



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
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Governor

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KIM GUADAGNO
Lt. Governor

MEGHAN DAVEY
Director

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES

D.L.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES AND
ESSEX COUNTY BOARD OF
SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 7350-2016

As Director of the Division of Medical Assistance and Health Services, I
have reviewed the record in this matter, consisting of the Initial Decision, the
documents in evidence and the entire contents of the OAL case file. Neither
party filed exceptions. Procedurally, the time period for the Agency Head to file a

Final Agency Decision is October 6, 2016 in accordance with an Order of Extension.

This matter arises from the Medicaid eligibility date. Petitioner has been residing in an Assisted Living Facility (ALF), not a nursing facility as mentioned in the Initial Decision, since March 2015. He applied for benefits in December 2015. For purposes of Medicaid, the ALF is considered a community residence. In order to qualify for Medicaid in 2016 his gross income would have to be \$990 or less under the New Jersey Care . . . Special Medicaid Program. See R-3. In 2015 that amount was \$981. However, Petitioner's gross income of \$2,027 renders him ineligible. R-2. Petitioner's only path to eligibility for Medicaid benefits is under the Long-Term Care Services and Supports (LTSS) program that permits the use of a higher income level - 300 percent of the SSI benefit amount. In 2015 and 2016 that amount was \$2,199. In order for eligibility to be granted at this higher income level, nursing level of care must be necessary. See 42 CFR § 435.236 and 42 CFR § 435.1005. In order to determine medically necessary services in a nursing home or pursuant to a waiver program 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 NF 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. This must be done prior to receipt of benefits so as not to create a Medicaid program in the community using the higher income level.

Petitioner alleges that the delay in processing his clinical eligibility permits him to establish eligibility as of December 1, 2015. In order to be eligible for medical assistance under the State plan, a person must be clinically and financially eligible; and the financial component of the State plan requires that the applicant meet both income and resource standards. Eligibility must be established in relation to each legal requirement of the program. N.J.A.C. 10:71-3.15. Eligibility will only be granted if it is determined that he meets the standards of that program, regardless of any errors or omission made by Essex County. Office of Personnel Management v. Richmond, 496 U.S. 414, 110 S. Ct. 2465, 110 L.Ed. 2d 387 (1990); Johnson v. Guhl, 357 F. 3d 403,409-10 (3rd Cir. 2004); Gressley v. Califano, 609 F.2d 1265, 1267 (7th Cir.1979).

Petitioner is not eligible for December 1, 2015 as his income exceeded \$981. Only upon a determination that met nursing home level of care would he be entitled to have his income of \$2,027 be considered against the \$2,199 income standard. In recognizing that individuals in ALFs are not screened for nursing home level of care at the time of admission, the Office of Community Choice Options (OCCO) in the Division of Aging Services, which assesses for clinical eligibility, permits ALFs to refer residents to OCCO for a clinical determination. <http://www.state.nj.us/humanservices/doas/forms/AL-6.pdf>. This guidance was issued in 2011 and describes this form, which existed since at least 2009, as permitting a more timely application process as “[c]linical eligibility will not be assumed, determined retrospectively, or back-dated to coincide with a financial eligibility or facility admission date.” http://nj.gov/humanservices/doas/documents/policy/disclosure_al_medicaid_policies.pdf. In this case, the ALF did

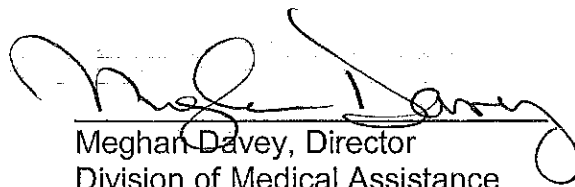
not make a request prior to filing or during the Medicaid application process. As a result, the OCCO acted upon notification and correctly set February 1, 2016 as the date of clinical eligibility. As a result the first date that Petitioner could use the higher income standard to established eligibility was February 1, 2016. As such, I hereby REVERSE the Initial Decision and affirm the determination by Essex County.

THEREFORE, it is on this *4th* day of OCTOBER 2016,

ORDERED:

That the Initial Decision is hereby REVERSED; and

That Petitioner is eligible as of February 1, 2016.


Meghan Davey, Director
Division of Medical Assistance
and Health Services