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

M.L.	:	
PETITIONER,	:	**ADMINISTRATIVE ACTION**
v.	:	**ORDER OF REMAND**
BERGEN COUNTY BOARD OF SOCIAL SERVICE	:	**OAL DKT. NO. HMA 05666-22**
RESPONDENTS.	:	

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 render a Final Agency Decision is December 22, 2022 in accordance with an Order of Extension. The Initial Decision was received on September 23, 2022.

The matter arises regarding the calculation of the Minimum Monthly Maintenance Needs Allowance (MMMNA) and Petitioner's contention that his wife, R.L., is entitled to additional income due to exceptional circumstances resulting in financial duress.

The Medicaid Catastrophic Care Act (MCCA) created rules specifically for institutionalized individuals and their community spouses. "To achieve this aim, Congress installed a set of intricate and interlocking requirements with which States must comply in allocating a couple's income and resources." Wisconsin Dep't of Health and Family Servs. v. Blumer, 534 U.S. 473, 480 (2002). Of particular import in this matter, the MCCA then 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.A. 1396r-5(d). The CSMIA, or amount the community spouse may receive each month from the institutionalized spouse's income, consists of the difference between the statutorily set MMMNA and the amount of monthly income otherwise available to the community spouse. Ibid. "The MMMNA is a level of income which has been estimated by the state as necessary to permit the non-institutionalized spouse to live independently in the community." 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). The CSMIA is the amount the community spouse may have transferred from the institutionalized spouse's income if it is necessary to raise the community spouse's monthly income to the estimated amount necessary to allow the community spouse to live independently (the statutorily determined MMMNA). Under the federal statute, additional income is only permitted when there is a showing of exceptional circumstances resulting in financial duress. 42 U.S.C. § 1396r-5(e)(2)(B). It is Petitioner's burden to demonstrate that the circumstances meet this standard.

Ordinary and regular expenses have been rejected as a basis to meet the exceptional circumstance threshold. Dorn v. DMAHS, OAL Dkt. No. HMA 7609-04, affirmed 2006 WL 2033940 (N.J. Superior Court, Appellate Division), J.M.A. v. DMAHS

and Union County Board of Social Services, OAL Dkt No. HMA 5549-02, Contra., M.G. v. DMAHS and Union County Board of Social Services, 95 N.J.A.R. (DMA) 47 (1995) (the community spouse had a leaking roof, electrical damage and was being sued by "several of her doctors for non-payment of her expenses"). See also Schachner v. Perales 85 N.Y. 2d 316, 322 (1995) ("voluntarily assumed expenses of a private secondary and college education are not the sort of 'exceptional expenses' contemplated"). In Dorn, the Appellate Division found that the "distinction between 'everyday expenses' (which cannot constitute a basis for increasing the spousal allowance), and the unexpected expenses, exemplified by 'medical bills, home repair bills for significant structural problems or credit card arrears that are related to the medical situation' (which might support an increase in the allowance) is a proper interpretation of the" federal statute. In a more recent unpublished Appellate Division case, the court found that the federal statute "requires a causal connection between the exceptional circumstances and the financial duress." C.H. v. DMAHS and Camden County Board of Social Services, Dkt. No. A-6129-08T2 (decided August 12, 2010). Merely having financial duress is not sufficient to warrant additional money for the institutionalized spouse.

The mechanism to increase the MMMNA and the CSMIA is through a fair hearing to determine "that the community spouse needs income above the amount established by the community spouse maintenance deduction due to exceptional circumstances resulting in financial duress." If there is such a finding, "there shall be substituted for the community spouse maintenance deduction such amount as is necessary to alleviate the financial duress and for so long as directed in the final hearing decision." N.J.A.C. 10:71-5.7(e).

Petitioner was diagnosed with amyotrophic lateral sclerosis (ALS) at age 55. He became institutionalized in late 2019/early 2020 and was approved for Medicaid effective January 1, 2020. At the time, Petitioner's son was still living at home and was claimed as a dependent. Petitioner expenses for that year resulted in a community spouse allowance of $4,570.83. The next two redetermination cycles resulted in decreases to the community spouse allowance due to reduced housing expenses and the lack of any dependent children in the house. In January 2022, Bergen County calculated that R.L. was entitled to a MMMNA of $2,645.05 under the spousal impoverishment rules. Petitioner requested a fair hearing to increase her MMMNA and retain additional income from Petitioner.

