



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. HMA 13535-23
AGENCY DKT. NO. N/A

J.S.,

Petitioner,

v.

**ESSEX COUNTY BOARD
OF SOCIAL SERVICES,**
Respondent.

J.S., pro se

Charity Achonye, Family Service Worker-Office of Special Services Division of Family Assistance and Benefits, for Respondent, (Essex County Board of Social Services),

Record Closed: April 9, 2024

Decided: April 30, 2024

BEFORE **JULIO C. MOREJON**, ALJ:

STATEMENT OF THE CASE

Petitioner, J.S., appeals the decision of Essex County Board of Social Services (Agency), terminated his Medicaid benefits because he had excess resources under N.J.A.C. 10:71-4.5.

PROCEDURAL HISTORY

On November 8, 2023, the Agency notified J.S. that his Medicaid benefits would be terminated effective November 30, 2023, because the Agency determined that J.S. had resources in excess of \$4,000.00 under N.J.A.C. 10:71-4.5(c). On November 27, 2023, J.S. filed a request for a fair hearing with the State of New Jersey, Department of Human Services, Fair Hearing Unit, Division of Medical Assistance and Health Services (DMAHS).

DMAHS transmitted this matter to the Office of Administrative Law (OAL), where it was filed on December 6, 2023, as a contested case. N.J.S.A. 52:14B-1 to-15; N.J.S.A. 52:14F-1 to-13. As this matter was filed with DMAHS after October 2, 2023, the Initial Decision made herein is deemed adopted as the final agency decision of DMAHS pursuant to its Order of October 2, 2023.

The OAL Clerk's Office initially scheduled this matter for a telephone hearing for March 11, 2023. On said date, a telephonic conference was held, and J.S. requested an adjournment in order to seek legal representation. The matter was then rescheduled for March 25, 2024, for a telephone hearing. On March 25, 2024, J.S. appeared and there was no appearance for the Agency.

The matter was then rescheduled for a telephone hearing, on April 9, 2024, at 11:30AM, and a request for a Spanish speaking interpreter was made to the Agency. On April 9, 2024, J.S. appeared, and no one appeared for the Agency. J.S. wished to proceed with the hearing, nevertheless, and the fair hearing was conducted on said. The record closed on April 9, 2024.

FINDINGS

As the Agency made no appearance at the hearing, and having heard the testimony of J.S. and the documents received in evidence, I **FIND** the following to be **FACTS** herein:

J.S. is seventy (70) years old and receives Medicare benefits. Since 2020, J.S. was receiving Medicaid benefits under as in The NJ FamilyCare Aged, Blind, Disabled (ABD) Programs. J.S. applied for renewal of his Medicaid benefits on July 31, 2023 (R-1). On November 8, 2023, the Agency determined that J.S. was over the \$4,000.00 resource limit for individuals in ABD Programs, because J.S. had countable resources of \$4,260.96, maintained in his bank account at Wells Fargo Bank in July 2023. (R-1).

J.S. receives monthly Social Security Administration retirement benefits (SSA) of \$1,215 (R-1). J.S. owns a residential home that has been in foreclosure for several years. As part of his plan to avoid the loss of his home, J.S. applied for a modification of his mortgage with his mortgage lender. On or about October 2022, J.S. filed for Chapter 13 Bankruptcy protection. As part of the Chapter 13 Bankruptcy Plan, he pays \$1,063.90 to the mortgage lender and \$194 to the Chapter 13 Bankruptcy Trustee (P-1, P-2 and P-3).

J.S. testified that he receives monthly deposits in his bank account from his brother-in-law "Ga." in the amount of \$1,100.00 and his sister-in-law "Gr." in the amount of \$300.00, which monies were then used to pay the mortgage lender, and the Chapter 13 Trustee (P-1 to P-3). Ga. passed away in February 2023, and thereafter Gr. and for a short time J.S.'s son, "Ro." made monthly contributions toward the mortgage and Chapter 13 Trustee payments. Said contributions were deposited in J.S.'s bank account (P-1, P-2 and P-4).

As part of his fair hearing appeal, and as requested by the Agency, J.S. produced Wells Fargo bank statements for the months of July 2023 through November 2023 (P-2). A review of the bank statements provided by J.S. reveals that each monthly statement does not commence on the first day of the respective month. The ending balance for the Wells Fargo bank statements for the months of July 2023, when J.S. applied for Medicaid and November 2023, when the Agency denied his Medicaid application is as follows:

- July statement is for the time period June 9 to July 19. The beginning balance was \$4,260.96, and the ending balance was \$3,721.54;

- August statement is for the time period July 11 to August 7. The beginning balance was \$3,721.54, and the ending balance was \$2,539.67.
- September statement is for the time period August 8 to September 8. The beginning balance was \$2,539.67, and the ending balance was \$#,516.00.
- October statement is for the time period September 9 to October 6. The beginning balance was \$3,516.00, and the ending balance was \$2,420.87.
- November statement is for the time period October 7 to November 7. The beginning balance was \$2,420.87.

