



State of New Jersey

DEPARTMENT OF HUMAN SERVICES  
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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Lt. Governor

MEGHAN DAVEY  
Director

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

A.M.,	:	
	:	
PETITIONER,	:	ADMINISTRATIVE ACTION
	:	
v.	:	FINAL AGENCY DECISION
	:	
DIVISION OF MEDICAL ASSISTANCE	:	OAL DKT. NO. HMA 7866-2016
	:	
AND HEALTH SERVICES AND	:	
	:	
UNION COUNTY BOARD OF	:	
	:	
SOCIAL SERVICES,	:	
	:	
RESPONDENTS.	:	

As Acting Deputy Director of the Division of Medical Assistance and Health Services (DMAHS), designated by the Director of DMAHS to assume responsibility over this matter due her recusal, I have reviewed the record in this case, including the Initial Decision, the OAL case file and the documents filed below. No exceptions were filed in this matter. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is July 25, 2016 in accordance with N.J.S.A. 52:14B-10 which

requires an Agency Head to adopt, reject, or modify the Initial Decision within 45 days of receipt. The Initial Decision in this matter was received on June 8, 2016.

The matter arises from the imposition of a transfer penalty due to Petitioner's transfer of property valued at \$250,000 and the denial of a waiver of the penalty as an undue hardship. This case has a tortuous history that is set forth in the Initial Decision. Petitioner had been institutionalized since 2011. On October 24, 2011 she transferred her property to her nephew's wife for \$50,000. On October 25, 2011 she entered Berkeley Heights Nursing and Rehabilitation Center until her death in May 2015. Petitioner's son applied for benefits in December 2011 and September 2013. Both applications were denied for failure to provide documentation relating to the transferred property. Both applications were appealed as fair hearings. The first application was docketed as OAL Docket HMA 13716-2012 but was withdrawn by Petitioner in January 2013. The second application resulted in both an Initial Decision and Final Agency Decision that upheld the denial of the application. See A.M. v. DMAHS and Union County Board of Social Services, HMA 18525-2013, signed April 3, 2014.

In the third application that gives rise to this case, Union County was able to determine an eligibility date for Petitioner as well as the value of the transferred property. As such Petitioner was granted eligibility as of October 1, 2014 but subject to a transfer penalty of 638 days that would end June 30, 2016. As Petitioner died in May 2015, she was never eligible for Medicaid to pay for her long term care services.

At the hearing, Petitioner, who was presumably represented by her estate, presented testimony from representatives of the nursing home regarding the transfer of the home. The Initial Decision found that the timing of the transfer a day before she entered the nursing home and two months before applying for Medicaid was suspect

and "there was not a shred of credible testimony at the hearing regarding the details of the asset transfer." ID at 9. Additionally, when Petitioner tried to argue there was a life estate that should reduce the penalty amount, the Initial Decision found that "the record [was] bereft of credible testimonial evidence on" the existence of a life estate. ID at 9.


After upholding the transfer penalty, the Initial Decision turned to the claim that the penalty would work an undue hardship. Recognizing that the hardship waiver cannot be granted on Petitioner's own misdeeds with regard to the transfer of the house and other litigation, the ALJ correctly noted that undue hardship was personal to Petitioner and "is not intended to be used as an alternative to a collection lawsuit" which the nursing home had already filed. ID at 10. Petitioner did not meet the two prongs of the hardship waiver and the ALJ found that the waiver was properly denied.

Based on the record and the findings set forth therein, I hereby ADOPT the Initial Decision affirming the transfer penalty and the denial of a hardship waiver.

THEREFORE, it is on this <sup>19<sup>th</sup></sup> day of JULY 2016,

ORDERED:

That the Initial Decision is hereby ADOPTED.

  
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Carol Grant, Acting Deputy Director  
Division of Medical Assistance  
and Health Services