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

H.H., PETITIONER, v. DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES AND BURLINGTON COUNTY BOARD OF SOCIAL SERVICES, RESPONDENTS.	**ADMINISTRATIVE ACTION** **FINAL AGENCY DECISION** **OAL DKT. NO. HMA 4848-2019**

As Assistant Commissioner for the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision, the OAL case file and the documents filed below. Neither party filed exceptions in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is December 27, 2019 in accordance with an Order of Extension.

The matter arises regarding the date of eligibility. Petitioner applied in May 2018 and was seeking eligibility as of that month. Burlington County determined that Petitioner met eligibility as of February 1, 2019.

The Initial Decision upholds the February 1, 2019 date and I concur. When determining whether an institutionalized individual with a spouse is eligible for Medicaid benefits, applicants follow specific rules that assess the allowable resources and allowable income of the institutionalized and the community spouse. The amount of resources that the couple is permitted to retain is based on a "snapshot" of the couple's total combined resources as of the beginning of the continuous period of institutionalization. See Mistrick v. DMAHS and PCBOSS, 154 N.J. 158, 171 (1998); 42 U.S.C.A. § 1396r-5(c)(1)(A); N.J.A.C. 10:71-4.8(a)(1). The community spouse is permitted to keep the lesser of: one-half of the couple's total resources or the maximum amount set forth in N.J.A.C. 10:71-4.8(a)(1)($123,600 in 2018, indexed annually). This is called the Community Spouse Resource Allowance (CSRA). Resources above that amount must be spent down before qualifying for benefits.

Here Burlington County set the snapshot date as of February 1, 2018, the date the Pre-Admission Screening (PAS) had been completed. The 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. It is on that date that Petitioner could be considered an institutionalized individual.

Petitioner is seeking to have the date she began living in an assisted living facility set as the snapshot. She had been living in an assisted living facility since 2014. At that time, Petitioner and her husband had over $472,000 in assets. When she was found to

meet nursing home level of care pursuant to a PAS in February 2018, the couple had assets totaling $131,341.03. R-1 at 59. One-half of that amount or $65,670.52 was set as the protected resources for Petitioner's husband. When combined with the $2,000 Petitioner is allowed to retain, eligibility could be established when there was $67,670.52 in assets. Ibid.

The Initial Decision determined that Petitioner could not be considered institutionalized until the PAS was completed. Services provided in an assisted living facility are not considered to be institutional. Federal law requires that States provide institutional nursing home services. See 42 USCA § 1396a(a)(10). Assisted living services are not required services but can be provided under a home and community based waiver either under 1915(c) or 1115. See Medicaid Assisted Living Services, Government Accountability Report (GAO) https://www.gao.gov/assets/690/689302.pdf. A continuous period of institutionalization is determined by admission to a Title XIX facility for a period of 30 consecutive days. N.J.A.C. 10:71-4.8(a). See also 42 USCA § 1396r-5(h)(1). Petitioner's snapshot occurred in February 2018 when she had been determined to be eligible for the level of care provided in a nursing home.

In addition to the reasons stated in the Initial Decision, there is no legal basis to grant eligibility when none exists. "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).

Petitioner's argument for the imposition of equitable considerations fails to recognize that the courts in New Jersey have rarely applied the doctrine of estoppel to governmental

entities absent a finding of malice, Cipriano v. Department of Civil Serv., 151 N.J.Super. 86, 91(App.Div.1977), particularly when estoppel would "interfere with essential governmental functions." See also O'Malley v. Dep't of Energy, 109 N.J. 309, 316-18(1987) and Vogt v. Borough of Belmar, 14 N.J. 195, 205 (1954). Where public benefits are concerned, courts have gone farther to recognize that "[e]ven detrimental reliance on misinformation obtained from a seemingly authorized government agent will not excuse a failure to qualify for the benefits under the relevant statutes and regulations." Gressley v. Califano, 609 F.2d 1265, 1267 (7th Cir.1979). See also Office of Personnel Management v. Richmond, 496 U.S. 414, 110 S. Ct. 2465, 110 L.Ed. 2d 387 (1990) and Johnson v. Guhl, 357 F. 3d 403 (3rd Cir. 2004).

The United States Supreme Court has addressed the estoppel issue in the context of federal disability benefits. Office of Personnel Management v. Richmond, 496 U.S. 414, 110 S. Ct. 2465, 110 L.Ed. 2d 387 (1990). In that case the Court, in the majority opinion, held that, under the Appropriations Clause of the Constitution, the payments of benefits from the federal treasury are limited to those authorized by statute. Erroneous advice from a governmental employee regarding those benefits cannot estop the government from denying benefits not permitted by law. Article VIII, Section II of the New Jersey Constitution also has similar appropriations language. As the Medicaid Program is a cooperative federal-state program, jointly financed with federal and state funds, payment of Medicaid benefits from the state and federal treasuries must be authorized by law. The Supreme Court went on to note that:

> [estoppel] ignores reality to expect that the Government will be able to "secure perfect performance from its hundreds of thousands of employees scattered throughout the continent." Hansen v. Harris, 619 F.2d 942, 954 (CA2 1980) (Friendly, J., dissenting), rev'd sub nom. Schweiker v. Hansen, 450 U.S. 785, 101 S.Ct. 1468, 67 L.Ed.2d 685 (1981). To open the door to estoppel claims would only invite endless litigation over both real and imagined claims of misinformation by disgruntled citizens, imposing an unpredictable drain on the public fisc. Even if most claims were rejected in the end, the burden of defending such estoppel claims would itself be substantial.

. . .

> The natural consequence of a rule that made the Government liable for the statements of its agents would be a decision to cut back and impose strict controls upon Government provision of information in order to limit liability. Not only would valuable informational programs be lost to the public, but the greatest impact of this loss would fall on those of limited means, who can least afford the alternative of private advice.
> OPM v. Richmond, 496 U.S. 414, 433- 434,110 S. Ct. 2465, 2476 (1990).

The final statement in Richmond makes it clear that "[a]s for monetary claims, it is enough to say that this Court has never upheld as assertion of estoppel against the Government by a claimant seeking public funds. In this context there can be no estoppel, for courts cannot estop the Constitution." Id. at 434. This precedent was affirmed by the Third Circuit, Court of Appeals which also declined to apply estoppel against New Jersey in the context of determining Medicaid eligibility. Johnson v. Guhl, 357 F. 3d 403, 409-10 (3rd Cir. 2004). That court reached back even further to an 1868 Supreme Court case which held that "the Government could not be compelled to honor bills of exchange issued by a government official where there was no statutory authority for the issuance of the bills." Id.

THEREFORE, it is on this 27th day of DECEMBER 2019,

ORDERED:

That the Initial Decision is hereby ADOPTED as set forth above.

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