

Petitioner applied for Medicaid. Petitioner's spouse, M.K., was determined medically eligible for Supplemental Social Security Income (SSI) by the Social Security Administration (SSA), but was determined ineligible for SSI due to Petitioner's income. Petitioner and spouse reside in the same household. Petitioner's spouse has no income. After applying the \$20 disregard, the Petitioner's total monthly income is \$1,129. BCBSS found that Petitioner's monthly income exceeded the income limit of \$1,041 for a household of one and found Petitioner ineligible.

The Division of Medical Assistance and Health Services (DMAHS) in the New Jersey Department of Human Services oversees and administers the state and federally funded Medicaid program for certain groups of low to moderate income individuals. New Jersey is considered a Supplemental Security Income (SSI) state, which means that the State's methodology for determining an individual's income and resources can be no more restrictive than SSI. 42 U.S.C.A. § 1396a(a)(10)(C)(i)(III).

N.J.A.C. 10:72-4.1, sets financial limits on eligibility for the Medicaid program. N.J.A.C. 10:72-4.4 specifically addresses the financial limits on eligibility for those applying to the Aged, Blind and Disabled (ABD) program. Specifically, the regulation states that "if the countable income (before deeming) of the aged, blind or disabled individual exceeds the poverty income guideline for one person he or she is ineligible for benefits and income deeming does not apply." N.J.A.C. 10:72-4.4(d)(1). The directive in this regulation is rooted in the U.S. Social Security Administration (SSA), Code of Federal Regulations (CFR) and Program Operations Manual System (POMS).²

The CFR instructs how to deem income from an ineligible spouse living in the same household. 20 C.F.R. 416.1163. Specifically, it provides:

(1) If the amount of your ineligible spouse's income that remains after appropriate allocations is not more than the difference between the Federal benefit rate for an eligible couple and the Federal benefit rate for an eligible individual, there is no income to deem to you from your spouse. In this situation, we subtract

² Section 1614(f)(1) and (2) of the SSA gives the Secretary the authority to determine the circumstances under which it would be inequitable to deem from an ineligible spouse or parent.

only your own countable income from the Federal benefit rate for an individual to determine whether you are eligible for SSI benefits.

(2) If the amount of your ineligible spouse's income that remains after appropriate allocations is more than the difference between the Federal benefit rate for an eligible couple and the Federal benefit rate for an eligible individual, we treat you and your ineligible spouse as an eligible couple.

20 C.F.R. 416.1163(d)(1) and (2).

The CFR also provides examples to illustrate how income is deemed from an ineligible spouse to an eligible individual in cases, like this one, which do not have any of the exceptions in §416.1160(b)(2). Example 1 is as follows:

In September 1986, Mr. Todd, an aged individual, lives with his ineligible spouse, Mrs. Todd, and their ineligible child, Mike. Mr. Todd has a Federal benefit rate of \$336 per month. Mrs. Todd receives \$252 unearned income per month. She has no earned income and Mike has no income at all. Before we deem any income, we allocate to Mike \$168 (the difference between the September Federal benefit rate for an eligible couple and the September Federal benefit rate for an eligible individual). We subtract the \$168 allocation from Mrs. Todd's \$252 unearned income, leaving \$84. Since Mrs. Todd's \$84 remaining income is not more than \$168, which is the difference between the September Federal benefit rate for an eligible couple and the September Federal benefit rate for an eligible individual, we do not deem any income to Mr. Todd. Instead, we compare only Mr. Todd's own countable income with the Federal benefit rate for an eligible individual to determine whether he is eligible. If Mr. Todd's own countable income is less than his Federal benefit rate, he is eligible. To determine the amount of his benefit, we determine his countable income, including any income deemed from Mrs. Todd, in July and subtract this income from the appropriate Federal benefit rate for September.

See 20 C.F.R. 416.1163(g).

Here, Petitioner, who lives with his ineligible spouse, receives \$1,129 in income. Petitioner's spouse receives \$0 unearned income per month. Since Petitioner's remaining income is not more than the difference between the Federal benefit rate for an eligible couple and the Federal benefit rate for an eligible individual, we do not deem any income to Petitioner. Instead, we compare only Petitioner's own countable income with the Federal benefit rate for an eligible individual to determine whether he is eligible. If Petitioner's own

countable income is less than his Federal benefit rate, he is eligible. Petitioner's income, however, exceeds the Federal benefit rate.

Additionally, the SSA has published POMS, which is a statement of the "publicly available operating instructions for processing Social Security claims." Wash. State Dep't of Soc. & Health Servs. v. Guardianship Estate of Keffeler, 537 U.S. 371, 385, 123 S. Ct. 1017, 154 L. Ed. 2d 972 (2003). The United States Supreme Court noted the deference due POMS. Ibid. "While these administrative interpretations are not products of formal rulemaking, they nevertheless warrant respect." Id. at 385. (citing Skidmore v. Swift & Co., 323 U.S. 134, 139-140, 65 S. Ct. 161, 89 L. Ed. 124 (1944)); see also James v. Richman, 547 F.3d 214, 218 n.2 (3d Cir. 2008). Additionally, in Elizabeth Blackwell Health Center for Women v. Knoll, the Third Circuit found that interpretive rules by an agency with lawmaking authority (as opposed to legislative rules) will get deference even if the agency's interpretation is not made pursuant to the that lawmaking authority. 61 F.3d 170 (3rd Cir. 1995). In that case, a manual from HCFA, now CMS, providing guidance to States about Medicaid plans was deemed an interpretative rule and given deference. See United States v. Mead Corp., 533 U.S. 218, 229, 121 S. Ct. 2164, 150 L.Ed.2d 292 (2001). ("A very good indicator of delegation meriting Chevron treatment [is an] express congressional authorization to engage in the process of rulemaking or adjudication that produces regulations or rulings for which deference is claimed."). The Third Circuit has also cited POMS and afforded it deference in a case regarding the denial of Medicaid eligibility due to excess resources. Sable v. Velez, 437 Fed. App'x 73, 77 (3d Cir. 2011) (non-precedential) ("Sable II"). Thus, "while POMS cannot thoughtlessly or rigidly be transplanted from the Social Security context to the Medicaid context, it is entitled to consideration." Landy v. Velez, 958 F. Supp. 2d 545, 553 (D. N.J. 2013)

POMS offers guidance with regard to Medicaid applicants and deeming between spouses. According to POMS, in order for spouse to spouse deeming to apply, the SSI applicant or recipient "must first be eligible based on his or her own income." POMS SI

01320.400. Here, Petitioner, a 70 year old male applied for ABD Medicaid in February 2019. He receives \$1,149.50 per month in Social Security benefits. This is his only source of income. Petitioner's wife has no income. Petitioner's income exceeds the \$1,041 income limit for an individual. Accordingly, I FIND that Petitioner is not income eligible for Medicaid. N.J.A.C. 10:72-4.4(d). The deeming of any other household income is unnecessary because Petitioner was not first eligible in his own right.


The record below does not shed any light on whether Petitioner may benefit from the assistance afforded by the Specified Low-income Medicare Beneficiaries (SLMB) program, but I suggest that he apply for these benefits through the Pharmaceutical Assistance to the Aged and Disabled (PAAD) program by contacting the Department of Health and Senior Services at 1-800-792-9745. This Final Agency Decision should not be construed as making any findings regarding Petitioner's eligibility for this program.

Based on my review of the record, I concur with the ALJ's findings and hereby ADOPT the Initial Decision.

THEREFORE, it is on this ^{24th} day of OCTOBER 2019,

ORDERED:

That the Initial Decision is hereby ADOPTED.


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