



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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JENNIFER LANGER JACOBS
Assistant Commissioner

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

R.G.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE :

AND HEALTH SERVICES AND :

BURLINGTON COUNTY BOARD OF :

SOCIAL SERVICES, :

RESPONDENTS. :

ADMINISTRATIVE ACTION

ORDER OF RETURN

OAL DKT. NO. HMA 5764-2020

As Assistant Commissioner of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision, the OAL case file and the documents filed below. Neither party filed exceptions in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is March 22, 2021 in accordance with an Order of Extension.

The matter arises regarding the calculation of the Minimum Monthly Maintenance Needs Allowance (MMMNA) and Petitioner's contention that his wife is entitled to additional income due to exceptional circumstances resulting in financial duress.

The Medicaid Catastrophic Care Act (MCCA) created rules specifically for institutionalized individuals and their community spouses. "To achieve this aim, Congress installed a set of intricate and interlocking requirements with which States must comply in allocating a couple's income and resources." *Wisconsin Dep't of Health and Family Servs. v. Blumer*, 534 U.S. 473, 480 (2002). Of particular import in this matter, the MCCA then 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). The CSMIA, or amount the community spouse may receive each month from the institutionalized spouse's income, consists of the difference between the statutorily set MMMNA and the amount of monthly income otherwise available to the community spouse. *Ibid.* "The MMMNA is a level of income which has been estimated by the state as necessary to permit the non-institutionalized spouse to live independently 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). The CSMIA is the amount the community spouse may have transferred from the institutionalized spouse's income if it is necessary to raise the community spouse's monthly income to the estimated amount necessary to allow the community spouse to live independently (the statutorily determined MMMNA). Under the federal statute, additional income is only permitted when there is a showing of exceptional circumstances resulting in financial duress. 42 U.S.C. § 1396r-5(e)(2)(B). It is Petitioner's burden to demonstrate that the circumstances meet this standard.

Ordinary and regular expenses have been rejected as a basis to meet the exceptional circumstance threshold. *Dorn v. DMAHS*, OAL Dkt. No. HMA 7609-04, affirmed 2006 WL 2033940 (N.J. Superior Court, Appellate Division), *J.M.A. v. DMAHS*

and Union County Board of Social Services, OAL Dkt No. HMA 5549-02, Contra., M.G. v. DMAHS and Union County Board of Social Services, 95 N.J.A.R. (DMA) 47 (1995) (the community spouse had a leaking roof, electrical damage and was being sued by "several of her doctors for non-payment of her expenses"). See also Schachner v. Perales 85 N.Y. 2d 316, 322 (1995) ("voluntarily assumed expenses of a private secondary and college education are not the sort of 'exceptional expenses' contemplated"). In Dorn, the Appellate Division found that the "distinction between 'everyday expenses' (which cannot constitute a basis for increasing the spousal allowance), and the unexpected expenses, exemplified by 'medical bills, home repair bills for significant structural problems or credit card arrears that are related to the medical situation' (which might support an increase in the allowance) is a proper interpretation of the" federal statute. In a more recent unpublished Appellate Division case, the court found that the federal statute "requires a causal connection between the exceptional circumstances and the financial duress." C.H. v. DMAHS and Camden County Board of Social Services, Dkt. No. A-6129-08T2 (decided August 12, 2010). Merely having financial duress is not sufficient to warrant additional money for the institutionalized spouse.

The mechanism to increase the MMMNA and the CSMIA is through a fair hearing to determine "that the community spouse needs income above the amount established by the community spouse maintenance deduction due to exceptional circumstances resulting in financial duress." If there is such a finding, "there shall be substituted for the community spouse maintenance deduction such amount as is necessary to alleviate the financial duress and for so long as directed in the final hearing decision." N.J.A.C. 10:71-5.7(e).

Petitioner was found eligible as of March 1, 2020 and passed away in May. Burlington County calculated that Petitioner's wife was entitled to a Minimum Monthly Maintenance Needs Allowance (MMMNA) of \$2,464.94 under the spousal impoverishment rules. Based on her own income of \$1,569, Petitioner's wife is entitled to retain \$895.94 of Petitioner's income to bring the combined income to the MMMNA. She requested a fair hearing to increase her MMMNA and retain additional income from Petitioner.

At the hearing Petitioner's wife presented medical bills and other expenses. The medical bills, beginning with a hospitalization, were incurred by Petitioner in the three months prior to establishing eligibility. P-H. The Initial Decision finds that these bills constitute exceptional circumstances resulting in financial duress so as to have the MMMNA increased. However, I disagree. The mechanism to pay those bills is not through the MMMNA but through the deduction for Pre-Eligibility Medical Expenses (PEME). N.J.A.C. 10:71-5.7(k). See also Medicaid Communication 10-07. It will effectuate the same result as the unreimbursed expenses for the hospital, ambulance and dialysis will be deducted from Petitioner's post eligibility income. Thus, I REVERSE the Initial Decision with regard Petitioner's medical bills and RETURN the matter to Burlington County to adjust the PR-1 to take these expenses in account.

The finding that Petitioner's obligation under Medicaid regulations to pay for his cost of care warrants an increase of the MMMNA is troubling as it in essence causes Medicaid to pay for Petitioner's cost of care. See N.J.A.C. 10:71-5.7 and 42 CFR § 435.725. The calculation of the cost of care is done after the proscribed deductions such as the personal needs allowance and the community spouse's allowance are applied. N.J.A.C. 10:71- 5.7(b) and (c). To that end, I hereby REVERSE the Initial Decision's

finding that Petitioner's cost of care is attributable to his wife's maintenance allowance.¹

Petitioner also presented bills that his wife incurred that she incurred for transportation. She had relied on Petitioner to drive her but when he fell ill she had to use ride share services to visit him, to run errands and to make her own medical appointments. Public transportation was not available in the area where she resided and a community shuttle was suspended due to COVID-19. I FIND that these expenses are exceptional circumstances that resulted in financial duress and should be included in the spousal deduction.

THEREFORE, it is on this ^{19th} day of MARCH 2021,

ORDERED:

That the Initial Decision is hereby ADOPTED with regard to the transportation expenses;

That the Initial Decision is hereby REVERSED with regard to the finding that the medical expenses and contribution to care are added to the community spouse deduction; and

That the matter is RETURNED to Burlington County to apply the medical expenses from December 2019 through February 2020 to the post-eligibility calculation.



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

¹ The inclusion of Petitioner's medical expenses in the post-eligibility calculation will reduce the amount to be paid to the nursing home to the cost of care.