



**State of New Jersey**

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

PO Box 712

TRENTON, NJ 08625-0712

PHILIP D. MURPHY  
*Governor*

SHEILA Y. OLIVER  
*Lt. Governor*

CAROLE JOHNSON  
*Commissioner*

JENNIFER LANGER JACOBS  
*Assistant Commissioner*

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

C.M.,

PETITIONER,

v.

SUSSEX COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

**ADMINISTRATIVE ACTION**

**FINAL AGENCY DECISION**

**OAL DKT. NO. HMA 08599-19**

**ON REMAND FROM HMA 01858-19**

As Assistant Commissioner of the Division of Medical Assistance and Health Services (DMAHS), I have reviewed the record in this case, including the Initial Decision and the Office of Administrative Law (OAL) case file. Procedurally, the time period for the Agency Head to file a Final Decision is October 18, 2019, in accordance with N.J.S.A. 52:14B-10 which requires an Agency Head to adopt, reject or modify the Initial Decision within 45 days of receipt. The Initial Decision was received on September 3, 2019.

This matter stems from Sussex County Board of Social Services' (SCBSS) termination of Petitioner's Medicaid benefits. Petitioner appealed the termination and this office transmitted Petitioner's request for fair hearing to the OAL. On February 25, 2019, ALJ Cookson held a fair hearing and on March 4, 2019 issued an Initial Decision reversing

the SCBSS and finding in favor of the Petitioner. On May 8, 2019, the DMAHS Director issued a Final Agency Decision (FAD) reversing the ALJ and reinstating the termination of Petitioner's Medicaid benefits. Petitioner appealed the FAD and the Appellate Division remanded the matter to the OAL to determine: (1) whether Petitioner's son continued to work throughout 2019; (2) whether he was required to file a tax return for 2019; and (3) whether his projected monthly income would disqualify the family from Medicaid benefits. Upon remand, ALJ Moss found that Petitioner's son stopped working on March 23, 2019, that he had not become employed elsewhere, and as a result, his income would not cause the household to be ineligible for Medicaid benefits. This information, however, was revealed nine months after redetermination. It was not available to the SCBSS in December 2018, nor was it part of the record at the first OAL hearing before ALJ Cookson.

The Affordable Care Act regulations established a new method for counting income based upon an applicant's Modified Adjusted Gross Income (MAGI). The countable income for MAGI is gross income according to the Internal Revenue Service Code. See 42 CFR § 435.603. Since MAGI methodology is based on the Internal Revenue Code, household compositions are identified as either tax filing or non-tax filing, with corresponding regulations governing each. 42 CFR § 435.603(f). N.J.A.C. 10:78-4.3(a) specifically states that, "countable income shall include the income of all members of the household unit . . ." Household unit "means those persons whose income is counted in the determination of eligibility... The following persons, if they reside with the program applicant or beneficiary, shall be considered members of the household unit:

1. In the case of a parent or caretaker:
  - i. The parent or caretaker;
  - ii. The spouse of the parent or caretaker;
  - iii. The parent or caretaker's natural or adoptive children under the age of 21 . . .

See N.J.A.C. 10:78-3.5(a)(1) (emphasis added). However, the income of a child or tax dependent, "who is not expected to be required to file a tax return under section 6012(a)(1)

of the Code of the taxable year in which eligibility for Medicaid is being determined, is not included in household income whether or not the individual files a tax return.” See 42 CFR 435.603(d)(2). 26 USC 6012(a)(1) requires that a tax return is required to be filed for every individual having for the taxable year gross income which equals or exceeds the exemption amount. At the time of redetermination, the federal income tax filing threshold for single dependents was \$12,000.

Medicaid eligibility is determined prospectively based on the information provided at the time of application or redetermination. (On September 13, 2018, Petitioner filed an application for Medicaid with SCBSS). Petitioner’s family had been receiving Medicaid benefits, when in December 2018, SCBSS learned that Petitioner’s employment had changed and that Petitioner’s son had been working steadily at Shoprite since May 2018, averaging \$1,348.91 each month. Grocery stores are not typically seasonal employers, and there was indication that Petitioner’s son, who had been employed for seven months, was not hired seasonally. It was reasonable, for SCBSS to predict that Petitioner’s son would remain employed at an estimated monthly salary of \$1,348.91. In fact, Petitioner’s son was still employed with Shoprite as of the date of the initial OAL hearing on February 25, 2019.<sup>1</sup>

