



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

M.O.

PETITIONER,

v.

MERCER COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENT.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA14438-19

As Assistant Commissioner for 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, the contents of the OAL case file and Petitioner's exceptions to the Initial Decision. Procedurally, the time period for the Agency Head to render a Final Agency Decision is February 24, 2020 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 in this matter was received on January 8, 2020.

Based upon my review of the record, I hereby adopt the findings and conclusions of the Administrative Law Judge in their entirety and I incorporate the same herein by reference. This matter concerns the amount of income received by Petitioner. Petitioner

applied for Managed Long Term Services and Supports (MLTSS) in July 2019. His application was approved effective August 1, 2019. Among Petitioner's income sources is a monthly pension payment from Carleton University in Ottawa Canada. The pension is received through the Canadian company CIBC Mellon (CIBC). In the months of August, September and October 2019, Petitioner's monthly payment was CA\$2,495.20 (Canadian dollars). Prior to any distributions, CIBC withholds 15% of Petitioner's monthly income pursuant to the requirements of the United States-Canada Income Tax Treaty. After the withholding for Canadian taxes, Petitioner received CA\$2,120.92. That amount is converted to U.S. dollars when deposited in Petitioner's bank account. The Petitioner also maintains a Qualified Income Trust (QIT) with TD Bank for which he pays a monthly maintenance fee of \$6.99.

The Mercer County Board of Social Services (MCBSS) calculated the Petitioner's cost share for the months of August, September and October 2019 based on pension payments valued at \$2,495.20 US dollars rather than Canadian dollars. No deduction was included for the \$6.99 in monthly maintenance fees. Consequently, MCBSS calculated Petitioner's cost share to be \$1,995.45 in August, \$2,032.65 in September and \$2,168.15 in October.

I agree with the ALJ that the matter should be returned to MCBSS to recalculate Petitioner's cost-share obligations to include the \$6.99 monthly bank fees and to convert his monthly pension income from Canadian to U.S. dollars at the applicable exchange rate. Payments of foreign currency are counted when received, but are considered as the U.S. dollar value of that payment. The Social Security Administration, Program Operations Manual System (POMS) SI 00830.105 (July 6, 2010). Additionally, Med-Com No. 14-15 states that the holder of a QIT may "expend not more than \$20 a month for banking costs to administer the trust." MCBSS should have calculated Petitioner's cost-share accordingly.

I also agree with the ALJ's determination that the 15% withheld from Petitioner's monthly pension pursuant to the United States-Canada Income Tax Treaty are funds used in payment of a legal obligations and are considered available income under Medicaid law. In the Initial Decision, the ALJ set forth the clear legal and regulatory precedents that have been upheld in numerous decisions. Estate of G.E. v. DMAHS, 271 N.J. Super. 229. (App. Div. 1994).

THEREFORE, it is on this 14th day of FEBRUARY 2020,

ORDERED:

That the Initial Decision is hereby ADOPTED.



Carol Grant, Acting Assistant Commissioner
Division of Medical Assistance
and Health Services