



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

PO Box 712

TRENTON, NJ 08625-0712

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
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

L.S.,

PETITIONER,

v.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 10448-21

ESSEX COUNTY DIVISION OF FAMILY:

ASSISTANCE AND BENEFITS,

RESPONDENTS.

As the Assistant Commissioner for the Division of Medical Assistance and Health Services, I have reviewed the record in this matter, consisting of the Initial Decision, the documents in evidence, and the contents of the Office of Administrative Law (OAL) case file. Respondent filed Exceptions to the Initial Decision. Procedurally, the time period for the Agency Head to file a Final Decision is April 29, 2022 in accordance with in accordance with N.J.S.A. 52:14B-10 which requires an Agency Head to adopt, reject, or modify the Initial Decision within 45 days of receipt. The Initial Decision was received on March 15, 2022.

This matter arises from the Essex County Division of Family Assistance and Benefits' (Essex County) November 29, 2021 denial of Medicaid benefits for failure to timely provide

documentation necessary to determine Medicaid eligibility. On October 18, 2021, the Petitioner, through her Designated Authorized Representative (DAR), filed a Medicaid application with Essex County. It is undisputed that Essex County requested the Petitioner provide it with detailed verification of her income from the Department of Veteran's Affairs (VA). It is also undisputed that the Petitioner did not provide this information prior to the November 29, 2021 denial.¹ Without this information, Essex County was unable to complete its eligibility determination and the denial was appropriate.

Petitioner receives a VA survivor's pension. (P-3,4). There are numerous categories of pension benefits, including but not limited to: Aid and Attendance, Improved Pension, Survivor's Pension, and Housebound Care. Because there are varying benefit categories, Essex County as the County Welfare Agency (CWA), requests detailed verification of the benefits an applicant is eligible to receive, including the specific dollar amount attributable to each benefit category. Med-Comm. No. 15-08. Certain VA benefits, like the Improved Pension (VAIP) are awarded as a result of Unreimbursed Medical Expenses (UMEs) that reduce an applicant's income to \$0. Med-Comm. 15-08. These are not included as countable income during the eligibility determination process. Med-Comm. 15-08. Applicants may demonstrate that they are receiving a VAIP with an income of \$0 by providing a letter or other documentation from the VA reflecting the amounts of countable income and UMEs used to determine VAIP eligibility and showing that the VA has determined that the UMEs reduce the applicant's income to \$0. Med-Comm. 15-08. Petitioner did not provide such verification to Essex County prior to the denial.

Administrative agencies have the discretion to determine whether a case is contested. N.J.S.A. 52:14f-7(a). The OAL acquires jurisdiction over a matter after it has been determined to be a contested case by an agency head. N.J.A.C. 1:1-3.2(a). A contested case is commenced in the State agency with appropriate subject matter jurisdiction. N.J.A.C.

¹ It her December 14, 2021 request for fair hearing, Petitioner noted "the request for documentation that is neither necessary nor possible to support our claim of Medicaid eligibility. (R-2)

1:1-3.1. DMAHS is the administrative agency within the Department of Human Services (DHS) that is charged with administering the Medicaid program. N.J.S.A. 30:4D-4. Here, the only matter before the OAL concerned the failure to provide verification of the VA benefits before Essex County issued its November 2020 denial. The Petitioner's failure to provide the requested verifications is dispositive of the transmitted issue. The hearing is not an opportunity for the Petitioner to present new documentation so that the ALJ, rather than the CWA, can make an eligibility determination. If the ALJ determined that the verifications were timely provided, the matter should have been returned to the county to determine eligibility. There is no evidence that the record before the court was a complete picture of Petitioner's financial circumstances. It could not be relied upon to grant Petitioner's Medicaid application. Consequently, the Initial Decision incorrectly concludes that Petitioner is eligible for benefits based only on income and fails to account for Petitioner's resources or any transfer of assets in its determination.

Moreover, the June 29, 2021 and December 1, 2021 letters provided at the hearing do not support a finding of eligibility. To exclude benefits from countable income in the determination process, the VA letter must show that the UMEs reduced income to \$0. The June 29, 2021 letter provides a breakdown of the Petitioner's monthly benefit rate but makes no findings with regard to her income. (P-2). Given this information, it would be appropriate for Essex County to include the amount of Petitioner's pension, excluding Aide and Attendance, in her countable income. According to the information available to Essex County this would result in countable income of \$2,618.27 (\$1,400 Social Security + \$359.61 pension and annuity + 778.66 VAIP benefit) which exceeds the Medicaid income limit of \$2,382.

Additionally, the December 1, 2021 letter provides no breakdown of Petitioner's monthly benefit rate but does find that the UMEs reduce her income to zero. In December 2021, the VA determined Petitioner's monthly benefit rate to be \$1,318. To determine that rate, the VA first calculated Petitioner's countable income. The VA defines countable income as "how much you earn, including your Social Security benefits, investment and retirement

payments, and any income your dependents receive.” See <https://www.va.gov/pension/veterans-pension-rates/>. The VA calculated Petitioner’s income in 2021 to be \$44,101. This amount was based on \$18,778 from Social Security (monthly payment of \$1,564.90), \$15,300 from annuity/retirement and \$9,924 from other sources. (P-3). This is a monthly income of \$3,675. It is not only counterintuitive to think that the VA included its pension in Petitioner’s countable income to determine the pension amount, but there is no evidence to show that this is what occurred. Therefore, the \$3,675 monthly income, which excludes Petitioner’s VA pension, likewise exceeds the \$2,382 income limit.

I note also that the income information used by the VA significantly differs from that available to Essex County, especially with regard to the yearly income from annuities and retirement accounts. When this amount is combined solely with the Petitioner’s Social Security income of \$18,778, Petitioner’s monthly income of \$2,839 still exceeds the Medicaid maximum of \$2,382.

If the VA’s calculation of Petitioner’s income is incorrect, Petitioner had the opportunity to provide verification of that income to Essex County when requested and prior to the denial. The Petitioner did not. I FIND that the denial for failure to provide verifications necessary to determine eligibility was appropriate. Petitioner may reapply for Medicaid benefits, mindful of the fact that the current information shows Petitioner’s income exceeds Medicaid limits. Petitioner may benefit from a Qualified Income Trust as suggested by Essex County.

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

ORDERED:

That the Initial Decision is hereby REVERSED.



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