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DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
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JENNIFER LANGER JACOBS

Director

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

K.H.,

PETITIONER,

ADMINISTRATIVE ACTION

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FINAL AGENCY DECISION

OAL DKT. NO. HMA 11138-19

MIDDLESEX COUNTY BOARD

OF SOCIAL SERVICES,

RESPONDENTS.

Initial Decision was received on September 15, 2020.

As Assistant Commissioner of the Division of Medical Assistance and Health Services, I have reviewed the record in this matter, consisting of the Initial Decision, the documents in evidence 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 December 14, 2020 in accordance with an Order of Extension. The

This case arises from the Middlesex County Board of Social Services' (MCBSS)

June 21, 2019 determination of continued eligibility and PR-1 form which denied

Petitioner an allowance for community spousal maintenance. Petitioner and his wife,

O.H., are both Medicaid recipients. Prior to entering a nursing facility, Petitioner was enrolled in the Managed Long Term Services and Supports (MLTSS) program. O.H. continues to receive services in the community through the MLTSS program. MCBSS recognized O.H.'s receipt of MLTSS benefits, and determined that that she was "institutionalized" and ineligible for the financial protections afforded a community spouse pursuant to N.J.A.C. 10:71-5.7(c). Placing on emphasis on the Petitioner's physical location in the home, the Administrative Law Judge (ALJ) determined that O.H. did not receive "institutional care" at home through the MLTSS program, and found that MCBSS' denial of the spousal deduction was made in error. Based upon my review of the record, I hereby REVERSE the findings and conclusions of the ALJ.

Medicaid is a federally-created, state-implemented program designed, in broad terms, to ensure that people who cannot afford necessary medical care are able to obtain it. See 42 U.S.C.A. § 1396, et. seq., Title XIX of the Social Security Act ("Medicaid statute"). Medicaid provides "medical assistance to the poor at the expense of the public." DeMartino v. Div. of Med. Assistance & Health Servs., 373 N.J. Super. 210, 217 (App. Div. 2004) (citing Mistrick v. Div. of Med. Assistance & Health Servs., 154 N.J. 158, 165 (1998)); Atkins v. Rivera, 477 U.S. 154, 156, 106 S. Ct. 2456, 2458, 91 L. Ed. 2d 131, 137 (1986); 42 U.S.C.A. § 1396-1. Although a state is not required to participate in the Medicaid program, once a state elects to participate, it must comply with the Medicaid statute and federal regulations. 42 U.S.C.A. § 1396a. New Jersey participates in the Medicaid program pursuant to the New Jersey Medical Assistance and Health Services Act (the Act), N.J.S.A.30:4D-1, et. seq., DMAHS is the state agency designated, pursuant to 42 U.S.C.A. § 1396a(5), to administer the New Jersey Medicaid program. N.J.S.A.

30:4D-7.

Because Medicaid funds are limited and intended for the needy, only those applicants with income and non-exempt assets below specified levels may qualify for this government paid assistance. Prior to 1988, couples applying for long-term nursing home care benefits from Medicaid were required to "spend down the entirety of their resources in order for one of them to qualify for Medicaid. This resulted in the virtual impoverishment of the spouse who remained in the community." Cleary v. Waldman, 167 F.3d 801, 805 (3d Cir.), cert. denied, 528 U.S. 870, 120 S. Ct. 170, 145 L. Ed. 2d 144 (1999) (emphasis added).

In 1988 Congress amended the laws governing Medicaid by enacting the Medicare Catastrophic Coverage Act (MCCA). <u>See</u> Pub. L. No. 100-360, 102 Stat. 683-817, reprinted in 1 U.S.C.C.A.N. (1988). Under prior law:

Shortly after institutionalization, each spouse is treated as a separate household. Income - - generally Social Security checks, pensions, and interest or dividends from investments - - is considered to belong to the spouse whose name is on the instrument conveying the funds Thus, in a case where a couple's pension check is made out to the husband, if the husband enters a nursing home, all of the income is considered his for purposes of determining eligibility. If the wife in this case enters the nursing home, however, none of the income is considered hers, and the husband is under no obligation under Federal law to contribute any of his income toward the cost of her care.

In amending the law, Congress sought to prevent either spouse who had income or resources in his or her name, from benefitting unfairly at the expense of the other. Congress recognized that "the impoverishment of individuals whose spouses reside in nursing homes

and receive Medicaid benefits is not justifiable" and that failure to allocate adequate income and resources to the community spouse "have forced community spouses, in desperation, to sue their husbands for support." H.R. Rep. No. 100-105(II), 100th Cong., 2nd Sess. 4, reprinted in 1988 U.S.C.C.A.N. at 892.

