State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. HMA 06602-26
AGENCY DKT. NO. N/A

J.L.,

Petitioner,

v.

ESSEX COUNTY BOARD OF SOCIAL SERVICES,

Respondent.

Eli Zaghi, Esq., for petitioner, (Law Office of Simon P. Wercberger, LLC)

Adeola Kelani, Family Services Worker, for respondent pursuant to N.J.A.C. 1:1-5.4(a)(3)

Record Closed: May 27, 2026 Decided: June 9, 2026

BEFORE, **GERARD HUGHES**, ALJ:

STATEMENT OF THE CASE

Petitioner, J.L., had more than $2,000 in resources on the first day of the month in July, September, October, November, and December 2025. Was he eligible for Managed

Long Term Services and Supports (MLTSS) during these months? No. To be eligible for MLTSS, an individual's countable resources may not exceed $2,000, N.J.A.C. 10:71-4.5(c), and such resources are counted as of the first moment of the first day of each month, N.J.A.C. 10:71-4.1(e).

PROCEDURAL HISTORY

On October 30, 2025, J.L. applied for MLTSS nursing home coverage, seeking coverage retroactive to July 1, 2025.

On March 23, 2026, the Essex County Board of Social Services (Essex County) denied the application, and J.L., through his Designated Authorized Representative, Moishe Hirsch, requested a fair hearing.

On April 22, 2026, the Division of Medical Assistance and Health Services (DMAHS) transmitted this case to the Office of Administrative Law as a contested case under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the office, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

On May 27, 2026, I conducted a hearing and closed the record.

FINDINGS OF FACT

Based upon the testimony the parties provided and my assessment of their credibility, together with the documents the parties submitted and my assessment of their sufficiency, I **FIND** the following as **FACT**:

J.L. resides in a nursing facility. On October 30, 2025, he applied for MLTSS under the Medicaid Only program retroactive to July 1, 2025. Essex County determined that J.L. had excess resources from July through December 2025, due to the timing of pension payments he received during that period. More specifically, J.L. receives a monthly pension payment from the New York Shipping Association and International

Longshoremen's Association (NYSA-ILA) in the amount of $1,440, which is directly deposited into his bank account with TD Bank. NYSA-ILA usually makes the pension payment for a given month by depositing the funds at the end of the preceding month.

On the following dates, NYSA-ILA made the following deposits, which J.L. withdrew to pay the nursing facility during the relevant months:

- On June 30, 2025, J.L. received a monthly pension payment, which he withdrew on July 7, 2025
- On July 30, 2025, J.L. received a monthly pension payment, which he withdrew on July 31, 2025
- On August 28, 2025, J.L. received a monthly pension payment, which he withdrew on September 12, 2025
- On September 29, 2025, J.L. received a monthly pension payment, which he withdrew on October 21, 2025
- On October 30, 2025, J.L. received a monthly pension payment, which he withdrew on November 5, 2025
- On November 28, 2025, J.L. received a monthly pension payment, which he withdrew on December 5, 2025

J.L. also held an additional $945 in the TD Bank account and maintained a Personal Needs Allowance (PNA) account of around $200 at the nursing facility during these months.

Each pension payment was meant to cover the month following the date of deposit.

In January 2026, J.L. established eligibility for MLTSS.

CONCLUSIONS OF LAW

An individual's countable resources may not exceed $2,000 to be eligible for the MLTSS. N.J.A.C. 10:71-4.5(c). For an individual residing in a nursing facility, this

limitation includes resources held both outside the facility and within the facility, such as a PNA account. N.J.A.C. 10:71-4.5(d). Regardless of the date an individual applies for Medicaid, resource eligibility is determined as of the first moment of the first day of each month. N.J.A.C. 10:71-4.1(e).

