



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

S.P.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES AND
UNION COUNTY BOARD OF
SOCIAL SERVICES,
RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 06229-2022

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. Neither party filed exceptions in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is January 3, 2023, in accordance with an Order of Extension.

This matter arises from the Union County Board of Social Services's (UCBSS)

June 15, 2022 denial of Petitioner's April 20, 2022 Medicaid application¹ for being over the resource limit to qualify for benefits. The Initial Decision reversed the denial of Petitioner's application, finding that UCBSS failed to include a return of gift in the calculation of Petitioner's Spousal Resource Assessment. Based upon my review of the record, and for the reason set forth below, I hereby REVERSE 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 (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

¹ This is Petitioners second application for Medicaid benefits.

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. This resulted in the virtual impoverishment of the spouse who remained 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) (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). Thus, the amount of the couple's resources, for purposes of calculating the Spousal Resource Assessment, is based upon the assets owned by the couple on the snapshot date³ and does not change. The resources determined on the snapshot date are not altered by any resources that the couple previously owned or subsequently owns. 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.

Petitioner was institutionalized on March 31, 2021. R-3. The present application was received by UCBSS on April 20, 2022. R-1. UCBSS calculated the total spousal resources at \$134,073.07 based upon the date of institutionalization, pursuant to 42 U.S.C. § 1396r-

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.

³ The snapshot date is the date that a spousal resource assessment is performed, which provides a "snapshot" as to the couple's total net worth. Pursuant to 42 U.S.C. § 1396r-5(c)(1)(A) and N.J.A.C. 10:71-4.8(a)(1), the snapshot date is the first date of continuous institutionalization.

5(c)(1)(A); and N.J.A.C. 10:71-4.8(a)(1). Petitioner was advised that the couple's resources could not exceed \$69,036.53 and that a spenddown of resources was required in order to establish Medicaid eligibility. R-5. Petitioner argues that a repayment of a gift in the amount of \$235,816.49, which occurred on or about January 10, 2022, should have been included in the calculation of Petitioner's Spousal Resource Assessment. In support of this argument, Petitioner relies upon Medicaid rules related to the imposition of a transfer penalty on an applicant's receipt of Medicaid benefits.⁴

Petitioner argues that since the gift was repaid, a transfer penalty cannot be imposed. A transfer penalty was not imposed in this case. As noted above, the rules are clear that 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, not the date of the present application. See Mistrick, 154 N.J. at 171 (1998); 42 U.S.C. § 1396r-5(c)(1)(A); and N.J.A.C. 10:71-4.8(a)(1). Petitioner was institutionalized in March 2021. As of that date, UCBSS determined that the couple's combined resources were \$134,073.07. While the gift, which was given in 2019, was eventually returned to Petitioner and her spouse, it was not returned prior to Petitioner's being institutionalized, and as the couple did not have access to the funds at the time of institutionalization, it was not an available resource. Accordingly, these funds were not in the possession of Petitioner and the community spouse as of the date of Petitioner's

⁴ In determining Medicaid eligibility for someone seeking institutionalized benefits, counties must review five years of financial history. Under the regulations, "[i]f an individual . . . (including any person acting with power of attorney or as a guardian for such individual) has sold, given away, or otherwise transferred any assets (including any interest in an asset or future rights to an asset) within the look-back period," a transfer penalty of ineligibility is assessed. N.J.A.C. 10:71-4.10(c). "A transfer penalty is the delay in Medicaid eligibility triggered by the disposal of financial resources at less than fair market value during the look-back period." E.S. v. Div. of Med. Assist. & Health Servs., 412 N.J. Super. 340, 344 (App. Div. 2010). "[T]ransfers of assets or income are closely scrutinized to determine if they were made for the sole purpose of Medicaid qualification." Ibid. Congress's imposition of a penalty for the disposal of assets for less than fair market value during or after the look-back period is "intended to maximize the resources for Medicaid for those truly in need." Ibid.

institutionalization and were appropriately excluded from the snapshot of their combined assets at that time.

Petitioner contends that UCBSS's failure to include the amount of the gift in the Spousal Resource Assessment calculation would be a transfer penalty. This argument is unfounded and confuses resource eligibility "snapshot" with transfer penalty rules. The transfer penalty rules would only come into play after Petitioner was deemed eligible for benefits and if it was determined that Petitioner transferred assets during the look-back period for less than fair market value. As Petitioner was denied eligibility as a result of her being over resources, a transfer penalty calculation is inapplicable to the present matter, and a transfer penalty was not imposed in this matter.

Accordingly, I FIND that UCBSS was correct in calculating that the couple's resources could not exceed \$69,036.53 based upon the couple's total combined resources as of \$134,073.07 at the date of institutionalization. As the couple's resources exceeded that amount, I additionally FIND that UCBSS appropriately denied Petitioner's application as being over resources.

Thus, for the reasons set forth above, I hereby REVERSE the Initial Decision and FIND that UCBSS's denial of Petitioner's application for being over resources was appropriate.

THEREFORE, it is on this 28th day of DECEMBER 2022,

ORDERED:

That the Initial Decision is hereby REVERSED.



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