



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**CORRECTED**

**INITIAL DECISION**

OAL DKT. NO. HMA 13840-23

AGENCY DKT. NO. N/A

**E.P.,**

Petitioner,

v.

**SOMERSET COUNTY BOARD OF**

**SOCIAL SERVICES,**

Respondent.

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**A.P.**, E.P.'s son, for petitioner, pursuant to N.J.A.C. 1:10B-5.1

**Michelle Tomaszewski**, Human Services Specialist 3, for respondent pursuant to N.J.A.C. 1:1-5.4(a)(3)

Record Closed: March 5, 2024

Decided: March 21, 2024

BEFORE **SARAH G. CROWLEY**, ALJ:

**STATEMENT OF THE CASE**

The petitioner, E.P., appeals the determination made by the respondent, the Somerset County Board of Social Services (SCBSS), terminating Medicaid due to petitioner being over-income. The petitioner does not dispute that E.P.'s income

exceeds the eligibility standards for Medicaid, and without Medicaid's Managed Long Term Services and Supports (MLTSS) the petitioner would not qualify for the Medicaid Aged, Blind, Disabled Programs. The petitioner was found ineligible for MLTSS after an appeal. Thereafter, he was notified of the termination of his Medicaid.

### **PROCEDURAL HISTORY**

The petitioner requested a fair hearing, and on December 14, 2023, the Division of Medical Assistance and Health Services (DMAHS) transmitted this matter to the New Jersey Office of Administrative Law (OAL) for a hearing and determination as a contested case. N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. The matter was heard on March 5, 2024, and the record closed at that time.

### **TESTIMONY AND FACTUAL DISCUSSION**

**Michelle Tomaszewski**, human services specialist 3, testified on behalf of the SCBSS. She testified that the petitioner was found medically ineligible for MLTSS last summer. The decision was appealed, and an initial decision affirming the agency decision was issued in August 2023. The final agency decision was issued in September 2023, and the termination of MLTSS followed. During the pendency of the appeal, the petitioner applied for and was approved for the Medicaid Aged, Blind, Disabled (ABD) Programs. However, once the agency was notified that the MLTSS was terminated, the client was determined to be over-income for ABD. The client was aware that the MLTSS termination was imminent due to the decision on the appeal and that without MLTSS petitioner did not qualify for ABD due to excess income. The petitioner's total countable income is \$3,886.07 and the monthly program income limit is \$1,644.00. N.J.A.C. 10:74-4.1. The decision to deny benefits based on income was proper.

**A.P.**, E.P.'s son and power of attorney, testified that he did not understand why the ABD was granted in November, as the agency should have known about the MLTSS termination. A.P. conceded in his testimony and in the written statement that he submitted that his father would not qualify for ABD after the MLTSS was terminated.

Moreover, he was involved in and aware of the initial decision and the final decision of the agency terminating the MLTSS. It appears that A.P. is arguing that since the ABD application was approved before the termination of the MLTSS, the agency should be precluded from denying ABD. There is no legal or factual basis for such an argument. Petitioner does not dispute that he is over-income and that without MLTSS he does not qualify for ABD. The petitioner submitted a statement and documentation in support of his application, which were entered into evidence as P-1 through P-4.

### **LEGAL DISCUSSION**

Pursuant to N.J.A.C. 10:72-4.1, NJ FamilyCare ABD benefits require that an applicant be below the income of \$1,644.00 to be eligible for the programs. The petitioner does not meet this requirement and there is no dispute regarding the income level of the petitioner. His total monthly countable income is \$3,886.07. Accordingly, he does not qualify for the ABD programs. The petitioner has already been denied MLTSS by a final agency decision issued in September 2023.

Based on the testimony and the assessment provided by the respondent, which was competent, persuasive, and reliable, I **CONCLUDE** that the petitioner does not meet the ABD eligibility criteria set forth at N.J.A.C. 10:72-4.1, and the decision of the SCBSS must be affirmed.

### **ORDER**

Based on the foregoing, the respondent's denial of ABD benefits is **AFFIRMED**. The petitioner's appeal is **DISMISSED**.

I **FILE** this initial decision with the **ASSISTANT COMMISSIONER OF THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**. This recommended decision is deemed adopted as the final agency decision under 42 U.S.C. § 1396a(e)(14)(A) and N.J.S.A. 52:14B-10(f). The **ASSISTANT COMMISSIONER OF THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES** cannot reject or modify this decision.

If you disagree with this decision, you have the right to seek judicial review under New Jersey Court Rule 2:2-3 by the Appellate Division, Superior Court of New Jersey, Richard J. Hughes Complex, PO Box 006, Trenton, New Jersey 08625. A request for judicial review must be made within 45 days from the date you receive this decision. If you have any questions about an appeal to the Appellate Division, you may call (609) 815-2950.

April 1, 2024  
DATE

  
SARAH G. CROWLEY, ALJ

Date Record Closed: March 5, 2024

Date Filed with Agency: \_\_\_\_\_

Date Sent to Parties: \_\_\_\_\_

SGC/kl

**APPENDIX**

**WITNESSES**

**For petitioner**

A.P., power of attorney and son of the petitioner

**For respondent**

Michelle Tomaszewski, Human Services Specialist 3

**EXHIBITS**

**For petitioner**

- P-1 Letter from petitioner's power of attorney
- P-2 Medicaid letter
- P-3 Emails from petitioner to SCBSS
- P-4 Determination letter from SCBSS

**For respondent**

None