



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

P.O. Box 712
Trenton, NJ 08625-0712

CHRIS CHRISTIE
Governor

ELIZABETH CONNOLLY
Acting Commissioner

KIM GUADAGNO
Lt. Governor

MEGHAN DAVEY
Director

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

E.C.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

& HEALTH SERVICES and

BERGEN COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

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ADMINISTRATIVE ACTION

ORDER OF REMAND

OAL DKT. NO. HMA 16475-15

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 is June 12, 2016, in accordance with an Order of Extension. The Initial Decision in this matter was received on March 14, 2016.

This matter arises from the Passaic County Board of Social Services' (PCBSS) September 18, 2015 denial of Medicaid benefits because Petitioner failed to liquidate her home and because it had insufficient information about her care taker. However, Petitioner claimed that she was entitled to transfer her home to her daughter under the caregiver exemption. N.J.A.C.10:71-4.10(d). Petitioner entered the nursing home in May 2015.

The New Jersey regulations regarding this transfer exemption are based on the federal statute. Compare 42 U.S.C. § 1396p(c)(2)(A)(iv) and N.J.A.C. 10:71-4.10(d). The statute provides that if the "equity interest in a home" is transferred by title to a son or daughter who provided such care that prevented institutionalization for at least two years, the transfer is exempt from penalty. The care provided must exceed normal personal support activities and Petitioner's physical or mental condition must be such as to "require special attention and care." Id. It is Petitioner's burden to prove that she is entitled to the exemption.

While I understand the Initial Decision's concern that Petitioner's continued ownership of the home does not trigger the caregiver exemption, it is clear that Petitioner's daughter as her Power of Attorney planned to transfer the home to herself and is arguing she does not need to liquidate it as she can assume ownership under N.J.A.C. 10:71-4.10(d)(7) without affecting Petitioner's Medicaid eligibility. PCBSS did make a determination that Petitioner failed to support her claim that her daughter met the requirements of the regulation. It is that agency action that is on appeal and Petitioner can create a record concerning her daughter's qualifications as a child caregiver.


Thus, I hereby REVERSE the Initial Decision with regard to the determination that the transfer must be done prior to establishing Medicaid and REMAND the matter to OAL for further testimony to determine if Petitioner can meet her burden to demonstrate the caregiver exemption applies to her case.

THEREFORE, it is on this <sup>26<sup>th</sup></sup> day of MAY 2016

ORDERED:

That the Initial Decision is hereby REVERSED; and

That the matter is REMANDED for further proceedings.

  
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Meghan Davey, Director  
Division of Medical Assistance  
and Health Services