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Assistant Commissioner

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

R.P.,	
PETITIONER,	**ADMINISTRATIVE ACTION**
v.	**FINAL AGENCY DECISION**
DIVISION OF MEDICAL ASSISTANCE	**OAL DKT. NO. HMA 05329-2021**
AND HEALTH SERVICES AND	**(ON REMAND HMA 04730-2020)**
ESSEX COUNTY BOARD OF	
SOCIAL SERVICES,	
RESPONDENTS.	

As Assistant Commissioner of 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. Neither party filed exceptions to the Initial Decision. Procedurally, the time period for the Agency Head to render a Final Agency Decision is October 23, 2023, in accordance with an Order of Extension. This matter was previously remanded for additional testimony and documentary evidence.

This matter arises from the Essex County Board of Social Services' (ECBSS) February 25, 2020 determination that Petitioner received incorrectly paid benefits in the amount of $30,465.82. Petitioner does not dispute the amount of the overpayment but

asserts that a waiver is appropriate in this case. The Administrative Law Judge (ALJ) agreed. For the reasons that follow, I hereby ADOPT the Initial Decision with regard to the finding that Medicaid is entitled to recover the incorrectly paid benefits in this matter. Furthermore, based upon the unique facts and circumstances of this matter, I concur with the ALJ's recommendation that Petitioner's request to waive his obligation to repay the Medicaid overpayment be granted.

In 2006, Petitioner was involved in an automobile accident that caused Petitioner to become a paraplegic and resulted in six weeks of hospitalization and eighteen months of rehabilitation. Petitioner also testified that in addition to paralysis, he also suffers from other ailments, including diabetes, a permanent catheter and colostomy, urinary tract infections, pressure sores, a heart attack in 2017, and kidney failure, which requires dialysis three times per week. He is frequently hospitalized or a resident in a rehabilitation facility for treatment of those health conditions. However, Petitioner lives in a home owned by his mother, who had been residing in a facility since 2016. Petitioner testified at the remand hearing in this matter that his mother passed away in 2021.

Petitioner testified that he did not know who applied for Medicaid on his behalf, but he has been receiving Managed Long Term Supports and Services (MLTSS) Medicaid benefits since his rehabilitation in or around 2006. In October or November 2019, Petitioner received a recertification form from ECBSS with a request for bank statements. Petitioner stated that this was the first time that he had received a recertification of his Medicaid benefits. The bank statements he provided showed that the account balances at issue exceeded the $2,000 resource limit from April 2018 through October 2018. The bank account statements showed that Petitioner held a joint account with his mother. As of April 30, 2018, the account had a balance of $5,591.17. The only deposits are from the Social Security Administration in the amount of $1,479.00 and the withdrawals range

from $1,400 to $1600. Petitioner testified that the excess money in the account was not his. The Initial Decision provides that Petitioner assumed the funds were deposited by or on behalf of his mother. He claimed that he did not use or otherwise benefit from his mother's money and he had no idea it would create an issue with his Medicaid benefits. He also testified that his mother did not use his Social Security payments.

After the first hearing in this matter, the ALJ issued a decision, wherein she found that Petitioner's resources exceeded the $2,000 resource limit from April through October 2018, causing an overpayment of $30,465.82. However, the ALJ found that the overpayment should be waived due to the unique facts of this case. Specifically, the ALJ found that Kessler Institute for Rehabilitation filed an application on behalf of the Petitioner, that Petitioner did not know an application had been filed on his behalf, and that Petitioner was unaware of the financial requirements associated with Medicaid. Additionally, the ALJ found that Petitioner had never received any correspondence from Medicaid in over a decade. Finally, the ALJ found that the Petitioner did not intentionally accumulate resources owned by his mother, but admittedly, Petitioner does not know where that money came from.

By Order dated May 21, 2021, the undersigned reversed the recommended decision and remanded the matter for additional testimony and an opportunity to provide additional documentary evidence. Specifically, requested were copies of Petitioner's original Medicaid application; a copy of the Designated Authorized Representative form on file with ESCBSS with the Medicaid application; correspondence sent by ECBSS in relation to Petitioner's Medicaid benefits and to whom; and information on when the joint bank account was opened, when the extra money deposited, if the Petitioner was under the impression that the money was at his disposal, and what happened to the excess resources in October and November 2018.

On remand, it was determined that ECBSS could not locate Petitioner's original file. Therefore, copies of Petitioner's original Medicaid application, DAR form, and any correspondence issued by ECBSS, if any, could not be provided. The ALJ noted that ECBSS "agreed that it was possible that [Petitioner] was unaware of the $2,000 resource limit, as it would have been indicated on the original application and recertification notices, which the Board could not locate. The Board also indicated that it does appear that 'for years,' renewal applications were not sent out." ID at 6. It was noted that the bank account at issue was opened in December 2002, and Petitioner "has no knowledge of when the funds were deposited." Ibid. Moreover, Petitioner testified that he was not under the impression that the funds at issue were are his disposal and has no knowledge of what happened to the funds at issue in October and November 2018.[1]

Pursuant to N.J.S.A. 30:4D-7i, the Commissioner of the Department of Human Services (Commissioner) has the duty "[t]o take all necessary action to recover the cost of benefits incorrectly provided to . . . a recipient." However, the Commissioner, or her designee, here, the undersigned, has the authority [t]o compromise, waive, or settle and execute a release of any claim arising under th[e A]ct including interest or other penalties, . . . in whole or in part, either in the interest of the Medicaid program or for any other reason which the [C]ommissioner by regulation shall establish." N.J.A.C. 30:4D-7l. As noted by the ALJ, cases where the Commissioner's designee has used her discretion to waive overpayments are based on the intrinsic facts of each case. R.R. v. Div. of Med. Health Servs., 2018 N.J. AGEN LEXIS 975 at 2.

[1] I note that while the ALJ stated that "the parties agree that November 2018 is irrelevant, as it was never part of the Board's claim," how the money was disposed of, by whom and to whom, are relevant to this issue as it would show who had access to and used the funds in question.

Here, ECBSS was unable to provide copies of Petitioner's application and who completed the application on Petitioner's behalf. ECBSS even admitted that it was likely that Petitioner failed to receive notices advising him of the resource limit for years. Therefore, as noted by ECBSS, it is highly likely that Petitioner was not aware of the $2,000 resource limit required to maintain his benefits. Additionally, the record shows that because of Petitioner's physical disabilities and his status, he will be unable to repay the overpayment even through payment options provided to him by ECBSS. Accordingly, based on the unique fact and circumstances of this matter, I agree with the ALJ's determination that Petitioner's request that the overpayment at issue be waived should be granted.

THEREFORE, it is on this 16th day of OCTOBER 2023,

ORDERED:

That the Initial Decision is hereby ADOPTED.

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