



State of New Jersey
Department of Human Services
Division of Medical Assistance and Health Services

P.O. BOX 712
TRENTON NJ 08625-0712

PHILIP D. MURPHY
Governor

Carole Johnson
Commissioner

Sheila Y. Oliver
Lt. Governor

Jennifer Langer Jacobs
Assistant Commissioner

FAIR HEARING UNIT
October 21, 2019

Leslie Sklar, Deputy Clerk
Office of Administrative Law
Quakerbridge Plaza Bldg 9
Trenton, New Jersey 08625

Re: Helen Harrington v. DMAHS and Monmouth County Board of Social Services
OAL Dkt. No. 11312-2018

Dear Ms. Sklar:

The Initial Decision in the above reference matter was reversed by the Assistant Commissioner and is being remanded for additional proceedings.

The matter concerns the denial of benefits due to Petitioner's income exceeding her medical costs at an assisted living facility. The Initial Decision determined that an examination of whether Petitioner's "total income exceeded her total medical costs" was warranted. However, the record does not include her medical costs. Rather Petitioner's room and board must be separated from her medical costs.

DMAHS is remanding this case to the OAL for additional testimony and evidence to tease the room and board costs from the rate she presented. I have enclosed new transmittal forms as well as the case file from the prior hearing. If you have any questions or need additional information, please contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Meredith Van Pelt".

Meredith Van Pelt, Esq.
Office of Legal & Regulatory Liaison

C: Fredrick Niemann, Esq.
Susan Panksy, FHL



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

H.H.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

MONMOUTH COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

ORDER OF REMAND

OAL DKT. NO. HMA 11312-2018

As Assistant Commissioner for the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision, the OAL case file and the briefs filed below. Neither party filed exceptions in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is October 21, 2019 in accordance with an Order of Extension.

The matter arises regarding the denial of Petitioner's Medicaid application due to excess income. Petitioner is seeking to use an annuity she purchased in May 2018 to pay for her assisted living bill while she awaits the penalty imposed due to her transfer of

\$66,000 to her daughter. All told her monthly income amounted to \$8,575.29. Monmouth County denied Petitioner's application for benefits as her income was sufficient to pay her medical expenses.

The federal Medicaid Act, Title XIX of the Social Security Act, 42 U.S.C.A. § 1396, et seq., provides for a joint federal-state program to provide medical assistance to individuals whose income and resources are insufficient to meet the cost of necessary medical services. 42 U.S.C.A. § 1396-1. Medicaid provides "medical assistance to the poor at the expense of the public." Estate of DeMartino v. Div. of Med. Assist. & Health Servs., 373 N.J. Super. 210, 217 (App. Div. 2004) (quoting Mistrick v. Div. of Med. Assist. & Health Servs., 154 N.J. 158, 165 (1998); citing Atkins v. Rivera, 477 U.S. 154, 156, 106 S. Ct. 2456, 2458, 91 L. Ed. 2d 131, 137 (1986)), certif. denied, 182 N.J. 425 (2005); see also 42 U.S.C.A. § 1396-1.

The Initial Decision reversed the denial finding that because Petitioner had insufficient income to pay for her assisted living facility, she was eligible for Medicaid benefits. In reaching that conclusion, "the regulations require examination of whether the petitioner's total income exceeded her total medical costs, including the 'private pay costs associated with her nursing home care and other medical expenses.'" ID at 15. I concur that this is the analysis to be done, however, Petitioner's medical costs have not been established.

Assisted living facilities are considered community placements and are available to Medicaid eligible individuals under a federal waiver that permits the expansion of services. Unlike nursing homes, individuals in an assisted living facility are responsible to pay their room and board costs. See New Jersey FamilyCare Comprehensive Waiver. https://www.state.nj.us/humanservices/dmahs/home/NJFC_1115_Amendment_Approval_Package.pdf and www.nj.gov/humanservices/doas/forms/PR-2_inst.

The nursing home cases cited in the Initial Decision simply are not analogous to this matter. Room and board costs in an assisted living facility are not considered a medical expense. As such, the portion of the cost Petitioner presented as her medical expenses that included her room and board must be teased out of the daily rate so as to determine Petitioner's medical costs. See G.T. v. DMAHS and Gloucester Board of Social Services, OAL Dkt. No. HMA 7855-12 Final Decision December 12, 2012, where the monthly room and board cost of a \$6,250 facility was determined to be \$1,491 a month. Here, the documents provided from the resident ledger show room and board billed at \$5,797 a month. That is not a medical expense and the separation of charges is required as Medicaid is prohibited from paying for housing. Her daily charges for administration of medication and for help with her activities of daily living are medical costs and amount to \$2,910 which is sufficiently covered by her income.

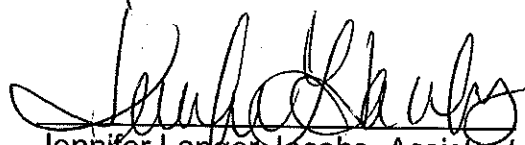
Thus, while I agree with the Initial Decision's conclusion that there needs to be examination of whether Petitioner's "total income exceeded her total medical costs", I FIND that the record does not separate Petitioner's room and board from her medical costs so as to determine the medical costs. Therefore, the matter is hereby REVERSED and REMANDED to the OAL for Petitioner to provide evidence of her room and board expenses.

THEREFORE, it is on this ^{18th} day of OCTOBER 2019,

ORDERED:

That the Initial Decision is hereby REVERSED in part; and

That the matter is REMANDED to OAL for further proceedings regarding Petitioner's room and board costs.



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