As a result, the MCCA changed the system used to determine the post-eligibility allocation of a married couple's income and resources between the institutionalized spouse and the community spouse by allowing the community spouse to retain assets well in excess of any other Medicaid-eligible group. Cleary, supra, 959 F.Supp. at 232. 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.¹ 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)(currently \$126,420 in 2019, indexed annually). This is called the Community Spouse Resource Allowance (CSRA). Resources above that amount must be spent down before qualifying for benefits.

Furthermore, as part of the post-eligibility income provisions, the MCCA provides that each spouse's monthly income belongs to that spouse unless it is joint income, in which case it is to be split. 42 <u>U.S.C.A.</u> § 1396r-5(b). Therefore, a community spouse's income "shall [not] be deemed available to the institutionalized spouse." 42 <u>U.S.C.A.</u> § 1396r-5(b)(1). The MCCA provides that deductions from the institutionalized spouse's income may be paid for the benefit of the community spouse, providing a community spouse monthly income allowance (CSMIA). 42 U.S.C.A. 1396r-5(d). In this way, the MCCA ensures the community spouse receives a minimum of income well above the poverty level and requires couples to

¹ In order to determine medically necessary services in a nursing home or pursuant to a home and community based waiver requiring nursing home level of care, a pre-admission screening (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 nursing facility 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.

bear a reasonable amount of the costs of institutionalized care and thereby preserve limited Medicaid resources. See <u>Cleary v. Waldman</u>, 959 <u>F.Supp.</u> 222, 232 (D.NJ 1997).²

Petitioner argues that O.H. is a community spouse pursuant to the federal statute for purpose of receiving the spousal maintenance deduction. For Medicaid purposes, the community spouse is considered to be someone who is married to an institutionalized individual and is not himself or herself institutionalized. N.J.A.C. 10:71-5.7(c). As previously stated, O.H. is a Medicaid beneficiary. She receives her benefits at home through the MLTSS program, the same Medicaid program that is covering her husband in the facility. Beginning July 1, 2014, participants in home and community-based waivers were encompassed in the Comprehensive 1115 Medicaid Waiver, and enrolled in MLTSS. The MLTSS program provides comprehensive services and supports to help eligible beneficiaries remain living in the community rather than in a nursing facility. In order for O.H. to qualify for MLTSS, she was assessed and found to be in need of institutional level of care and thus entitled to additional services not covered under regular Medicaid. Despite this assessment, Petitioner insists that O.H.'s status as community spouse hinges upon her physical residence in the community and overlooks her receipt of institutional level of care benefits through MLTSS.

The importance of the benefits received, as opposed to O.H.'s residence at home or in a nursing facility, is evident in the implementation of section 2404 of the Affordable Care Act which amended section 1924 of the Social Security Act ("Protection for Recipients of Home and Community-Based Services Against Spousal Impoverishment"). The amendment required states to include in the definition of "institutionalized spouse" married individuals who are "eligible for medical assistance for home and community-based services provided under subsection (c), (d), or (i) of section 1915, under a waiver approved under section

² In doing this, a Minimum Monthly Maintenance Needs Allowance (MMMNA) was established and is indexed annually. As the name implies it sets a minimum income standard for the community spouse.

³ Prior to this, New Jersey operated Home and Community-Based waivers under 1915 for individuals who were in need of institutional care but could remain in the community with additional waiver services.

⁴ As previously noted, Petitioner would have undergone a Pre-Admission screening pursuant to N.J.A.C. 8:85-2.1 and 2.2. For purposes of MLTSS, it is on that date that the applicant could be considered an institutionalized individual

1115..." Furthermore, Section 1924 imposes rules applicable to the post-eligibility treatment of income (PETI). These rules require that a state Medicaid agency's payment for institutional and home and community-based services waiver services be reduced by the amount of available income a beneficiary has after deductions are made for things including but not limited to an amount for the maintenance needs of the individual's spouse and family.⁵

O.H.'s receipt of MLTSS benefits renders her an institutionalized spouse and therefore, ineligible for the community spouse maintenance deduction. Though I am sympathetic towards Petitioner's situation, federal law does not permit the application of this rule based on individual circumstance. While Petitioner may benefit from a community spouse designation, an across the board application of the community spouse protections for individuals receiving MLTSS Medicaid benefits would result in most applicants being denied Medicaid, forcing them to spend down their resources and reduce their income. In other situations, current beneficiaries would see their Medicaid benefits terminated as their resource and income levels would increase. As a participant in the Medicaid program, DMAHS is constrained to comply with the federal definition of "institutionalized spouse" which includes those receiving home and community based waiver services, such as those provided to O.H. through the MLTSS program.

I FIND that the MCBSS correctly denied Petitioner's request for a spousal maintenance deduction.

THEREFORE, it is on this 2nd day of DECEMBER 2020,

ORDERED:

That the Initial Decision is hereby REVERSED.

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

⁵ See https://www.medicaid.gov/sites/default/files/federal-policy-guidance/downloads/SMD050715.pdf