



*State of New Jersey*

DEPARTMENT OF HUMAN SERVICES  
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

CHRIS CHRISTIE  
*Governor*

P.O. Box 712  
Trenton, NJ 08625-0712

ELIZABETH CONNOLLY  
*Acting Commissioner*

KIM GUADAGNO  
*Lt. Governor*

MEGHAN DAVEY  
*Director*

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

E.T.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE  
AND HEALTH SERVICES AND

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 01503-17

E.T.,

PETITIONER,

v.

BERGEN COUNTY BOARD OF SOCIAL  
SERVICES,

RESPONDENT.

OAK DKT. NO. HMA 01504-17

E.T.,

PETITIONER,

v.

BERGEN COUNTY BOARD OF SOCIAL  
SERVICES,

RESPONDENT.

OAL DKT. NO. HMA 03376-17

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this matter including the Initial Decision and the contents of the OAL case file. No Exceptions to the Initial Decision were filed. Procedurally, the time period for the Agency Head to render a Final Agency Decision is October 29, 2017, in accordance with an Order of Extension. The Initial Decision was received on July 31, 2017.

This matter arises from the Bergen County Board of Social Services' (BCBSS) September 9, 2016 termination of Medicaid benefits for being over income; BCBSS' January 9, 2017 denial of Medicaid benefits pursuant to N.J.A.C. 10:71-3.16(a); and the Division of Aging Services (DoAS) January 3, 2017 denial of clinical eligibility. By Order dated April 19, 2017, these three cases were consolidated at the Office of Administrative Law (OAL). On May 23, 2017, Petitioner filed a Motion for Summary Judgment. On June 6, 2017, Respondent filed its opposition, and on June 22, 2017 Petitioner filed a reply. On July 31, 2017, the ALJ ordered summary decision in favor of Petitioner and further ordered that Medicaid benefits be provided to Petitioner retroactive to the date of his application.

Summary disposition may be entered where there is no genuine issue as to any material fact and where the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.1 et seq. See also Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995). Once the moving party has shown competent evidence of the absence of any genuine issue of fact, the non-moving party must do more than simply create some doubts as to the material facts; it must raise a factual issue substantial enough to sustain a reasonable conclusion in the non-

moving party's favor. Based on my review of the record, I hereby REVERSE the Initial Decision and REMAND the matter to OAL for proceedings on the merits.

In the Initial Decision, the ALJ addressed two of the three notices transmitted to the OAL. The ALJ did not address the September 9, 2016 termination of FamilyCare benefits because the family income exceeded 142% of the Federal Poverty Guideline for Family Care. This first notice addresses the termination of FamilyCare benefits for Petitioner and his entire family. Petitioner's benefits under the FamilyCare program were continued pending the outcome of the fair hearing on this notice. It is unclear why the ALJ focuses on the October 17, 2016 determination of the State Vendor instead of the September 9, 2016 notice from Bergen County. It is apparent from the record that the Petitioner is seeking benefits through the MLTSS program. The State Vendor does not make eligibility determinations regarding the MLTSS program. A determination with regard to the September 9, 2016 notice from Bergen County is necessary to ascertain the appropriateness of Petitioner's continued Medicaid benefits under this program.

The January 9, 2017 denial notice addresses Petitioner's individual application for the Medicaid program. The ALJ determined that BCBSS' January 9, 2017 denial notice "failed to give a rational reason for declaring Petitioner ineligible for Medicaid benefits." As a result, he held that the decision was improper and the denial should be reversed. "Where a party claims entitlement to benefits under federal statutes and lawfully promulgated regulations, that party must satisfy the requirements imposed by Congress." Gressley v. Califano, 609 F.2d 1265, 1267 (7th Cir.1979). Eligibility will only be granted if it is determined that he meets the standards of that program, regardless of any errors or

omissions made by the BCBSS. 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 (3<sup>rd</sup> Cir. 2004); Gressley v. Califano, 609 F.2d 1265, 1267 (7th Cir.1979). Thus, assuming *arguendo* that notice in this case was inadequate, the remedy is not the award of benefits, but a determination of whether the Petitioner meets the eligibility requirements.

