



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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Director

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

C.D.,

PETITIONER,

ADMINISTRATIVE ACTION

v.

FINAL AGENCY DECISION

DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES AND
BURLINGTON COUNTY BOARD OF
SOCIAL SERVICES,

OAL DKT. NO. HMA 1899-2016

RESPONDENTS.

As Director of 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 documents filed below. Petitioner filed exceptions in this matter. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is October 31, 2016 in accordance with an Order of Extension.

The matter arises regarding the January 19, 2016 denial of Petitioner's Medicaid application. Petitioner applied for Medicaid benefits in September 2015. Burlington County sent her requests for additional information. Her Social Security income is \$2,196 or three dollars less than the \$2,199 maximum. Petitioner was also entitled to a monthly pension of \$331.93 which requires her to establish a Qualified Income Trust (QIT). In January 2016 her POA established a QIT and deposited the pension in that account in March 2016. Burlington County set Petitioner's date of eligibility as of March 1, 2016.

At the hearing and in exceptions, Petitioner contends that she didn't receive some of the notices from Burlington vis a vis the pension and that she was not aware of the pension so it should not be considered. However, Petitioner did not testify to this. In fact, neither she nor her POA testified at the hearing. Rather Petitioner's Designated Authorized Representative (DAR), who is an employee of the nursing home and was appointed in January 2016, was the only witness for Petitioner. Without testimony from Petitioner or her POA, the DAR's testimony cannot be used to support any findings on about Petitioner's knowledge or actions regarding the pension.

While hearsay is admissible in the Office of Administrative Law, a finding of fact based on hearsay must be supported by competent evidence. N.J.A.C. 1:1-15.5(b), the **residuum rule**, requires "some legally competent evidence" to exist "to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness." The ALJ was correct to conclude that the DAR's hearsay statements were unsupported.

The Initial Decision upheld eligibility for the month of March 2016, finding that the Petitioner met the income requirements for that month when her trustee placed her

excess income into the QIT. Burlington noted in an October 15, 2015 letter to Petitioner that she would have to provide information regarding her pension including the QIT and spend down of the pension. R-18. The hearsay testimony of Petitioner's DAR cannot be the basis of a finding that Petitioner did not receive this letter. Rather, other evidence supports that the Initial Decision's finding that Petitioner received the letter as she signed the benefit election form in December 2015. R-21.

Petitioner failed to provide any information about the nature of the retirement account to support her argument. A policy brief from the Social Security Administration noted the problems with a program established in 1974 and the rapidly changing nature of retirement plans and benefits.

SSI does not treat assets in defined benefit and defined contribution retirement plans in the same manner. Beneficiaries of a defined benefit plan must apply for pension benefits when qualifications are met, and those benefits offset the SSI payment, but SSI applicants and recipients are allowed to retain the asset until it can be annuitized. By contrast, holdings in a defined contribution plan must be reduced or eliminated, depending on the amount of the holdings, for the SSI applicant or recipient to be eligible for SSI. The primary difference, then, is that a potential SSI recipient has access to the funds in a defined contribution plan, but a participant in a defined benefit plan has no access to the pension until attaining a specific age.

The three approaches to SSI's treatment of defined contribution retirement funds include: continuing the current policy of treating funds as countable resources if they can be withdrawn, or excluding funds until retirement age, which would encourage the greatest accumulation of retirement funds and could be a work incentive for SSI recipients, or attributing funds as hypothetical annuity income over the period of SSI eligibility.

<https://www.ssa.gov/policy/docs/policybriefs/pb2006-01.html>

Burlington County's denial letter due to excess resources is based on the understanding that, as a defined contribution plan, Petitioner had access to the funds which are considered a resource. Petitioner has not presented any credible evidence to the contrary. Based on my review of the record I concur with the Initial Decision's

conclusion that Burlington County correctly set Petitioner's Medicaid eligibility for March 1, 2016.

I do note Petitioner may be entitled to a deduction for her Pre-Eligibility Medical Expenses (PEME) that occurred in the three months prior to her March 1, 2016 Medicaid eligibility date. Petitioner can request that the nursing facility complete the PEME Request Form and submit it to Burlington County for consideration.

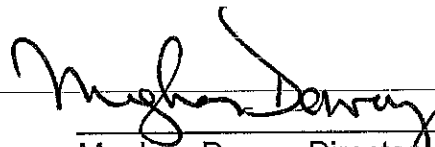
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THEREFORE, it is on this <sup>28<sup>th</sup></sup> day of OCTOBER 2016,

ORDERED:

That the Initial Decision is hereby ADOPTED.

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Meghan Davey, Director  
Division of Medical Assistance  
and Health Services