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
Commissioner

JENNIFER LANGER JACOBS
Assistant Commissioner

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

R.H.,	:	
PETITIONERS,	:	**ADMINISTRATIVE ACTION**
	:	**FINAL AGENCY DECISION**
v.	:	
	:	**OAL DKT. NO. HMA 09764-21**
	:	**ON REMAND FROM 00810-21**
UNION COUNTY BOARD OF	:	
SOCIAL SERVICES,	:	
RESPONDENTS.	:	

As Assistant Commissioner for the Division of Medical Assistance and Health Services (DMAHS), I have reviewed the record in this matter, including the Initial Decision and the Office of Administrative Law (OAL) case file. Respondent filed Exceptions to the Initial Decision. Procedurally, the time period for the Agency Head to render a Final Agency Decision is June 27, 2022 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 was received on May 12, 2022.

This matter arises from the Union County Board of Social Services' (UCBSS) November 24, 2020 notice of overpayment for incorrectly received benefits totaling $6,890.47. Petitioner filed a timely appeal and the matter was transmitted to the OAL. A hearing was conducted and an Initial Decision was issued on October 12, 2021. On November 21, 2021, the matter was remanded to the OAL for additional evidence and testimony. Hearings were held on February 23, March 23, and March 24, 2022 and an Initial Decision was issued on May 12, 2022. For the reasons that follow, I hereby ADOPT and MODIFY the Initial Decision.

On February 3, 2015, Petitioner filed an online application for NJ Family Care Medicaid benefits. Although Petitioner testified that his then girlfriend applied for Medicaid on his behalf and without his knowledge, there is no indication of this in the record, nor she did appear to testify at the hearing. N.J.A.C. 1:1-15.5(b), the **residuum rule,** requires "some legally competent evidence" to exist "to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness." No such evidence exists here. Therefore, one cannot conclude that Petitioner did not personally fill out the on-online application. To that end, I have no reason to believe that anyone other than Petitioner received the April 6, 2015 letter notifying him that he had been found eligible for Medicaid and directing him to enroll in a Health Maintenance Organization (HMO). Nor do I have any reason to believe that anyone other than Petitioner selected the HMOs noted in both the April 16, 2015 and May 14, 2015 notices addressed to him.

Each of the April 6, April 16 and May 14, 2015 notices addressed to Petitioner acknowledged his enrollment in the program and provided contact phone numbers and

office addresses in the event the recipient had questions or required information. Although Petitioner did utilize the contact information to change his HMO, there is no indication in the record or from the testimony that Petitioner ever availed himself of the information to report his change in circumstance. It is an applicant's "ongoing responsibility" to report changes in income or other circumstances which may affect the receipt of benefits. See N.J.A.C. 10:78-2.1(c), N.J.A.C. 10:78-2.7, N.J.A.C.10:78-8.3 and N.J.A.C. 10:69-5.12(a). As the Appellate Division aptly noted in B.D. v. Div. of Med. Assistance & Health Servs., "[t]o permit otherwise would encourage recipients to purposely delay reporting a change in circumstances that renders them ineligible for NJFC [NJ FamilyCare] and allow them to continue receiving benefits to which they are not entitled[.]"

The Division is statutorily authorized to seek reimbursement of Medicaid 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;*

In February 2015, the Petitioner applied for and began receiving Medicaid benefits. At the time, Petitioner was unemployed and was receiving unemployment benefits and food stamps. Petitioner did not report his income from unemployment on the application. Petitioner remained unemployed through June 13, 2016. Petitioner did not disclose the change in his employment status or his income. Documentation in the record shows that Petitioner had insurance coverage at least as early as September 2016. The evidence in

the record shows that Petitioner's income exceeded the Medicaid eligibility limits for the period beginning October 2017 through December 2018.

THEREFORE, it is on this 22nd day of JULY, 2022,

ORDERED:

That the matter is hereby ADOPTED.

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