner was a resident in a long-term care nursing facility. ID at 2. He was found eligible for Medicaid benefits in 2019. Ibid.

In the February 24, 2020 Rating Decision issued by the Department of Veterans Affairs related to his award of a special monthly VA pension, the VA noted that Petitioner's medical expenses totaled \$27,667, representing the amount he paid for home care, Medicaid Part B, and private health insurance. P-1. There is no mention of Petitioner's Medicaid benefits. Petitioner was advised in the Rating Decision that "[i]f the amount you pay for medical expenses changes or you are no longer paying medical expenses, tell us

immediately. If you don't tell us about changes in your medical expenses, we may pay you too much money. You would have to pay back this money." P-1. As the A&A benefits as well as the special VA pension were awarded to help pay for Petitioner's medical expenses that, at the time of the award, were already being paid for by Medicaid and not Petitioner, the record needs to be clarified regarding whether the VA was made aware that Petitioner was receiving Medicaid benefits at the time of the award or at any time since the awards were granted. This required notification could have affected the amount of benefits to which Petitioner was actually entitled each month and a determination regarding the actual amount of A&A and the special pension that Petitioner was entitled to after being approved for Medicaid benefits must be made prior to deciding whether Petitioner's A&A benefits and special VA pension are considered income for post-eligibility purposes.

THEREFORE, it is on this 9th day of AUGUST 2022,

ORDERED:

That the Initial Decision is hereby REVERSED and REMANDED as set forth above.



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