[P-2]

LEGAL ANALYSIS AND CONCLUSION

The Commissioner of the New Jersey Department of Human Services has adopted regulations governing participation in New Jersey's Medicaid program, including income and resource eligibility standards. N.J.A.C. 10:71-1.1 to -9.5. If the total value of an individual's resources exceeds \$2,000, that individual is ineligible for the Medicaid program. N.J.A.C. 10:71-4.5(c).

In New Jersey, Medicaid is called NJ FamilyCare, and specific to the elderly, it is called NJ FamilyCare Aged, Blind, Disabled (ABD) Program, which J.S. qualifies under. The allowable resource standard for J.S. as an ABD program participant is \$4,000. Pursuant to N.J.A.C. 10:72-3.4(a), a person who is sixty-five years or older and meets all eligibility criteria under the ABD Program is eligible for Medicaid benefits:

I **CONCLUDE** that J.S. satisfies the definition of an individual qualifying as an Aged, Blind Disabled program for Medicaid in New Jersey, and that the allowable resource standard for him is \$4,000.

The regulations provide that only resources that are "available" to the applicant are to be considered in the determination of Medicaid eligibility. A resource is available when "[t]he person has the right, authority or power to liquidate real or personal property," or when "[r]esources have been deemed available to the applicant." N.J.A.C. 10:71-4.1(c)(1), (2). This includes "income to which the individual is entitled but does not receive due to action or inaction by the individual or the individual's spouse." N.J.A.C. 10:71-4.10(b)(3).

Resources that are classified as "excludable," however, "shall not be considered either in the deeming of resources or in the determination of eligibility." N.J.A.C. 10:71-4.4(a). Excludable resources include "the value of resources which are not accessible to an individual through no fault of his or her own." N.J.A.C. 10:71-4.4(b)(6). I **CONCLUDE** that the monies deposited in J.S.'s bank account by Ga., Gr., and Ro., are not excludable, as J.S. had access and control of the same.

Resource eligibility is determined by the total of all countable resources as of the "first moment of the first day of the month" N.J.A.C. 10:71-4.5(a)(1). See also N.J.A.C. 10:71-4.1(e). In order to be eligible for Medicaid at the time of his application on July 31, 2023, J.S. had to have resources under the standard of \$4,000, as of that first moment of that month. Here, the record discloses that the July 2023 Wells Fargo bank statement is for the time period June 9 to July 10, and the August 2023 bank statement is for the time period July 11 to August 7. Therefore, I **CONCLUDE** that the "first day of the month" under N.J.A.C. 10:71-4.5(a)(1) shall be June 9, 2023, for the July bank statement and July 11 for the August statement.

The record reflects that the July bank statement discloses a balance of \$4,260.96, on the first day of the statement (June 9), and the August bank statement discloses a balance of \$3,721.54, on the first day of the statement (July 11). The Agency has determined, and I have found, that J.S.'s maximum allowed resource amount is \$4,000 for an ABD Medicaid recipient. Based upon the record before me, I **CONCLUDE** that at the time J.S. applied for Medicaid benefits under the ABD plan on July 31, 2023, the Agency should have relied upon the balance contained in J.S.'s bank statement for August, which is for the time period July 11 to August 7. I further **CONCLUDE** that since

the balance in J.S.'s bank statement on July 11 was \$3,721.54, the same is under the ABD resource amount of \$4,000, and therefore, J.S. would have qualified for Medicaid benefits.

Consequently, I **CONCLUDE** that J.S. is not over the applicable resource limit of \$4,000 for ABD program participants in New Jersey at the time of his application on July 31, 2023, and the Agency's decision on November 8, 2023, denying J.S.'s Medicaid application of July 2023, is **REVERSED**.

ORDER

I **ORDER** that petitioner, J.S. is resource eligible for Medicaid Only benefits under N.J.A.C. 10:71-4.5, and the Agency's decision on November 8, 2023, denying J.S.'s Medicaid application of July 2023, is **REVERSED**.

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 30, 2024
DATE

Julio Morejon

JULIO C. MOREJON, ALJ

Date Received at Agency:

April 30, 2024

Date E-Mailed to Parties:
lr

April 30, 2024

APPENDIX

WITNESSES

For Petitioner:

J.S.

For Respondent:

No appearance

EXHIBITS

For Petitioner:

- P-1 Letter from J.S. dated March 21, 2024, in Spanish addressed the undersigned
- P-2 Wells Fargo Bank Statements for July through November 2023
- P-3 Postal Money Orders

For Respondent:

- R-1 Fair Hearing Summary Report, and other documents provided by the Agency