



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. HMA 00815-20

AGENCY DKT. NO. N/A

S.W.,

Petitioner,

v.

CUMBERLAND COUNTY BOARD

OF SOCIAL SERVICES,

Respondent.

Joellen C. Meckley, Esq., for petitioner (Begley Law Group, P.C., attorneys)

Sandi VanCulin, Fair Hearing Liaison, for respondent, pursuant to N.J.A.C. 1:1-5.4(a)(3)

Record Closed: March 13, 2020

Decided: April 13, 2020

BEFORE JOHN S. KENNEDY, ALJ:

STATEMENT OF THE CASE

Petitioner, S.W., appeals the determination of the respondent, Cumberland County Board of Social Services (the Board) regarding the effective date of Medicaid eligibility. Petitioner contends that the Board failed to properly determine the "snapshot" date for purposes of calculating the Community Spouse Resource Allowance ("CSRA").

PROCEDURAL HISTORY

Petitioner timely requested a fair hearing and the matter was transmitted to the Office of Administrative Law on January 17, 2020, for a hearing as a contested case. N.J.S.A. 54:14B-1 to -15 and N.J.S.A. 14F-1 to -13. The matter was heard on February 19, 2020. The record remained open until March 13, 2020, to allow the parties to submit additional documentation/post-hearing legal briefings. Following a review of the matter for completeness, the record closed on March 13, 2020. Due to the Coronavirus, the time for filing this Initial Decision was extended until April 24, 2020.

FACTUAL DISCUSSION AND FINDINGS

The facts in this matter are not in dispute. Rather, this matter concerns a legal argument regarding the effective date of Medicaid eligibility and whether continuous residence in an assisted living facility constitutes "institutionalization" for purposes of determining the CSRA snapshot date in accordance with N.J.A.C. 10:71.4-8. Accordingly, based upon the testamentary and documentary evidence presented and the parties' legal arguments/written submissions, I **FIND** the following as **FACT**:

On February 20, 2019, a Pre-Admission Screening (PAS) was completed for petitioner in her home due to a diagnosis of early onset Alzheimer's Disease. The PAS certified that as of February 20, 2019, petitioner was clinically eligible for "nursing facility level of care in a nursing home or home and community-based waiver in accordance with N.J.A.C. 8:85-2.1." On March 29, 2019, while still residing in the community, petitioner submitted an application for Medicaid/Medicaid Managed Long Term Services and Support (MLTSS) benefits requesting an eligibility date for April 1, 2019. It was petitioner's belief that she and her community spouse had appropriately spent-down excess resources and met financial eligibility requirements. It was also petitioner's belief that the County would use either the PAS date or the first day of the month of the application to calculate the spousal resource allowance. Based on either of those dates, petitioner and her husband had spent down their excess resource prior to submitting her Medicaid application. Petitioner was subsequently admitted to a nursing facility on April 16, 2019, and has resided there to this day.

The application filed on March 29, 2019, was denied on September 17, 2019, due to a failure to provide requested documentation. The petitioner never received a Resource Assessment for Couples form at any point while the initial application was being processed. Petitioner submitted a second application on September 27, 2019, seeking an eligibility date of September 1, 2019. Petitioner continued to assume that she had remained under the applicable resource limits throughout the application process. On December 11, 2019, petitioner received notice that her second application was approved and she was eligible for benefits effective September 1, 2019, pending a spenddown of excess resources in the amount of \$32,876.85. The petitioner appealed the effective date of eligibility of the second application.

On December 2, 2019, the Board prepared for petitioner a "Resource Assessment For Couples" and determined the spend down required as of April 2019, was \$63,034.56. Between April 2019, and September 2019, a total of \$30,157.71 was spent down, therefore, the spend down amount as of September 1, 2019, was \$32,876.85. (R-1, page 29-30).

LEGAL ARGUMENTS OF THE PARTIES

Petitioner argues that the Board's determination of the CSRA snapshot date of September 1, 2019, is in error. Petitioner contends that the Board should have determined that her "first period of continuous institutionalization" occurred on the date of her PAS (February 20, 2019) rather than April 1, 2019, the first month she was admitted to the nursing facility. Petitioner contends that her community spouse should have been permitted to keep \$128,640, the maximum CSRA in 2019.

