

This matter arises from the May 7, 2021¹ assessment by Middlesex County Board of Social Services's (MCBSS) that Petitioner was required to contribute to her cost of care, in the amount of \$1,867.61, retroactive to December 1, 2020. See N.J.A.C. 10:71-5.7; See also 42 CFR § 435.725. Petitioner does not contest the amount of the cost of care imposed; however, Petitioner contends that MCBSS was not permitted to impose a cost of care contribution under the Families First Coronavirus Response Act (FFCRA), 42 C.F.R. §433.400, or, in the alternative, Petitioner challenges MCBSS's ability to impose the cost of care contribution retroactively to December 1, 2020.

Petitioner has resided in a nursing facility and was deemed eligible for Medicaid benefits under the Medically Frail Medicaid Program since 2019. ID at 3. Under the Medically Frail Medicaid Program, Petitioner was not required to contribute to her cost of care. Ibid. At some point in 2019, Petitioner was awarded monthly Social Security benefits in the amount of \$1,165 and two pensions in the amount of \$557.11 and 175.50 per month. Ibid. Petitioner was advised in April 2020 that she was no longer eligible for the Medically Frail Medicaid Program. Ibid. Petitioner then applied for Medicaid benefits under the Managed Long Term Services and Supports (MLTSS) program in May 2020. Id. at 4. Through letter dated June 10, 2020, Petitioner's application was approved effective May 1, 2020. R-2. The June 10, 2020 letter did not include a "Statement of Available Income for Medicaid Payment," known as a PR-1. Ibid. Petitioner received a renewal application for her Medicaid benefits in April 2021, resulting in a May 7, 2021 determination by MCBSS that Petitioner remained eligible for Medicaid benefits. ID at 4 and R-3. A PR-1 was completed with the renewal application and a cost of care contribution in the amount of \$1,847.61 was

¹ While the letter from the Middlesex County Board of Social Services is dated May 4, 2021, the "Statement of Available Income for Medicaid Payment", known as the PR-1 was signed by the worker's signature of May 7, 2021. Accordingly, it appears that the letter was not issued until May 7, 2021. R-3.

assessed. R-3. MCBSS initially sought to impose the cost of care contribution retroactively to August 1, 2019; however this was later amended to December 1, 2020. ID at 4.

The Initial Decision found that MCBSS was authorized to impose the cost of care contribution in this matter. Specifically, the Initial Decision found that while the FFCRA generally prohibits Medicaid terminations during the Public Health Emergency caused by COVID-19, it did not prohibit the imposition of cost of care contributions. The Initial Decision found that the Centers for Medicare and Medicaid Services (CMS) made it clear through the adoption of 42 C.F.R. §433.400(c)(3), which went into effect on or after November 2, 2020, that changes to a beneficiary's cost sharing and post-eligibility treatment of income is permissible while the FFCRA is in effect. I concur with the Initial Decision's assessment, and FIND that the imposition of a cost of care contribution to Petitioner's receipt of Medicaid benefits was appropriate as set forth in 42 CFR § 435.725 and N.J.A.C. 10:71-5.7.

The Initial Decision further found that although MCBSS was permitted to impose a cost of care contribution on Petitioner's receipt of Medicaid benefits, MCBSS was not permitted to impose the cost of care contribution retroactively to December 1, 2020. Specifically, the Initial Decision finds that MCBSS was required to provide ten-days, advanced notice, pursuant to N.J.A.C. 10:71-8.1(d), of the the imposition of the cost of care contribution. Accordingly, the Initial Decision finds that the earliest date that the cost of care contribution could be imposed is June 1, 2021. While I agree that MCBSS's assessment of Petitioner's cost of care contribution is limited to her 2021 redetermination when the PR-1 was completed, N.J.A.C. 10:71-8.1(d), which provides that "[e]ach applicant/beneficiary shall receive written notice of any agency decision which relates to his or her eligibility status at least 10 days prior to any change in his or her eligibility status", does not apply in this matter. The change to Petitioner's cost of care contribution is not a change to Petitioner's eligibility status. Petitioner remained eligible for benefits as a result of her 2021 redetermination application. Accordingly, Petitioner's cost of care contribution should have been imposed as

of May 2021, the date that the PR-1 was completed and the effective date of her renewal for benefits. Therefore, I MODIFY the Initial Decision accordingly.

Thus, for the reasons set forth in the Initial Decision and set forth above, I hereby ADOPT in part and MODIFY in part the Initial Decision in this matter as set forth herein

THEREFORE, it is on this 2nd day of AUGUST 2022,

ORDERED:

That the Initial Decision is hereby ADOPTED in part and MODIFIED in part as set forth above.



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