In concluding that R.L.'s MMMNA should be increased, the ALJ found that R.L.'s credit card balance exceeded $1,200, she had her own medical bills and expenses, costs related to her husband's cremation and burial and a $9,231.17 bill from the nursing facility where Petitioner resided. At the hearing, R.L. presented credit card statements, a car payment and insurance statement, a phone bill, an energy bill and a renter's insurance statement. R.L.'s credit card showed ordinary expenses such as groceries, gas, car insurance, inspection and routine maintenance. Additionally, R.L. presented checks for what appear to be medical services, but offers no bills from providers. She also presented receipts for prescription drugs but there is no evidence that these were not covered by insurance or part of R.L.'s regular expenses. Finally, there is no evidence in the record with regard to R.L.'s payment of her husband's cremation and burial expenses.

In R.G. v. DMAHS, HMA 05764-20, Final Agency Decision (March 19, 2021) Petitioner presented bills that his wife incurred for transportation. She had relied on Petitioner to drive her but when he fell ill she had to use ride share services to visit him,

run errands and attend medical appointments. Public transportation was not available in the area where she resided. Accordingly, these expenses were the result of extraordinary circumstances. Petitioner has not presented any evidence that her use of her car, and the corresponding expenses, was the result of an extraordinary circumstance. Like the Petitioner in R.G. v. DMAHS, if R.L. can show that the purchase of the car and insurance was a newly incurred and unexpected expense, or that the maintenance was not routine, this may bolster the argument that R.L.'s care is an extraordinary expense. Therefore, I am REMANDING the matter to give Petitioner the opportunity to explain the circumstances surrounding the purchase and maintenance of her vehicle.

Similarly, R.L.'s use of a storage facility may be an extraordinary expense under the specific facts and circumstances of this case. It appears from R.L.'s testimony that she incurred this additional expense when it became necessary to sell her home and move into a much smaller apartment. A copy of the storage rental agreement would highlight the need for the storage unit due to the move, support the position that the expense was extraordinary, and establish that the expense was incurred during the period being appealed (January 2022 through July 2022).

Similarly, R.L. has not produced any evidence that her own medical expenses were extraordinary and not paid for by another source.[1] R.L. has been on disability since approximately 2009. ID at 5. Since then, she has undoubtedly incurred numerous medical expenses. R.L. has testified that her expenses and circumstances changed during the first half of 2022, but it is unclear how they have changed. Does she need to see more or different doctors than before? Does she have to pay more out of pocket for

[1] Petitioner testified that she pays for Aetna insurance and $306 is taken out of her monthly disability check for Medicare.

her prescriptions or doctor visits now than she did previously? Petitioner explained that she was able to pay the nursing facility prior to January 2022, but that it became more difficult to do so even after she sold her home and no longer had dependent children living with her. ID at 5. The record shows that R.L. has expenses, but it needs to clearly demonstrate the increase in and nature of those expenses to determine if they are extraordinary. For that reason, I am REMANDING the matter to give R.L. the opportunity to document her change in circumstances.

Additionally, Petitioner argued that her health insurance was mistakenly omitted from the county's calculation. However, this amount was omitted because Petitioner failed to provide proof that she paid her health insurance premiums. These documents do not appear to be part of the record before me. Consequently, I am REMANDING the matter to give Petitioner the opportunity to provide proof of her health insurance payments.

Lastly, the finding that Petitioner's obligation under Medicaid regulations to pay for his cost of care warrants an increase of the MMMNA is troubling as it in essence causes Medicaid to pay for Petitioner's cost of care. See N.J.A.C. 10:71-5.7 and 42 CFR § 435.725. The calculation of the cost of care is done after the proscribed deductions such as the personal needs allowance and the community spouse's allowance are applied. N.J.A.C. 10:71- 5.7(b) and (c). To that end, I hereby REVERSE the Initial Decision's finding that Petitioner's cost of care is attributable to his wife's maintenance allowance.

THEREFORE, it is on this 16th day of DECEMBER 2022,

ORDERED:

That the Initial Decision is hereby REVERSED and REMANDED for documentation supporting Petitioner's position that her circumstances have

changed such that they are exceptional and warrant an increase in the MMMNA; and

That the Initial Decision is hereby REVERSED with regard to the finding that the medical expenses and contribution to care are added to the community spouse deduction.

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