The Board asserts that petitioner was clinically eligible for Medicaid in April 2019, when she was admitted to the nursing facility. Petitioner's first application was denied for failure to provide documentation needed to render a decision. That application is not currently before this tribunal. The second application, filed on September 27, 2019, sought an eligibility date of September 1, 2019. The Board found that petitioner was approved effective September 1, 2019, pending a spend down of assets in the amount of

\$32,876.85. As a result, the Board contends that its determination as to the effective date of eligibility was correct, and petitioner will not be both clinically and financially eligible for Medicaid until such time as the spend down is completed and a penalty transfer is assessed.

LEGAL ANALYSIS AND CONCLUSIONS

Medicaid is a cooperative federal and state program established by Title XIX of the Social Security Act for the purpose of furnishing medical assistance to qualified aged, blind or disabled persons or families with disabled children. 42 U.S.C.A. §§ 1396 et seq. Medicaid "is designed to provide medical assistance to persons whose income and resources are insufficient to meet the costs of necessary care and services." L.M. v. N.J. Div. of Med. Assistance and Health Servs., 140 N.J. 480, 484 (1995) (quoting Atkins v. Rivera, 477 U.S. 154, 156, (1986)). If a state chooses to participate in the Medicaid program, it must adopt a state plan that complies with the federal Medicaid Act and the regulations adopted by the Department of Health and Human Services. 42 U.S.C.A. §§ 1396a; Estate of G.E. v. Div. of Med. Assistance and Health Servs., 271 N.J. Super. 229 (App. Div. 1994).

New Jersey has elected to participate in the Medicaid program and the Commissioner of the Department of Human Services is responsible for the operation of the program. N.J.S.A. 30:4D-1 et seq. The Division of Medical Assistance and Health Services (DMAHS) is the State administrative agency responsible for administering the Medicaid program in New Jersey. To qualify for Medicaid, an applicant must meet the financial (resource and income) eligibility standards as well as the medical (clinical) eligibility standards.

Pursuant to N.J.A.C.10:71-4.8, (Institutionalization eligibility; resources of a couple), in determining resource eligibility for an individual requiring long term care, the county welfare agency shall establish the combined countable resources of a couple as of the first period of continuous institutionalization. This determination shall be made upon request for a resource assessment in accordance with N.J.A.C. 10:71-4.9. or at the time of application for Medicaid benefits. N.J.A.C.10: 71-4.8(a).

The regulation further provides in pertinent part:

1. The community spouse's share of the couple's combined countable resources is based on the couple's countable resources as of the first moment of the first day of the current period of institutionalization.

...

6. For purposes of this section, an institutionalized individual does not include any individual who is not likely to remain in a Title XIX facility for a period of 30 consecutive days. If a physician has not certified that the individual's stay in the facility is expected to be a period of 30 or more consecutive days, that individual's Medicaid eligibility will be determined as if he or she continued to reside in community until he or she has been in a Title XIX facility (or a combination of Title XIX facilities) for a period of 30 consecutive days.

...

7. For purposes of this section, a continuous period of institutionalization means 30 consecutive days of institutional care in a medical institution, and/or Medicaid funded home and community-based waiver services.

...

Additionally, N.J.A.C. 71:5-6, (Income Eligibility Standards), provides that for purposes of the Medicaid program, Title XIX approved facilities shall include acute care general hospitals, nursing facilities, intermediate care facilities for the mentally retarded... and licensed special hospitals . . . and Title XIX psychiatric hospitals . . . Id. at N.J.A.C. 10:71-5.6 (d). The regulation further provides that persons are considered institutionalized if they enter a Title XIX approved facility and a physician has certified that the duration of stay in a Title XIX facility . . . is expected to be thirty consecutive days or more. Id. at N.J.A.C. 71:5-6 (d)(1).

Thus, contrary to petitioner's arguments, the regulations do make a distinction between the types of facilities in which an individual must consecutively remain to be deemed an "institutionalized individual." The regulations define "institutionalized individuals" as those persons who remain, in approved Title XIX facilities, for a requisite

period of time. Thus, while N.J.A.C.10: 71-4.8(a) may be less than artfully drafted and somewhat confusing particularly when attempting to reconcile the application of subsection "a (6)" with subsection "a (7)," other relevant regulations including N.J.A.C. 10:71-5.6 consider persons to be institutionalized once they remain in a Title XIX facility.

