

June 2011 and August 2014. In support of its assessment, Hudson County argued that Petitioner did not meet the residency requirement found at N.J.S.A. 30:4D-3(k) due to two extended trips outside the state of New Jersey. Based upon my review of the record, I hereby ADOPT the Initial Decision of the Administrative Law Judge with CLARIFICATION.

DMAHS oversees and administers the state and federally funded Medicaid program for certain groups of low to moderate income individuals. New Jersey is considered a Supplemental Security Income (SSI) state, which means that the State's methodology for determining an individual's income and resources can be no more restrictive than SSI. 42 U.S.C.A. § 1396a(a)(10)(C)(i)(III). Therefore, when determining eligibility for the ABD program, as with all of its programs, DMAHS relies on SSI.

The SSA has published POMS, which is a statement of the "publicly available operating instructions for processing Social Security claims." Wash. State Dep't of Soc. & Health Servs. v. Guardianship Estate of Keffeler, 537 U.S. 371, 385, 123 S. Ct. 1017, 154 L. Ed. 2d 972 (2003). The United States Supreme Court noted the deference due POMS. Ibid. "While these administrative interpretations are not products of formal rulemaking, they nevertheless warrant respect." Id. at 385. (citing Skidmore v. Swift & Co., 323 U.S. 134, 139-140, 65 S. Ct. 161, 89 L. Ed. 124 (1944)); see also James v. Richman, 547 F.3d 214, 218 n.2 (3d Cir. 2008). Additionally, in Elizabeth Blackwell Health Center for Women v. Knoll, the Third Circuit found that interpretive rules by an agency with lawmaking authority (as opposed to legislative rules) will get deference even if the agency's interpretation is not made pursuant to the that lawmaking authority. 61 F.3d 170 (3rd Cir. 1995). In that case, a manual from HCFA, now CMS, providing guidance to

States about Medicaid plans was deemed an interpretative rule and given deference. See United States v. Mead Corp., 533 U.S. 218, 229, 121 S. Ct. 2164, 150 L.Ed.2d 292 (2001). (“A very good indicator of delegation meriting Chevron treatment [is an] express congressional authorization to engage in the process of rulemaking or adjudication that produces regulations or rulings for which deference is claimed.”). The Third Circuit has also cited POMS and afforded it deference in a case regarding the denial of Medicaid eligibility due to excess resources. Sable v. Velez, 437 Fed. App'x 73, 77 (3d Cir. 2011) (non-precedential) (“Sable II”). Thus, “while POMS cannot thoughtlessly or rigidly be transplanted from the Social Security context to the Medicaid context, it is entitled to consideration.” Landy v. Velez, 958 F. Supp. 2d 545, 553 (D. N.J. 2013).

POMS offers guidance with regard to Medicaid beneficiaries and absence from the United States. According to POMS, a recipient is not eligible for SSI if he or she is outside the U.S. for a full calendar month or 30 consecutive days or longer (see EXCEPTIONS in section SI 02301.225B which include reporting an absence in excess of 30 days). POMS SI 02301.225.

The Division is statutorily authorized to seek reimbursement of Medicaid overpayments. Indeed, recovery in this matter is based upon N.J.S.A. 30:4D-7.i., which mandates the Division “to take all necessary action to recover the cost of benefits incorrectly provided to . . . a recipient . . .” However, pursuant to N.J.S.A. 30:4D-7.i., I am authorized to “compromise, waive or settle any claim under this act.” Given the history of this particular matter and the issues surrounding the 2016 notices, coupled with the evidence in the record that Petitioner’s absence from the United States was in fact temporary, I am reluctant to penalize Petitioner under the specific facts presented here

and conclude that this is an appropriate case to exercise the authority granted to me by N.J.S.A. 30:4D-7.I. to waive the claim for the overpayment. This decision is not intended to set precedent or affect any other decision made in the future to waive an overpayment.

THEREFORE, it is on this 4th day of MAY 2023,

ORDERED:

That the Initial Decision is ADOPTED; and

That the Division waive recovery of the claim.



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