

June 14, 2021.

This case arises from the Ocean County Board of Social Services' (OCBSS) demand for repayment of \$5,335.20 in Medicaid benefits, paid to Petitioners between March 2016 and February 2017, as a result of Petitioners' failure to report income. Based upon my review of the record, I hereby ADOPT the Initial Decision of the Administrative Law Judge (ALJ) with regard to OCBSS' determination of overpayment and REVERSE the Initial Decision with regard to the partial waiver of said overpayment.

Petitioners, P.R. and U.R., are a married couple, ages forty-two and thirty-nine respectively. They have two minor children. On January 5, 2016, Petitioners filed a Medicaid application with OCBSS as a family of four and stated a monthly income of \$2,790.¹ On January 13, 2016, OCBSS requested that Petitioners provide "a copy of all pages of the most current personal, business and self-employed income tax returns..." and "copies of paystubs for the past 4 consecutive weeks for anyone in your household that is employed..." Petitioners did not provide any paystubs but did provide a copy of their 2014 federal tax return that showed monthly income of \$2,790. Petitioners had not yet filed their 2015 income tax return. In 2016, the income limit for single adults and parents in a family of four was \$2,795 per month and the income limit for pregnant women in a family of four was \$4,030 per month. On January 22, 2016, based on the information provided, Petitioners were determined eligible for Medicaid.

P.R. is self-employed. He is a 100% owner of an S Corporation. In March 2016, Petitioners filed their 2015 federal tax return with the IRS showing a \$1,283 increase in their monthly income for a total monthly income of \$4,073 for 2015. Based on this

¹ At the time of application, U.R. was pregnant so Petitioners were considered a family of four.

information, Petitioners would not have been eligible for Medicaid in 2016. The ALJ did not find credible P.R.'s and U.R.'s testimony that they are unable to verify their total annual income until their accountant finished their tax returns.² I agree with the ALJ, and note that Petitioners failed to provide the paystubs requested for December 2015 into January 2016.

Pursuant to N.J.A.C. 10:71-2.2(e)(3), Petitioners are required to report any change in income. This requirement appears in the January 19, 2016 notice of eligibility.³ Petitioner claims to have provided the 2015 federal income tax return in March 2016. OCBSS logs show that U.R. appeared in person to drop off documents, but there is no indication that the 2015 tax return was among those papers, and OCBSS' copy of the 2015 tax return notes that it was received on April 3, 2017.⁴ Notwithstanding, the date OCBSS received the 2015 tax return is not dispositive of the overpayment issue, and DMAHS is directed to recover these benefits pursuant to N.J.A.C. 30:4D-7.i.

I disagree with the ALJ that this case calls for a partial waiver of the overpayment due to agency error, the absence of fraud and stress and financial harm to Petitioners. In the first instance, administrative agencies have the discretion to determine whether a case is contested. N.J.S.A. 52:14f-7(a). The OAL acquires jurisdiction over a matter after it has been determined to be a contested case by an agency head. N.J.A.C. 1:1-3.2(a). A contested case is commenced in the State agency with appropriate subject matter jurisdiction. N.J.A.C. 1:1-3.1. DMAHS is the administrative agency within DHS charged

² The subsequently provided 2015 tax returns show that when Petitioners filed their January 2016 Medicaid application, they had received an additional \$15,400 for the year. This equates to a \$1300 monthly increase in income from the 2014 tax returns they provided with their Medicaid application.

³ Although not part of the record, this requirement also appears in the Medicaid application.

⁴ On January 13, 2016, OCBSS requested that Petitioners provide approximately thirteen verifications of eligibility.

with administering the Medicaid program. N.J.S.A. 30:4D-4. On August 18, 2020, DMAHS transmitted this matter to the OAL as Petitioner's appeal of incorrectly paid benefits. Whether or not the DMAHS Director exercises her discretion to "compromise, waive or settle any claim under this act" pursuant to N.J.S.A. 30:4D-7(I), is not a contested issue. As a result, any order with regard to waiver of overpayment is outside the scope of the OAL's jurisdiction.

