

This matter arises from SCBSS's March 26, 2021 denial of Petitioner's Medicaid application for being over the resource limit to qualify for benefits. Petitioner was institutionalized in June 2020. ID at 2. He applied for Medicaid benefits on September 29, 2020, seeking an eligibility date of October 1, 2020. Ibid. SCBSS calculated the total spousal resources at \$233,409.80 based upon the date of institutionalization. Ibid. After dividing that amount in half and reducing the amount by \$2,000, which Petitioner was permitted to retain, the spenddown amount was identified as \$114,704.90. Ibid. The parties disagree regarding whether interest and dividends totaling \$15,527.94 from a Vanguard brokerage account and IRA received by Petitioner's spouse, once reinvested, should be considered a resource to Petitioner when determining Petitioner's assets. Based upon my review of the record, I hereby ADOPT the findings and conclusions of the Administrative Law Judge (ALJ).

Medicaid is a federally-created, state-implemented program designed, in broad terms, to ensure that people who cannot afford necessary medical care are able to obtain it. See 42 U.S.C. § 1396, et. seq., Title XIX of the Social Security Act ("Medicaid statute"). Medicaid provides "medical assistance to the poor at the expense of the public." DeMartino v. Div. of Med. Assistance & Health Servs., 373 N.J. Super. 210, 217 (App. Div. 2004) (citing Mistrick v. Div. of Med. Assistance & Health Servs., 154 N.J. 158, 165

and Petitioner filed a surreply. However, pursuant to N.J.A.C. 1:10B-18.2(c), replies and cross-exceptions are not permitted in DMAHS cases. Nevertheless, I note that SCBSS's submission provides that it "incorporates [the ALJ's] reasoning in rendering his decision and the prior briefing on this matter in response to [P]etitioner's exceptions." Petitioner's submission included a letter, dated July 5, 2021, which was submitted to the ALJ in the underlying matter, and which Petitioner states "correct[ed] inaccurate summaries of relevant law in [SCBSS]'s letter."

(1998)); Atkins v. Rivera, 477 U.S. 154, 156, 106 S. Ct. 2456, 2458, 91 L. Ed. 2d 131, 137 (1986); 42 U.S.C. § 1396-1. Although a state is not required to participate in the Medicaid program, once a state elects to participate, it must comply with the Medicaid statute and federal regulations. 42 U.S.C. § 1396a. New Jersey participates in the Medicaid program pursuant to the New Jersey Medical Assistance and Health Services Act (the Act), N.J.S.A. 30:4D-1, et. seq. DMAHS is the state agency designated, pursuant to 42 U.S.C. § 1396a(5), to administer the New Jersey Medicaid program. N.J.S.A. 30:4D-7.

Because Medicaid funds are limited and intended for the needy, only those applicants with income and non-exempt assets below specified levels may qualify for this government paid assistance. Prior to 1988, couples applying for long-term nursing home care benefits from Medicaid were required to “spend down the entirety of their resources in order for one of them to qualify for Medicaid.” Cleary v. Waldman, 167 F.3d 801, 805 (3d Cir.), cert. denied, 528 U.S. 870, 120 S. Ct. 170, 145 L. Ed. 2d 144 (1999) (emphasis added).

In 1988 Congress amended the laws governing Medicaid by enacting the Medicare Catastrophic Coverage Act (MCCA). See Pub. L. No. 100-360, 102 Stat. 683-817, reprinted in 1 U.S.C.C.A.N. (1988). Under prior law:

Shortly after institutionalization, each spouse is treated as a separate household. Income -- generally Social Security checks, pensions, and interest or dividends from investments -- is considered to belong to the spouse whose name is on the instrument conveying the funds Thus, in a case where a couple's pension check is made out to the husband, if the

husband enters a nursing home, all of the income is considered his for purposes of determining eligibility. If the wife in this case enters the nursing home, however, none of the income is considered hers, and the husband is under no obligation under Federal law to contribute any of his income toward the cost of her care.