DMAHS regulations tether the Medicaid Only program to eligibility of Supplemental Security Income (SSI): "[t]he criteria for determination of eligibility [for the Medicaid Only] are based on SSI policy and procedure which do not necessarily coincide with standards for other public assistance programs and therefore require separate instructions." G.G. v. Div. of Med. Assistance & Health Servs., 249 N.J . 20, 31 (2021) (citing N.J.A.C. 10:71-1.4). The Social Security Administration (SSA) issues operating instructions for processing Social Security claims in its Program Operations Manual Systems (POMS). Kelley v. Comm'r of Soc. Sec., 566 F.3d 347, 350 fn.7 (3d Cir. 2009). Although POMS provide only administrative interpretations and are not the products of formal rulemaking, "they nevertheless warrant respect." Id. (quoting Wash. State Dep't of Soc. & Health Servs. v. Guardianship Estate of Keffeler, 537 U.S. 371, 385 (2003)).

The SSA has issued an operating instruction on checking and savings accounts, which addresses treatment of early payment deposits included in first of the month balances. See POMS SI § 01140.200 (2024). It instructs to be alert to situations in which payments are "received outside of the month of normal receipt (i.e. normal receipt date falls on a weekend of holiday)." Id. at section D(6)(d). In such situations, the operating instruction states to count the payment as income received in the month of normal receipt. Id.

Essex County treated the pension payments as a resource rather than income because the funds were in J.L.'s bank account as of the first day of each month. When combined with the $945 already in J.L.'s bank account and the PNA account, the monthly $1,440 pension payment resulted in J.L.'s having more than $2,000 in his accounts as of the first day of July, September, October, November, and December 2025.

J.L. argues that his pension payments should be treated as income during these months because NYSA-ILA made the payments early to cover the following month. In

support of his argument, J.L. relies on the SSA's operating instruction, POMS 01140.200. The SSA's operating instruction, however, is not a formal rule. As such, it cannot supersede Medicaid eligibility regulations, which unambiguously state that resources are counted as of the first day of the month. N.J.A.C. 10:71-4.1(e). Moreover, even if the SSA operating instruction was controlling, it addresses situations in which a payment is received outside the normal month of receipt, such as when the normal receipt date falls on a weekend or holiday. Here, J.L.'s pension payments were routinely deposited at the end of the month. As a result, he was not eligible for MLTSS during July, September, October, November, and December 2025, due to excess resources under N.J.A.C. 10:71-4.5(c) and N.J.A.C. 10:71-4.1(e).

Nevertheless, J.L. was eligible for Medicaid in August 2025. Applicants for Medicaid Only may be eligible for retroactive coverage for the three months prior to the month they apply. N.J.A.C. 10:71-2.16. A County Social Services Agency is required to ask a Medicaid-only applicant if the applicant has outstanding unpaid medical bills within this three-month period and provide an application for payment of unpaid medical bills. Id. J.L. did not have excess resources in August 2025 because he withdrew the pension payment made on July 30, 2025, on July 31, 2025, to pay his nursing facility. As a result, J.L.'s August resources included only $945 in his TDA bank account and approximately $200 in his PNA account, placing him under the $2,000 resource limit.

Accordingly, I **CONCLUDE** that J.L. was ineligible for Medicaid for the months of July, September, October, November, and December 2025, but Essex County must provide coverage for J.L.'s outstanding unpaid medical expenses for the month of August 2025.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that J.L. was **INELIGIBLE** for Medicaid for the months of July, September, October, November, and December 2025, and that Essex County must provide coverage for J.L.'s outstanding unpaid medical expenses for the month of August 2025.

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.

June 9, 2026
DATE

GERARD HUGHES, ALJ

Date Received at Agency:

Date Mailed to Parties:

GH/am

APPENDIX

Witnesses

For Petitioner:

Moishe Hirsch, Designated Authorized Representative

For Respondent:

Evelyn Salvo, Family Service Supervisor

Exhibits

For Petitioner:

P-1 Denial Letter

P-2 County Resource Worksheet

P-3 J.L.'s TD Bank Statements

P-4 Not admitted into evidence

P-5 Not admitted into evidence

P-6 Not admitted into evidence

P-7 POMS SI § 01140.200 (2024)

P-8 Not admitted into evidence

P-9 Recording of call between DAR and Pension Provider

For Respondent:

None