That said, for purposes of completeness, I now address the arguments made in favor of waiving the overpayment. With regard to Agency error, the ALJ notes that a delay in processing the fair hearing request, which OCBSS' witness could not explain, resulted in a significant penalty. It should be noted that OCBSS does not receive fair hearing requests. The DMAHS Fair Hearing Unit processes those requests.⁵ OCBSS would have no knowledge of the request until perfected and transmitted to the OAL when it is identified as a party.⁶

However, even assuming for arguments sake that OCBSS erred in failing to close Petitioner's case in a timelier manner, the Division is nevertheless statutorily authorized to seek reimbursement of the overpayments. Indeed, recovery in this matter is based upon N.J.S.A. 30:4D-7.i., which mandates the Division:

To take all necessary action to recover the cost of benefits incorrectly provided to ... a recipient ... No recovery action shall be initiated more than five years after an incorrect payment has been made to a recipient when the incorrect payment was due solely to an error on the part of the State or any agency, agent or subdivision thereof;

The statute does not require OCBSS to undergo an analysis of fraudulent intent in

⁵ This information is on the Medicaid determination notice, informing the recipient of his or her appeal rights.

⁶ DMAHS records indicate that Petitioners made Fair Hearing requests on February 26, 2019 and June 19, 2019 and that on February 28, 2019 and June 20, 2019, DMAHS asked Petitioner to provide complete letters from OCBSS that were the basis for the request so that the matter could be transmitted to the OAL. The letters were provided by Petitioners' counsel in August 2020 and the matter transmitted to the OAL on August 18, 2020.

its directive to collect overpayments. While fraud may be considered as part of the particular facts and circumstances of each case, it is not a pre-requisite for collection or waiver. Further, while I do not assume Petitioners' intent, their inability or unwillingness to provide OCBSS with the paystubs for December 2015 through January 2016 is part of the record and still unexplained.

Finally, while the ALJ cites stress and financial harm as a reason for waiver of overpayment, no evidence in the record demonstrates that Petitioners suffered any financial harm or hardship that warrants a waiver. Petitioners claim that they have declined Medicaid benefits even though a reduction in income made them eligible in 2020, while providing no specifics or evidence about this reduction in income.⁷ Regardless of this absence of specifics, Petitioners are aware of the income limits and are free to apply for Medicaid at any time. Their decision not to apply for Medicaid is not an indication of financial harm or hardship, as was present in the cases cited in this initial decision where a waiver was granted. See G.S. v. Div. of Med. Assistance and Health Servs., 2020 N.J. Super. Unpub. LEXIS 2216 (App. Div. Nov. 16, 2020)(the petitioner had various mental health conditions and lived in a group home); M.L. v. Div. of Med. Assistance and Health Servs., HMA 1381-01, Initial Decision, (Sept. 5, 2001), https://njlaw.rutgers.edu/collections/oal/html/initial/hma1381-01_1.html, aff'd in part and rev'd in part, Final Decision (Nov. 2, 2001)(the petitioner was elderly and had limited resources); M.B. v. Div. of Med. Assistance and Health Servs., HMA 15436-14, Initial Decision (June 29, 2015), https://njlaw.rutgers.edu/collections/oal/html/initial/hma15436-14_1.html, aff'd, Director (Aug. 26, 2015),

⁷ Based on the tax returns provided, Petitioner's income increased from 2014 through 2016. Nothing was submitted to establish Petitioners' income from 2017 through 2020.


<https://www.state.nj.us/humanservices/dmahs/info/fads2015.html#8> (the petitioner used funds to retrofit their family home for two children with profound disabilities); V.Z. v. DMAHS and Mercer Cty. Bd. of Soc. Serv., HMA 12634-12, Initial Decision (December 11, 2012), modified, Director (January 7, 2013)(the petitioner was elderly, legally blind and spoke limited English).

The undisputed facts in this case indicate that Petitioner received benefits from March 2016 through February 2017 when they were ineligible due to excess income. N.J.S.A. 30:4D-7.i requires DMAHS to recover the overpayment. While the law grants DMAHS the discretion to waive the collection in the interests of the Medicaid program, the exercise of this discretion is based on the intrinsic facts of the particular case. Nothing in the record demonstrates any financial harm or hardship that warrants a waiver. For the foregoing reasons, DMAHS declines to waive the overpayment in this case.

THEREFORE, it is on this 22nd day of JULY 2021,

ORDERED:

That Petitioner reimburse the OCBSS for incorrectly paid benefits in the amount of \$5,335.20 pursuant to a reasonable repayment plan.


Gerard Hughes, Assistant Commissioner
DHS Office of Legal and Regulatory Affairs