



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO.: HMA 09262-17

AGENCY DKT. NO.: N/A

M.K.,

Petitioner,

v.

**MORRIS COUNTY OFFICE
OF TEMPORARY ASSISTANCE,**
Respondent.

**Lawrence Friedman, Esq. and Mark R. Friedman, Esq., for petitioner
(Friedman Law, attorneys)**

**Katty Stagnitto, Human Services Specialist III, for respondent pursuant to
N.J.A.C. 1:1-5.4(a)3**

Record Closed: October 24, 2017

Decided: December 6, 2017

BEFORE JOAN BEDRIN MURRAY, ALJ:

STATEMENT OF THE CASE

Petitioner, M.K., appeals the determination by respondent, the Morris County Office of Temporary Services (the CWA), terminating her Medicaid benefits effective June 30, 2017. By notice dated June 14, 2017, the CWA advised petitioner that her gross income for 2016 and 2017 was greater than the semi-private room rate at the

Assisted Living Facility (the Facility) in which she resided, thereby making her ineligible for Medicaid. Petitioner counters that the CWA failed to take into account the actual costs charged by the facility, which far exceed her income.

The Division of Medical Assistance & Health Services (DMAHS) transmitted the matter to the Office of Administrative Law (OAL), where it was filed on June 28, 2017, for a hearing as a contested case. The matter was heard on August 3, 2017. The record remained open in order for the parties to submit post-hearing memoranda and other documentation, as more fully set forth below, and closed on October 24, 2017.

FINDINGS OF FACT

Human Services Specialist III, Katty Stagnitto testified on behalf of the CWA. Petitioner offered testimony by Barbara Kelly and Kathleen Underwood. Having reviewed the testimonial and documentary evidence presented, I make the following **FINDINGS of FACT** in this matter:

M.K. has resided in the Facility since March 2006. Her application for Medicaid was approved effective May 1, 2015, upon the establishment of a Qualified Income Trust (QIT). She deposits all of her income in the QIT. On March 20, 2016, the CWA issued a verification letter to petitioner in order to determine her continued financial eligibility for Medicaid. (R-A.)¹ Petitioner responded by submitting a renewal application dated March 28, 2016. (R-B.) According to Stagnitto, petitioner's financial status at that time made her ineligible for Medicaid benefits, but the CWA took no action to terminate same. The following year, on April 8, 2017, a new verification letter issued from the CWA in preparation for the redetermination of petitioner's benefits. (R-A.) A follow-up verification letter was issued on May 17, 2017. Ibid. Based on the CWA's review of her pertinent financial documents, the Agency determined that petitioner's available monthly income exceeded the room and board charges at the facility for the years 2016 and 2017. This is the totality of Stagnitto's testimony.

¹ Respondent's Exhibits are in a Fair Hearing Packet, and are tabbed alphabetically. They are referred to as R-A and so on.

A review of the documentary evidence shows that the 2017 room rate for a semi-private room at the facility was \$120 per day, totaling \$3720 for a thirty-one day month. Petitioner had the following income for 2017, as indicated on the PR-2 Form dated June 14, 2017:

Gross Social Security Benefit	334.90
Veteran's Benefit	1153.00
Pension	<u>2261.00</u>
Total Income	3748.90

By notice dated June 14, 2017 (R-E), the CWA terminated petitioner's Medicaid benefits, stating:

This action was taken for the following reason: The client's gross income for 2016 was \$3737.80. The semi-private rate for March 2016 was \$3565; the semi-private rate for April 2016 was \$3450. The client's gross income for 2017 is \$3748.90. The semi-private rate for January 2017 is \$3720.

Further, the notice states that the termination of eligibility was in accordance with "42 U.S.C. §1396-1 and § 30:4D-2 of the Medicaid Only Manual." Ibid. Stagnitto was unable to explain the relationship between the cited law and the termination of Medicaid.