The January 3, 2017 notice addressed Petitioner's eligibility for the MLTSS program. With regard to Petitioner's eligibility, there are still questions of fact not resolved by summary decision. In order for Petitioner to qualify for MLTSS, he must be in need of nursing home level of care. Eligibility for nursing facility services is determined by the professional staff designated by the Department based on a comprehensive needs assessment that demonstrates that the beneficiary requires nursing home level of care. N.J.A.C. 8:85-2.1. In this case, the designated party is the Division of Aging Services' Office of Community Choice Options. One of its registered nurses assessed the Petitioner in his home and determined that he is independent in the activities of daily living and therefore does not meet nursing facility level of care as required by N.J.A.C. 8:85-2.1 and N.J.A.C. 8:85-2.2. Here, Nurse Morris' narrative notes:

Observed client being redirected by father although father states that the client's behavior is undirectable at times and client does not always follow commands...As stated by father, client can independently feed himself with supervision...father states that client can dress himself but needs assistance with buttons and zippers. Father states that client can independently get on and off the toilet but needs assistance with cleaning after incontinent episodes and applying a diaper (only used during the night). Father states that client can independently get in and out of bed and transfers independently although supervision is need for locomotion to prevent injury.

Children requiring NF services exhibit functional limitations identified either in terms of developmental delay requiring nursing care over and above routine parenting or are limited in terms of specific age-appropriate physical and cognitive activities, functional abilities (ADL) or abnormal behavior, as demonstrated by performance at home, school or recreational activities. N.J.A.C. 8:85-2.1(a)1i.

N.J.A.C. 8:85-2.2 sets forth the types of services to be provided by nursing facilities. I do not agree that Nurse Morris' assessment of Petitioner clearly establishes clinical eligibility for nursing facility level of care. In fact, the assessment sets forth Nurse Morris' determination that Petitioner does not meet the standards of eligibility for nursing facility level of care. Clearly, there exists a dispute as to whether the assessment establishes a nursing facility level of care affirming clinical eligibility, and Petitioner's moving papers do not establish that Petitioner exhibits functional limitations over and above the routine parenting of an eight year old.

Furthermore, "Medicaid is an intensely regulated program." H.K. v. Div. of Med. Assistance & Health Servs., 184 N.J. 367, 380 (2005). DMAHS is obligated to administer New Jersey's Medicaid program in a fiscally responsible manner to ensure that the limited funds available are maximized for all program participants, Dougherty v. Dep't of Human Servs., Div. of Med. Assistance & Health Servs., 91 N.J. 1, 4-5 (1982); Estate of DeMartino v. Div. of Med. Assistance & Health Servs., 373 N.J. Super. 210, 217-19 (App. Div. 2004), certif. denied, 182 N.J. 425 (2005). For this reason, it is important for DMAHS to know if Petitioner is receiving duplicative services from either a group health plan or the CSOC.

Thus, I FIND that the record does not support the finding that Petitioner met the NF level of care required to establish clinical eligibility for the MLTSS program and hereby REMAND the matter to the OAL for further findings regarding Petitioner's eligibility.

THEREFORE, it is on this <sup>20th</sup> day of OCTOBER 2017,

ORDERED:

That the matter is REVERSED in that the record does not support the finding that Petitioner met clinical eligibility for the MLTSS program; and

That the matter is REMANDED to the Office of Administrative Law for testimony and fact finding regarding Petitioner's clinical eligibility and a determination on the merits of Petitioner's eligibility; and

That the matter is REMANDED for a determination of eligibility with regard to the Bergen County Board of Social Services September 9, 2016 notice of termination; and

That the matter is REMANDED for a determination of whether or not Petitioner is receiving duplicative services.

  
Meghan Davey, Director  
Division of Medical Assistance  
and Health Services