The MAGI method of income calculation does not negate a state’s responsibility to verify income or ensure that only eligible individuals receive benefits. 42 CFR §435.940. So, when SCBSS became aware of Petitioner’s new employment and Petitioner’s son’s employment, it was under no requirement to disregard said employment simply because it did not appear on the previously submitted tax return. To the contrary, SCBSS had an obligation to determine whether Petitioner’s son was expected to file a 2019 tax return, and reassess eligibility based on any changes.<sup>2</sup>

---

<sup>1</sup> Petitioner’s son remained employed through the Initial Decision on March 4, 2019 and ultimately ceased working at Shoprite on March 23, 2019. There is no indication in the record or the first Initial Decision that school and work were scheduled to end for Petitioner on March 23, 2019. In fact, the first Initial Decision notes that the ALJ had no indication of what the future held for Petitioner’s son’s employment status.

<sup>2</sup> Petitioner’s son’s income was not counted in 2018 because the information available to SCBSS showed that his

If Petitioner was aware that her son's employment status was temporary, why was that not communicated to either the SCBSS or the ALJ during the first OAL hearing? Petitioner presented no evidence at the first hearing that her son's income was temporary, that he was only employed during the school year, that his school year was scheduled to end on March 23, 2019 or that his lease would end at that same time, causing him to move home.<sup>3</sup> This information only became available upon remand to the OAL, eight months after SCBSS issued its December 2018 termination letter and approximately six months after the initial OAL hearing. It is Petitioner's responsibility to report any changes that would affect his or her circumstance to the CWA. N.J.A.C. 10:78-2.7. Because Petitioner provided none of this information, it was reasonable for SCBSS to assume that Petitioner's son would remain employed by Shoprite and earn a projected income of \$16,186.92 in 2019, requiring him to file a tax return.<sup>4</sup>

Therefore, at the time the termination was issued, Petitioner's son's income was correctly included in the household's income. The fact that Petitioner's son subsequently left employment from Shoprite does not change the information that was available to SCBSS at the time of redetermination; nor does it change the fact that Medicaid eligibility is determined prospectively and remains subject to verification. 42 C.F.R. 435.940. At the time of redetermination, Petitioner's son was employed and earning an average monthly salary of \$1,348.91, which if continued would result in earnings totaling \$16,186.92 for 2019. These earnings exceed the \$12,000 minimum threshold for tax filing. In fact,

---

earnings were below the \$12,000 filing threshold.

<sup>3</sup> With respect to the end of Petitioner's son's lease and classes, this information would have been well documented and known to Petitioner at the time of the fair hearing.

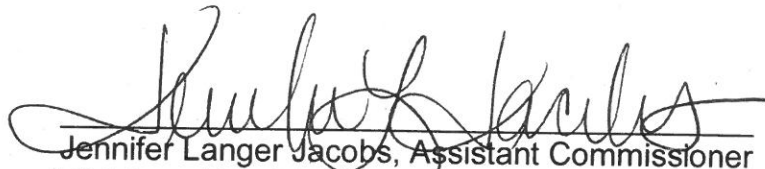
<sup>4</sup> The ALJ herself makes a prospective assumption about the household's eligibility based on Petitioner's son's unemployment when she notes, "he has not been employed for five months and there is no indication of future employment..." It is equally reasonable for SCBSS to assume that Petitioner's son, who had been employed for seven months at the time of redetermination would remain employed. To find as the ALJ does effectively prohibits the CWAs from independently verifying income information because any applicant or recipient may at any time become unemployed. The counties would have to find everyone eligible and numerous recipients would potentially be subject to Medicaid overpayment recovery actions.

Petitioner's son's monthly earnings (\$1,143.32) at the time of the first fair hearing would cause him to be a tax filer. Nothing was presented by Petitioner to demonstrate that this income was to end. Consequently, his income was included in the household's projected income for the next year of eligibility. The increase in Petitioner's income, combined with her son's income, exceeded the \$4,048.67 monthly income limit for a household of six. Thus, I FIND that Petitioner's household's eligibility was properly terminated. I note that Petitioner's circumstances may have since changed; she may always reapply for Medicaid benefits.

THEREFORE, it is on this 10<sup>th</sup> day of OCTOBER 2019,

ORDERED:

That the Initial Decision is hereby REVERSED. Petitioner's son's income was correctly included in the household income to determine prospective income and Petitioner's Medicaid benefits were properly terminated February 1, 2019.

  
Jennifer Langer Jacobs, Assistant Commissioner  
Division of Medical Assistance  
and Health Services