

In the Matter of

L.M.

FINAL AGENCY DECISION

L.M., Petitioner, appeals the Division of Developmental Disabilities' (Division) treatment of guardianship fees in the calculation of her contribution to care pursuant to N.J.A.C. 10:46D.

The following items were reviewed in preparing this Final Agency Decision:

1) Informal Conference Report dated June 22, 2015; 2) Petitioner's brief dated November 4, 2015; 3) Recommended Decision dated December 16, 2015; 4) Division file for L.M.; and 5) any applicable statutes, regulations, codes and case law cited throughout the Petitioner's submissions and this Final Agency Decision.

#### FACTS AND PROCEDURAL HISTORY

Petitioner was born on September 14, 1971 and is eligible to receive Division services. She resides in a group home funded by the Division and is therefore required to contribute to the cost of her care and maintenance pursuant to N.J.A.C. 10:46D. Petitioner's parents serve as her co-guardians and receive a six percent (6%) guardianship fee. Petitioner objects to the Division's method of calculating the deduction of the guardianship fee from her contribution to care amount. Petitioner asserts that the guardianship fee should be deducted *after* her disposable income is calculated. The Division deducted the guardianship fee from the Petitioner's gross income *before* calculating her disposable income, as it does for all clients.

After initiating this appeal, an informal conference was held on June 1, 2015. A settlement was not reached, and on June 22, 2015, the regional administrative practice

allowable deductions, including the 6% guardianship fee, from the individual's gross income. First, the Division must determine an individual's net income by subtracting all the Division to follow three basic steps.

each person, which provides consistency and accuracy. The regulatory formula requires which applies the regulatory formula. The program applies the identical methodology to When calculating contribution to care, the Division uses a computer program using the formula and methodology applied to all similarly situated individuals.

Petitioner is mistaken. The Division properly calculated her contribution to care amount, the Division's method of calculating the deduction of the guardianship fee was arbitrary. her total gross annual income for private guardianship services. Petitioner asserts that N.J.A.C. 10:46D-3.1(f) permits an individual to utilize up to six percent of his or

N.J.A.C. 10:46D-3.1.

no dependents is determined by using a formula expressed in this regulation. See Contribution to care for individuals over the age of eighteen with unearned income and receiving residential services from the Division to contribute to their cost of care. The purpose of N.J.A.C. 10:46D is to determine the financial ability of individuals

## DISCUSSION

issue this Final Agency Decision. calculating the contribution to care correct. Petitioner did not submit exceptions. I now Recommended Decision on December 16, 2015 finding the Division's method for continued the appeal by letter dated November 4, 2015. The Division issued a the established process for the determination of contribution to care. Petitioner officer issued an informal conference report finding that the Division properly followed

income. Net income is "the balance of gross income remaining after all allowable deductions and exemptions are taken." Merriam-Webster Dictionary.

Second, the Division must determine the individual's disposable income by subtracting the personal needs allowance from the net income.

Third, the Division must determine the individual's contribution to care by multiplying the disposable income amount by seventy five percent (75%).

The Division followed the regulatory formula to calculate the Petitioner's

contribution to care as follows:

Gross Income	\$1,127.00
Guardianship fee of 6%	-\$67.62
<b>Total Monthly Net Income</b>	<b>\$1,059.38</b>
Personal Needs Allowance	-\$40.00
<b>Disposable Income</b>	<b>\$1,019.38</b>
Contribution (75%)	\$764.54
Petitioner retains	\$254.85

Petitioner argues that the guardianship fee should be deducted *after* her disposable income is calculated. Petitioner would have the Division calculate

contribution to care as follows:

Gross Income	\$1,127.00
Personal Needs Allowance	-\$40.00
<b>Disposable Income</b>	<b>\$1,087.00</b>
Contribution (75%)	\$815.25
Guardianship fee of 6%	-\$67.62
<b>Net Contribution</b>	<b>\$747.63</b>
Petitioner retains	\$271.75

<sup>1</sup> <http://www.merriam-webster.com/legal/net%20income>

The difference between the two methods of calculation is \$16.90 per month, or just over \$200.00 annually. In her arguments, Petitioner incorrectly calculates the amount she would retain using her proposed methodology. Her calculation of \$339.37 neglects to deduct the guardianship fee of \$67.62. Using her methodology, she would retain \$339.37-67.62 = \$271.75, the same amount she would retain if there were no guardianship fee. Petitioner's argument therefore inflates the difference between the amount she would retain using the Division's methodology and her methodology. As a result, her argument mistakenly concludes that she would be permitted to retain more than 25% of her disposable using her calculation method. Under either methodology, Petitioner retains 25% of her disposable monthly income. The difference is that Petitioner would calculate her disposable income to be \$1087.00. Utilizing the method it uses for all individuals, the Division calculates her disposable income to be \$1019.38.

The Petitioner's proposed method to calculate the contribution to care is contrary to regulation. The regulatory formula requires the guardianship fee to be deducted *before* disposable income is calculated. N.J.A.C. 10:46D-3.1(a) states that disposable monthly income is derived from the "Total Monthly Net Income" less the personal needs allowance. Total Monthly Net Income is the remainder of the gross income after allowable deductions; the guardianship fee is an allowable deduction.<sup>2</sup> The Division complied with N.J.A.C. 10:46D-3.1 when it deducted the guardianship fee *before* it calculated the disposable income.

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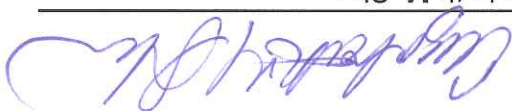
<sup>2</sup> The guardianship fee, unlike the enumerated special circumstances set forth in the regulation, is an allowable deduction that is subtracted before disposable income is calculated. *Compare* N.J.A.C. 10:46D-3.1(f) and (g).

For the foregoing reasons, I hereby find that the Division properly calculated the

Petitioner's Contribution to Care and Maintenance.

This is my Final Decision.

Dated: 6/29/13

  
Elizabeth M. Shea  
Assistant Commissioner  
Division of Developmental Disabilities