



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

A.T.,	:	
	:	
PETITIONER,	:	ADMINISTRATIVE ACTION
	:	
v.	:	FINAL AGENCY DECISION
	:	
DIVISION OF MEDICAL ASSISTANCE	:	OAL DKT. NO. HMA 10162-2017
	:	
AND HEALTH SERVICES AND	:	
	:	
MORRIS COUNTY BOARD OF	:	
	:	
SOCIAL SERVICES,	:	
	:	
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. No exceptions were filed. Procedurally, the time period for the Agency Head to file a Final Decision is October 13, 2017, 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 was received on August 29, 2017.

The matter arises regarding the denial of Petitioner's application for Medicaid benefits. Petitioner has lived in a continuing care retirement community (CCRC) since 2010. As a condition of entrance, Petitioner paid \$174,000 to the CCRC. Morris County determined those funds were available to her and denied the application. Petitioner appealed that action.

The Initial Decision determined that the CCRC entrance fee was a countable resource and upheld the denial. For the reasons that follow, I hereby ADOPT the Initial Decision.

Federal law specifically includes CCRC entrance deposits as a countable resource when three conditions are met. 42 U.S.C.A. § 1396p(g)(2). That statute states:

An individual's entrance fee in a continuing care retirement community or life care community shall be considered a resource available to the individual to the extent that—

(A) the individual has the ability to use the entrance fee, or the contract provides that the entrance fee may be used, to pay for care should other resources or income of the individual be insufficient to pay for such care;

(B) the individual is eligible for a refund of any remaining entrance fee when the individual dies or terminates the continuing care retirement community or life care community contract and leaves the community; and

(C) the entrance fee does not confer an ownership interest in the continuing care retirement community or life care community.

[42 U.S.C.A. § 1396p(g)(2).]

The Centers for Medicare and Medicaid Services (CMS), as the federal agency with oversight and authority for the Medicaid program, explained that the federal statute requires the CCRC fee to be included in the resource standard when:

The new subsection (G) defines when an entrance fee paid to a CCRC or life care community would be treated as a resource to an individual for purposes of determining Medicaid eligibility. The following three conditions must all be met in order for the entrance fee to be considered an available resource:

- The entrance fee can be used to pay for care under the terms of the entrance contract should other resources of the individual be insufficient; and
- The entrance fee (or remaining portion) is refundable when the individual dies or terminates the contract and leaves the CCRC or life care community; and
- The entrance fee does not confer an ownership interest in the community.

States should note that in order to meet the first condition listed above, it is not necessary for CCRCs or life care communities to provide a full, lump-sum refund of the entrance fee to the resident. If portions of the fee can be refunded or applied to pay for care as required, this condition would be met.

Also, in order to meet the second condition listed above, it is not necessary for the resident to actually receive a refund of the entrance fee or deposit. This condition is met as long as the resident could receive a refund were the contract to be terminated, or if the resident dies.

CMS Enclosure – Section 6015, *supra*, Rules Pertaining to the Treatment of Continuing Care Retirement Community at 27.


Petitioner's CCRC contract meets all three requirements of 42 U.S.C.A. § 1396p(g)(2). The Initial Decision cites to the express language contained in the CCRC agreement that conforms to these requirements. The agreement provides that the entrance fees will be spent down by the CCRC when Petitioner has no outside assets. Additionally Petitioner is entitled to a refund of the entrance fee when certain conditions are met, including upon her death. R-E at §§ 7.5.1. and 7.5.2. Thus, for the reasons

set forth above and those contained in the Initial Decision which is incorporated by reference, I hereby ADOPT the Initial Decision.

THEREFORE, it is on this ^{12th} day of OCTOBER 2017,

ORDERED:

That the Initial Decision is hereby ADOPTED.



Meghan Davey, Director
Division of Medical Assistance
and Health Services