The parties agree that petitioner did not enter into a Title XIX facility until April 16, 2019, when she was admitted to a nursing home facility. N.J.S.A. 30:4D-17.10 (Medical Assistance Services Act, Findings, Declarations) provides in pertinent part that the Legislature finds and declares that a substantial portion of nursing home residents do not need the level of medical care provided in skilled nursing or intermediate care facilities. Id. at N.J.S.A. 30:4D-17.10(a). The statute further provides that inappropriate placement at skilled nursing facilities results in reduced access to available beds for Medicaid recipients who are actually in need of nursing home care. As a result, the nursing home preadmission screening program was established to determine the needs of Medicaid-eligible individuals and others seeking admission to a skilled nursing facility prior to placement. Id. at N.J.S.A. 30:4D-17.10(c & d).

Based upon the evidence in the record, it appears clear that in April 2019, petitioner could no longer remain safely at home and was in need of care at an assisted living facility. However, the applicable regulations, define "institutionalized individuals" by those persons admitted to Title XIX facilities. Thus, the regulations do not appear to provide for the expansive interpretation of "institutionalized" which petitioner seeks.

Accordingly, for the reasons set forth above, I **CONCLUDE** that petitioner was not considered to be an "institutionalized individual" consistent with the provisions of N.J.A.C. 10:71-4.8(a)(6). As a result, I further **CONCLUDE** that the Board correctly determined the CSRA snapshot date of April 1, 2019, in accordance with N.J.A.C. 10:71-4.8.

Next, I address the issue of whether the Board incorrectly assessed a spend down once eligibility was established. As part of the application process, an applicant must assist the county welfare agency (CWA) in securing evidence that corroborates her statements regarding eligibility. N.J.A.C. 10:71-2.2(e)(2). The CWA is required to verify all factors related to eligibility, including sources of income and resources. N.J.A.C.

10:72-2.3(a). In the absence of credible verification of all eligibility factors, Medicaid eligibility may not be established. N.J.A.C. 10:72-2.3(e).

The maximum allowable time to process an application is forty-five days for the aged and ninety days for the disabled and blind. N.J.A.C. 10:71-2.3(a). However, where substantially reliable evidence is still lacking at the end of the designated period, the application may be continued in pending status. N.J.A.C. 10:71-2.3(c). The CWA may extend the designated period under certain circumstances, including a determination to afford the applicant, whose proof of eligibility has been inconclusive, a further opportunity to develop additional evidence of eligibility before final action on her application. N.J.A.C. 10:71-2.3(c)(2). A CWA must assist applicants in exploring their eligibility. N.J.A.C. 10:71-2.2(c)(3).

The CCBSS found petitioner eligible for Medicaid in September 2019, which was the first month verification of her eligibility was provided. The decision cannot be based on documents that the CCBSS did not have when it made its decision.

Although the delay in obtaining the required verification was not petitioner's fault or within her control, I **CONCLUDE** that the Board could not establish eligibility until all necessary information was provided. I further **CONCLUDE** that September 1, 2019, is the appropriate date for Medicaid eligibility to become effective.

ORDER

Based on the foregoing, I hereby **ORDER** that the Board's determination regarding the effective date of petitioner's Medicaid eligibility is **AFFIRMED**. I further **ORDER** that the Board's determination regarding the CSRA snapshot date is **AFFIRMED**.

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.

4/13/20

DATE

Date Received at Agency:

Date Mailed to Parties:

JSK/dm



JOHN S. KENNEDY, ALJ

4/13/20

4-16-20

APPENDIX

LIST OF WITNESSES

For petitioner:

W.W., petitioner's spouse

For respondent:

Melinda Garrison, HSS-III

LIST OF EXHIBITS

For petitioner:

P-1 Regulations

P-2 Initial Decision OAL Docket Number HMA 6519-07

P-3 Resource Assessment for couples

For respondent:

R-1 Fair Hearing Packet (147 pages)

Additional Documents Relied Upon

March 5, 2020, brief on behalf of petitioner.