



The Adamses had been receiving nonmoney payment GA-related MA under a "PD" category since 2004. "PD" designates a nonmoney payment person between 21 and 65 years of age who meets the eligibility requirements for GA but chooses to receive only MA.<sup>2</sup> 55 Pa. Code §178.11(6). DPW is required to review the eligibility of recipients at least every six months. Section 432.2(c) of the Code, added by Section 5 of the Act of July 15, 1976, P.L. 993, 62 P.S. §432.2(c). In reviewing the Adamses' eligibility in January 2007, DPW determined that Adams' monthly income, from Social Security and a small pension, totaled \$798, that his wife had no income and that they had no unpaid medical expenses to deduct from their income for eligibility purposes. As the maximum monthly income to be eligible for GA-related nonmoney payment MA was \$316, DPW sent a notice proposing to terminate MA. DPW considered eligibility under a GA-related MA program where income was considered on a six-month basis but similarly found that Adams' income exceeded the limits. A second notice was sent advising the Adamses of their ineligibility under that program. Adams appealed both decisions.

At the hearing before an Administrative Law Judge (ALJ), DPW's representative testified that DPW reviewed various MA programs and found that the Adamses did not meet the eligibility criteria for any. Although Adams had submitted a physician's medical assessment that he is disabled, Adams was found not to be eligible for MA under the Healthy Horizons Categorically Needy MA program (Healthy Horizons) for the elderly or disabled on the ground that the regulations for that program required that the disabled person be receiving Social Security Administration (SSA) disability benefits or disability benefits based on Supplemental Security Income (SSI) disability criteria. An application that Adams

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<sup>2</sup>Adams was 64 and his wife 62 at the time of the January 2007 eligibility review.

had submitted to the SSA for SSI disability benefits in 1991 had been denied. The record does not reflect the outcome of Adams' 1991 request for reconsideration.

Adams contended that he and his wife had to be eligible to continue to receive MA because his income and disability had not changed from the time they started receiving MA in 2004. He referenced an appendix in DPW's regulations setting forth monthly income limits for disabled persons under the Healthy Horizons program, which his monthly income satisfied. 55 Pa. Code, Chapter 181, Appendix A (Appendix A). DPW's representative did not dispute that Adams' income and disability were unchanged from 2004. Rather, without offering evidence as to the basis on which the Adamses had been ruled eligible for MA in 2004 and had been found to continue to be eligible at every re-evaluation prior to the one in January 2007, DPW's representative testified that the Adamses had been ruled eligible in error and that Adams was not eligible for MA under the Healthy Horizons program because he did not meet SSI disability criteria. The ALJ agreed, explaining to Adams that DPW had dropped the ball in 2004 with respect to his income exceeding that allowed to qualify for MA and that while Adams might satisfy the income eligibility limit for the Healthy Horizons program Adams was not eligible for that program because he was not receiving SSI disability payments.

Adams complained that DPW had referred him in 2003 to one of its disability advocates for assistance in trying to obtain SSI disability payments but that the advocate had said without explanation that he could not help Adams and that DPW's representative had told him his case file did not contain his physician's medical assessment. Adams offered to produce his medical assessment file documenting his disability, but the ALJ rejected the offer, stating: "The only thing you can bring me in, that I'm going to be able to apply these rules to, is something

from Social Security saying, we have determined Mr. Adams is disabled." Notes of Testimony, April 12, 2007 Hearing, at p. 39.

In his Adjudication, the ALJ concluded that the income limits in Appendix A are subject to DPW's regulations in 55 Pa. Code §140.221, which provide, *inter alia*, that to be eligible under the Healthy Horizons program as a disabled person, the individual must be "receiving Social Security Disability benefits or disability benefits based on SSI disability criteria at §141.71 ... or be a disabled person who meets the disability requirements of §141.71," *id.* at fourth page, but that Adams does not meet those criteria because "[t]here was no convincing evidence provided to show that either [Adams] or his wife are ... receiving Social Security Disability payments, or meet the disability requirements outlined at 55 Pa. Code 141.71(b)." *Id.* at sixth page. In its brief, DPW similarly argues that Adams is not entitled to MA under the Healthy Horizons program because in 1991 the SSA rejected his claim of being disabled. Adams asserts in his brief that he has an application pending with the SSA for disability benefits under SSI.<sup>3</sup> At the hearing he asserted that he meets requirements for such benefits.