LEGAL ANALYSIS AND CONCLUSION

Title XIX of the Social Security Act established the Medicaid program under which participating states may provide federally funded medical assistance to certain eligible needy individuals. Dougherty v. Dep't of Human Servs., 91 N.J. 1, 4 (1982); see also 42 U.S.C.A. § 1396. By enacting the New Jersey Medical Assistance and Health Services Act, N.J.S.A. 30:4D-1 to -19.5, New Jersey has elected to participate in the Medicaid program. L.M. v. Div. of Med. Assistance and Health Servs., 140 N.J. 480, 485 (1995). The New Jersey Act established the Division of Medical Assistance and Health Services within the Department of Human Services as the State agency

obligated to perform the administrative functions required for participation in the Medicaid program through the promulgation of rules and regulations. Bergen Pines County Hosp. v. New Jersey Dep't of Human Servs., 96 N.J. 456, 465 (1984); see also N.J.S.A. 30:4D-4, -5. The Medicaid Only program is administered pursuant to N.J.A.C. 10: 71-1 et seq.

Prior to December 1, 2014, applicants with gross monthly income above a certain limit were ineligible for Institutional Medicaid. However, on December 1, 2014, over-income applicants requiring nursing home care, as well as assisted living or home and community based care, could obtain Medicaid benefits by depositing their excess income into a QIT. This change is addressed at length in Medicaid Communication No. 14-15 (Med Com 14-15), dated December 19, 2014, which states in pertinent part:

The primary function of a QIT is to disregard an individual's income above 300% of the Federal Benefit Rate (FBR). In order for this income to be disregarded, it MUST be deposited monthly into the QIT bank account. (Emphasis included.)

See also U.S.C. §1396p(d)(4)(B).

In the instant matter, the CWA relies on 42 U.S.C. §1396-1 and N.J.S.A. 30:4D-2 in support of its termination of Medicaid, although the notice refers to the Medicaid Only Manual with regard to the latter statute. 42 U.S.C. §1396-1, Appropriations, states in part:

For the purpose of enabling each State . . . to furnish (1) medical assistance on behalf of . . . aged, blind, or disabled individuals, whose income and resources are insufficient to meet the costs of necessary medical services . . .

Likewise, N.J.S.A. 30:4D-2, Declaration of Purpose, provides:

It is the intent of the Legislature to . . . provide medical assistance . . . on behalf of persons whose resources are determined to be inadequate to enable them to secure quality medical care at their own expense . . .

As noted by petitioner, these are merely the introductory passages to the federal and state Medicaid laws, and do not address the issue in this matter. In fact, at the hearing Stagnitto could not point to a particular relevant state or federal regulation. After the hearing, I gave the CWA an opportunity to submit the controlling regulation. A brief dated October 19, 2017, was submitted that cited the identical regulations as those in the notice of termination. No additional explanation was offered.

Given the failure of the CWA to provide legal support for the termination of petitioner's Medicaid benefits at both the hearing and in its post-hearing submission, I **CONCLUDE** that the Agency has not met its burden of proving that petitioner is ineligible for Medicaid benefits.

ORDER


Based on the foregoing, it is hereby **ORDERED** that the CWA's termination of petitioner's Medicaid benefits be and hereby is **REVERSED**.

I hereby **FILE** my initial decision with the **DIRECTOR OF THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES** for consideration.

This recommended decision may be adopted, modified or rejected by the **DIRECTOR OF THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**, the designee of the Commissioner of the Department of Human Services, who by law is authorized to make a final decision in this matter. If the Director of the Division of Medical Assistance and Health Services does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within seven days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR OF THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES, Mail Code #3, PO Box 712, Trenton, New Jersey 08625-0712**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

December 6, 2017
DATE



JOAN BEDRIN MURRAY, ALJ

Date Received at Agency:

Dec. 6, 2017

Date Mailed to Parties:

DEC 7 2017



DIRECTOR
CHIEF ADMINISTRATIVE LAW JUDGE

kep