In amending the law, Congress sought to prevent either spouse who had income or resources in his or her name, from benefitting unfairly at the expense of the other. Congress recognized that "the impoverishment of individuals whose spouses reside in nursing homes and receive Medicaid benefits is not justifiable" and that failure to allocate adequate income and resources to the community spouse "have forced community spouses, in desperation, to sue their husbands for support." H.R. Rep. No. 100-105(II), 100th Cong., 2nd Sess. 4, reprinted in 1988 U.S.C.C.A.N. at 892.

As a result, the MCCA changed the system used to determine the post-eligibility allocation of a married couple's income and resources between the institutionalized spouse and the community spouse by allowing the community spouse to retain assets well in excess of any other Medicaid-eligible group. Cleary, 959 F.Supp. at 232. The amount of resources that the couple is permitted to retain is based on a "snapshot" of the couple's total combined resources as of the beginning of the continuous period of institutionalization.² See Mistrick v. DMAHS and PCBOSS, 154 N.J. 158, 171 (1998); 42 U.S.C. § 1396r-5(c)(1)(A); N.J.A.C. 10:71-4.8(a)(1). The community spouse is permitted to keep the lesser of: one-half of the couple's total resources or the maximum amount set forth in N.J.A.C. 10:71-4.8(a)(1). This is called the Community Spouse Resource Allowance (CSRA). Resources above that amount must be spent down before qualifying for benefits.

² In order to determine medically necessary services in a nursing home or pursuant to a home and community based waiver requiring nursing home level of care, a pre-admission screening (PAS) is completed by "professional staff designated by the Department, based on a comprehensive needs assessment which demonstrates that the recipient requires, at a minimum, the basic nursing facility services described in N.J.A.C. 8:85-2.2." N.J.A.C. 8:85-2.1(a). See also, N.J.S.A. 30:4D-17.10, et. seq.

Furthermore, as part of the post-eligibility income provisions, the MCCA provides that each spouse's monthly income belongs to that spouse unless it is joint income, in which case it is to be split. 42 U.S.C. § 1396r-5(b). Therefore, a community spouse's income "shall [not] be deemed available to the institutionalized spouse." 42 U.S.C. § 1396r-5(b)(1). The MCCA provides that deductions from the institutionalized spouse's income may be paid for the benefit of the community spouse, providing a community spouse monthly income allowance (CSMIA). 42 U.S.C. 1396r-5(d). In this way, the MCCA ensures the community spouse receives a minimum of income well above the poverty level and requires couples to bear a reasonable amount of the costs of institutionalized care and thereby preserve limited Medicaid resources. See Cleary v. Waldman, 959 F.Supp. 222, 232 (D.NJ 1997).³

Here, Petitioner argues that the interest and dividend payments from the Vanguard brokerage account and IRA should be considered his spouse's income, pursuant to 42 U.S.C. § 1396r-5(b)(1), and thus, should not be counted towards Petitioner's resources. However, income is only considered "income" in the month it is received. N.J.A.C. 10:71-5.2(b)1. The unspent income in the following month counts towards resources. N.J.A.C. 10:71-4.1(c); See Supplemental Security Income (SSI) guidance, namely Program Operations Manual System (POMS), SI 00810.010 Relationship of Income to Resources ("In general, anything received in a month, from any source, is income to an individual, subject to the definition of income for SSI purposes in What is Income SI 00810.005. Anything the individual owned prior to the month under consideration is subject to the resource counting rules. An item [that an individual] receive[s] in the current month is income for the current month only. (See exceptions to this general rule in SI 00810.030.) If held by the individual until the following month, that item is subject to resource-counting rules. (See exception in SI 01110.100 - SI 01110.115.)"). See also 42 U.S.C.A. 1382a; 20 C.F.R. §§ 416.1111 and

³ 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.

416.1123. Thus, while the interest and dividends paid to Petitioner's spouse would be considered income during the month it is received, the amount reinvested became part of the couple's total, combined resources in the month after the interest and dividends were received and reinvested. Therefore, the inclusion of this amount in Petitioner's resource calculation was appropriate.

Accordingly, for the reasons set forth in the Initial Decision and set forth above, I hereby ADOPT the Initial Decision's findings that Petitioner SCBSS's denial of Petitioner's application for being over resources was appropriate.

THEREFORE, it is on this 5th day of AUGUST 2022,

ORDERED:

That the Initial Decision is hereby ADOPTED.



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