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<sup>3</sup>At the hearing Adams did state that he had a case open for SSI disability eligibility in 2003 when he was referred to a DPW advocate for help but that the advocate did not help him. However, at the outset of Adams' cross-examination of DPW's representative and before Adams had an opportunity to present evidence at the hearing, the ALJ engaged Adams in colloquy that consumed the remainder of the hearing, near the end of which the ALJ made the above-quoted statement that the only thing Adams could produce that would help his case was something from the SSA saying he was disabled. Adams was unrepresented by an attorney. These facts and others, including the Adamses having received MA since 2004, DPW introducing no evidence of the basis on which the Adamses were found eligible for MA in 2004 but indicating to the ALJ at the hearing that it was due to an error, DPW seeking to terminate the MA when there had been no change in any of the Adamses' circumstances bearing on eligibility for MA and Adams appearing at the hearing *pro se* cried out for DPW to have rendered greater assistance to Adams in his efforts to establish eligibility. See *Dennis v. Department of Public Welfare*, 730 A.2d 544 (Pa. Cmwlth. 1999) (ALJ should have addressed whether petitioner required DPW assistance in **(Footnote continued on next page...)**)

The ALJ was correct in noting in his Adjudication that 55 Pa. Code §140.221 sets forth three means of establishing eligibility for the Healthy Horizons program, two of which are alternative means of establishing eligibility based on being disabled. Specifically, 55 Pa. Code §140.221(2) provides:

Under the Healthy Horizons Categorically Needy Program, an individual shall also meet one of the following criteria:

- (i) Be 65 years of age or older.
- (ii) Be a disabled person who is receiving Social Security Disability benefits or disability benefits based on SSI disability criteria at § 141.71 (relating to policy).
- (iii) Be a disabled person who meets the disability requirements of § 141.71.

Adams does not contend that he meets the criteria of either subparts (i) or (ii). The Adjudication concludes without discussion that Adam does not meet the criteria of subpart (iii), but in the hearing the ALJ indicated that his conclusion was based on his view that DPW's advocate's indication that he could not help Adams qualify for SSI disability benefits had to mean that Adams did not satisfy the requirements. DPW's brief similarly does not discuss the disability requirements of §141.71.

Section 141.71(b) provides in relevant part:

(b) Nonmoney payment recipients. Title XIX of the Social Security Act (42 U.S.C.A. §§ 1396--1396q) provides that the *benefits of the MA program available to*

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**(continued...)**

assembling required information); 55 Pa. Code §205.3(3) (DPW to obtain information from sources other than client when necessary). Adams' brief also stresses his belief that DPW's order to discontinue MA was due to mistakenly considering whether his wife, rather than he, met disability requirements, but that issue was not raised at the hearing and the testimony of DPW's representative gives no indication of such error.

*money payment recipients shall be available to the following individuals* described in paragraphs (1)--(6).

(1) ... Also included are persons who, though eligible for a money payment, decide they do not want the payment, but do want medical care. (Emphasis added.)

As stated above, Adams has been receiving nonmoney payment medical assistance in category "PD" for himself and his wife since 2004. Section 141.71(c) provides in relevant part as to money payment recipients:

(c) Money payment recipients. *The following persons will be eligible for MA services* provided the recipient does not have resources such as medical insurance or governmental benefits that cover the costs of the services at MA standards:

(1) Persons eligible for SSI.

(2) Persons who meet the definitive conditions of TANF, GA or SBP. GA persons, who are not eligible for Federally-funded MA and who are eligible to receive a cash payment are entitled to MNO level of benefits if otherwise eligible. In addition, these persons receive coverage for prescribed medications. GA-related MA recipients eligible for Federally-funded MA receive additional benefits under the MA Program. Children under 21 years of age, pregnant women, migrants, refugees eligible for MA up to 8 months from date of entry into the United States, as specified in 45 CFR 400.90 (relating to basis and scope), repatriated nationals and *persons who have applied for or been referred to the SSA for Social Security or SSI disability benefits qualify for Federally-funded MA.*

(Emphasis added.)

As Adams had applied to the SSA for SSI disability benefits and had been referred by DPW to the SSA for SSI disability benefits, the Court concludes that there was no basis for discontinuing the MA that Adams and his wife had been receiving. To the extent that DPW might argue that the language of Section

141.71(c)(2) that "persons who have applied for or been referred to the SSA for Social Security or SSI disability benefits qualify for Federally-funded MA" was intended to cover only persons who have an application or referral to the SSA for SSI disability benefits pending at the time of DPW's eligibility review, the Court emphasizes that such interpretation is contrary to the plain meaning of what Section 141.71(c)(2) says. An applicant has the burden of proving eligibility for MA, *see Gilroy* (citing *Dempsey v. Department of Public Welfare*, 756 A.2d 90 (Pa. Cmwlth. 2000)), and based on its review the Court is compelled to conclude that Adams has satisfied his burden. DPW's decision to discontinue the Adamses' MA cannot be reconciled with the facts or the law. Therefore, DPW's order is reversed.

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DORIS A. SMITH-RIBNER, Judge

Judge Simpson dissents.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Ulysses Adams,	:	
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Petitioner	:	
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v.	:	No. 270 C.D. 2008
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Department of Public Welfare,	:	
	:	
Respondent	:	

*ORDER*

AND NOW, this 19th day of November, 2008, the final order of the Secretary of the Department of Public Welfare dated December 18, 2007 upholding the April 17, 2007 order of Bureau of Hearings and Appeals is reversed.

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DORIS A. SMITH-RIBNER, Judge