



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

SARAH ADELMAN
Acting Commissioner

JENNIFER LANGER JACOBS
Assistant Commissioner

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

J.H.,

PETITIONER,

v.

WARREN COUNTY DIVISION OF
TEMPORARY ASSISTANCE AND
SOCIAL SERVICES,

RESPONDENT.

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: **ADMINISTRATIVE ACTION**
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: **ORDER OF REMAND**
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: **OAL DKT. NO. HMA 05530-21**
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As Assistant Commissioner for the Division of Medical Assistance and Health Services (DMAHS), I have reviewed the record in this matter, consisting of the Initial Decision, the documents in evidence and the contents of the Office of Administrative Law case file (OAL). No exceptions to the Initial Decision were filed. Procedurally, the time period for the Agency Head to render a Final Agency Decision is October 7, 2021 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 the agency's receipt. The Initial Decision was received on August 23, 2021.

On January 8, 2020, Petitioner was admitted to Barn Hill Care Center (BHCC). Petitioner applied for and was found eligible for Medicaid benefits as of January 1, 2020.¹ Thereafter, on December 28, 2020, Petitioner, through her daughter, filed a renewal application with Warren County. The renewal application disclosed her income, including payments from the Jewish Foundation for the Righteous (JFR) and the Claims Conference Holocaust Spouse Survivor Fund. These amounts were included on Petitioner's January 2021 Statement of Available Income for Medicaid Payment (PR-1). Petitioner appeals the inclusion of this income in her available income calculation. The ALJ agreed that these payments are reparations and should not be included in Petitioner's income calculation. For the reasons that follow, I hereby REVERSE and REMAND the matter to the OAL.

In 1994, Congress enacted legislation that disregarded "certain payments made to victims of Nazi persecution" to determine eligibility for benefits or services based on need. 103 P.L. 286. That statute also addressed in subsection (e) the repayment of additional rent paid under HUD housing programs because the reparation payment was not disregarded. In that subsection, Congress specifically stated that a qualified individual was someone who had "received any payment because of the individual's status as a victim of Nazi persecution" but was "not the successors, heirs or estate of "such an individual." (e)(2). The federal regulations continue to limit the exclusion to individuals "because of their status as victims of Nazi persecution." 20 C.F.R. 416.1236(a)(18).

Petitioner, with her family, joined the Dutch resistance during the German occupation of Holland in 1940. She, along with her parents and sibling, rescued and sheltered many Jews during World War II. Petitioner worked to find homes that would agree to shelter Jewish people and transported them from one safe place to another. During this time, Petitioner met her husband, a young Jewish man who came to ask the family for assistance. In 1954, Petitioner, her husband and their children moved to the United States of America.

¹ Petitioner's initial Medicaid application is not part of the record.

On September 12, 2019, JFR awarded Petitioner a \$300 monthly grant. JFR is an incorporated non-profit organization committed to providing “financial support to aged and needy non-Jews who rescued Jews during the Holocaust and preserve their legacy through a national education program.” See <https://jfr.org/>. The letter states that the “award is an expression of gratitude for the help you provided to persecuted Jews during the Nazi occupation.” (R-3). It goes on to state that the grant is “an expression of our appreciation for your righteous acts during the Holocaust, and our desire to assist you and to say thank you on behalf of the Jewish community...” (R-3). The letter cautions that the award depends on JFR’s ability to fundraise and may not be continued indefinitely. (R-3). Neither the information on JFR’s website nor the September 12, 2019 letter states that JFR pays reparations, or that the awards are to be considered reparations.

On May 18, 2020, the Conference on Jewish Material Claims Against Germany (Claims Conference) approved Petitioner application to the Spouse of a Holocaust Survivor Fund and awarded her monthly benefits of \$606 for nine months. The Claims Conference opened the Spouse of Holocaust Survivor Fund in January 2020. Monthly pensions under the Claims Conference Article 2 and Central and Eastern European Funds ended when the survivor passed. This new fund allowed a surviving spouse to receive a payment for a period of nine months to aid with “funeral expenses, living expenses and other financial adjustments.” In order to be eligible the claimant must have been “married to an Article 2/CEE Fund beneficiary at the time they passes and be alive as of January 1, 2020, or the date of application, whichever is later.” See <https://www.claimscon.org/our-work/compensation/background/spouse-of-holocaust-survivor-fund/>. Moreover, Section 3 of the Claims Conference online application obligates the applicant to understand the following:

• I agree to give the payment received from the Claims Conference under the Spouse of Holocaust Survivor Fund to any person with better entitlement than me in accordance with the provisions of the German government’s valid guidelines on awarding payment from this

compensation fund.

- I am aware that I have ***no legal entitlement to receive assistance...***

In the In Re Erman matter cited by the ALJ, there was no question that the payments at issue were reparations. It is not clear to me that the awards to Petitioner from JFR and the Claims Conference are, in fact, reparations. The term "reparations" refers to "all the loss and damage to which...Governments and their nationals have been subjected as a consequence of the war imposed upon them." Burger-Fischer v. Degussa AG, 65 F. Supp. 2d 248 (D.N.J.1999) citing Treaty of Peace Between the Allied and Associated Powers and Germany, June 28, 1919, Art. 231, 1 Bevans 43, 137-38. The Treaty of Peace with Germany enumerates the circumstances under which compensation may be claimed from Germany. Id. Art. 232 Annex I, § 8, 2 Bevans 142. Furthermore, the Claims Conference compensation programs, specifically the Central and Eastern European Fund and the Article 2 Fund, state that eligibility is "limited to Jewish Nazi victims who were persecuted as Jews..." see <https://www.claimscon.org/our-work/compensation/background/ceef/>. Petitioner's pro-active efforts as part of the Dutch resistance, though courageous and self-less, do not make her inherently eligible for reparations.


Moreover, both the Federal and State government limit the exclusion of reparations to individuals because of their status as victims of Nazi persecution. Both the Federal and New Jersey State governments exempt Holocaust reparation payments from income tax. Additionally, Holocaust survivor benefits are excluded from liens against and recovery sought from the estates of Medicaid recipients. N.J.S.A. 30:4D-7.2. In 2015, New Jersey also passed a law to exclude from creditors Holocaust reparation payments "designated for or received by a Holocaust survivor of National Socialist persecution from any governmental source or victim assistance source." N.J.S.A. 2A: 17-28.1. Finally, as New Jersey is a Supplemental Security Income (SSI) state, it is obligated to use the SSI rules. Those rules instruct that only payments to an individual because of their status as a victim of Nazi persecution are exempt. POMS SI 01130.610 and 00830.710.

While there is little doubt that Petitioner's actions helped to save numerous people, the monies at issue do not appear to be awarded due to Petitioner's status as a victim of Nazi persecution. It is Petitioner's burden to establish that these payments were reparations, and therefore exempt from establishing Medicaid eligibility. For that reason, I am REMANDING the matter to the OAL to give Petitioner the opportunity to present documentation from the JFR and the Claims Conference as to the nature of the payments at issue; specifically whether these payments were made to Petitioner because of her status as a victim of Nazi persecution in accordance with the Victims of Nazi Persecution Act of 1994. Public Law 103-286 (108 Stat. 1450).

THEREFORE, it is on this 5th day of OCTOBER 2021,

ORDERED:

That the Initial Decision is hereby REVERSED and REMANDED so that Petitioner can provide additional documentary evidence in accordance with this decision.



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