



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
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Governor

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KIM GUADAGNO
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MEGHAN DAVEY
Director

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

M.N.,
PETITIONER,
v.
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES AND
HUNTERDON COUNTY BOARD OF
SOCIAL SERVICES,
RESPONDENTS.
ADMINISTRATIVE ACTION
FINAL AGENCY DECISION
AND ORDER OF RETURN
OAL DKT. NO. HMA 688-2016

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. Respondent filed exceptions in this matter. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is July 15, 2016 in accordance with an Order of Extension.

The matter arises regarding the denial of Petitioner's Medicaid application due to being over resources and recognizing a \$332,133.51 transfer penalty on the purchase price of an annuity and gifts to her children.<sup>1</sup> Petitioner is seeking to employ a Medicaid planning device called half-a-loaf in which she is penalized for transferring assets while ensuring that she has sufficient funds to pay for her care during the penalty. Hunterdon County determined that the \$153,760 used to purchase an annuity that paid her \$8,105.13 was a transfer penalty. Petitioner planned to have the annuity pay for her long term care while she was penalized by Medicaid for the transfer of \$178,353.51 to her children. The annuity began paying in August 2015 so she is seeking eligibility as of that date to start the transfer penalty.

The Initial Decision found that Hunterdon County has incorrectly determined that the annuity resulted in a transfer penalty and I agree. Congress has seen fit to permit these "Medicaid" annuities as a mechanism for transferring assets as long as 42 U.S.C. § 1396p (e) is complied with. The decision went on to find Petitioner eligible for benefits as of August 1, 2015. For the reasons that follow, I hereby ADOPT the finding that annuity should not be included in the transfer penalty but REVERSE that finding that Petitioner has established eligibility as of August 1, 2015. I hereby RETURN the matter to Hunterdon County for further review.

Even though the purchase price of the annuity is not considered a transfer of assets, the full value of the annuity contract was available to Petitioner as of August 1, 2015. The annuity policy was revocable as of that date and could be canceled. The terms of the annuity contract state "[y]ou may cancel the contract before midnight of the

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<sup>1</sup> The December 10, 2105 notice states that Petitioner owned a life insurance policy with a cash value of over \$8,000. The Initial Decision does not resolve the resource issue but only deals with the transfer penalty. The matter is being returned to Hunterdon County so that the new outcome letter can address the policy to the extent it is still at issue.

tenth day from the date of its receipt." That cancellation will result in the "return [of] all amounts paid from this contract within ten days from the date we receive notice [of cancellation]." R-3. By letter dated July 27, 2015, the annuity contract from the Croatian Fraternal Union was forwarded to Petitioner's wealth management representative by Krause Financial Services in DePere, Wisconsin with instructions to have her sign for receipt. R-3. The acknowledgment form in the record is dated August 4, 2015 by Petitioner's Power of Attorney. Thus, the \$153,760 purchase price of the annuity was revocable as of August 1, 2015, rendering the price a countable resource for that month. See H.T. v. Somerset County and DMAHS, OAL Dkt. HMA 4941-12 (FAD signed September 24, 2012); M.M. v. Bergen County and DMAHS, OAL Dkt. 6410-2014 (FAD signed October 14, 2014); G.N. v. Bergen County and DMAHS, OAL Dkt. HMA 1899-2014 (FAD signed January 1, 2015).

Failing to meet the resource standard for August 2015, Petitioner's eligibility must then be examined for September 2015. With \$8,105.13 monthly income from the annuity, Petitioner exceeded the income limit of \$2,199 and needed to establish and fund a QIT in September 2015 in order to be eligible for that month.<sup>2</sup> The record is silent as to whether this was done. As such, I hereby REVERSE the Initial Decision's finding that Petitioner had established eligibility for August 1, 2015. The case shall be RETURNED to Hunterdon County to review Petitioner's eligibility on or after September 1, 2015 and issue a new determination letter with an eligibility date to start the penalty.

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<sup>2</sup> By way of background, as of December 1, 2014, New Jersey received federal authority to cease covering nursing home services under Medically Needy and permit applicants, who needed institutional level of care in a nursing facility, an assisted living facility or home and had income in excess of \$2,199 to place the excess income in a Qualified Income Trust (QIT), also known as a Miller Trust, and obtain Medicaid benefits. See 42 U.S.C. § 1396p(d)(4)(B). By placing the excess income in a QIT, Hunterdon County is able to exclude that amount from the income limit.


THEREFORE, it is on this <sup>1<sup>st</sup></sup> day of JUNE 2016,

ORDERED:

That the Initial Decision is hereby ADOPTED in part with regard to the finding that the annuity is not part of Petitioner's transfer penalty;

That the Initial Decision is REVERSED as to the finding that Petitioner is eligible as of August 1, 2015; and

That the matter is hereby RETURNED to Hunterdon County to make findings regarding Petitioner's eligibility on or after September 1, 2015 including Petitioner's income and resource eligibility so as to impose the transfer penalty.

  
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Meghan Davey, Director  
Division of Medical Assistance  
and Health Services