

eligible effective April 1, 2016. Petitioner lives with his spouse. His spouse was determined medically disabled by the Social Security Administration (SSA), but was not eligible to receive benefits due to a lack of sufficient work history. Petitioner's spouse has no income. In 2019, MCBSS conducted a redetermination of Petitioner's 2018 and 2019 Medicaid eligibility. In 2018, Petitioner's total monthly income was \$1,323.¹ MCBSS found that Petitioner's monthly income exceeded the income limit of \$1,012 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

¹ In 2019, Petitioner's total monthly income would be \$1,380 which still exceeds the income limit of \$1,041.

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.

to deem to you from your spouse. In this situation, we subtract 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 \$1,323 in income each month. 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 benefits 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 69 year old male, applied for ABD Medicaid in March 2016 and was found eligible. In 2019, a redetermination showed a change in income. In 2018, he received \$1,323 per month in Social Security benefits. This is his only source of income. Petitioner's wife has no income. Petitioner's income exceeds the \$1,012 income limit for an individual in 2018. 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.

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 ^{26th} day of NOVEMBER 2019,

ORDERED:

That the Initial Decision is hereby ADOPTED.


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