



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

D.B.	:	
	:	
PETITIONER,	:	ADMINISTRATIVE ACTION
	:	
v.	:	FINAL AGENCY DECISION
	:	
DIVISION OF MEDICAL ASSISTANCE	:	OAL DKT. NO. HMA 412-2017
	:	
AND HEALTH SERVICES AND	:	
	:	
UNION 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. Petitioner filed exceptions in this matter. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is September 21, 2017 in accordance with an Order of Extension.

The matter arises regarding Petitioner's Medicaid eligibility date. Petitioner, through his son and Power of Attorney (POA), applied for benefits by mail in June 2016. He had entered a nursing home in April 2016. At the time, he reported his income was \$2,640.70, which rendered him ineligible for benefits unless and until he created and funded a Qualified Income Trust (QIT). Union County informed of this in October 2016. A QIT was created in November 2016 and eligibility was established as of November 1, 2016. Petitioner appealed that determination seeking an earlier date.

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 AL facility or home and had income in excess of \$2,163 (\$2,199 in 2016 and \$2,205 in 2017) to place the excess income in a QIT, also known as a Miller Trust, and obtain Medicaid benefits. See 42 U.S.C. § 1396p(d)(4)(B). Petitioner's income of \$2,640.70 renders him ineligible until a QIT is established. By placing the excess income in a QIT, Union County is able to exclude that amount from the income limit. Unless and until Petitioner placed his income in excess of \$2,199 amount into the QIT, his income would be considered over the limit. This was not done until November 2016.

It is a bright line rule that even a dollar over income limit creates ineligibility. Income eligibility can only be established in the month when Petitioner set up and funded the QIT. Petitioner cannot be eligible prior to November 2016 as his income exceeded the standard. Thus, I FIND that Union County properly found Petitioner to be over the income limit until November 2016.

Petitioner is seeking to establish an earlier date through the doctrine of equitable estoppel. The Initial Decision addresses why the doctrine does not apply. In

exceptions, Petitioner reiterates the same arguments raised below. In addition to the reasons stated in the Initial Decision, there is no legal basis to grant eligibility when none exists. "Medicaid is an intensely regulated program." H.K. v. Div. of Med. Assistance & Health Servs., 184 N.J. 367, 380 (2005). DMAHS is obligated to administer New Jersey's Medicaid program in a fiscally responsible manner to ensure that the limited funds available are maximized for all program participants, Dougherty v. Dep't of Human Servs., Div. of Med. Assistance & Health Servs., 91 N.J. 1, 4-5 (1982); Estate of DeMartino v. Div. of Med. Assistance & Health Servs., 373 N.J. Super. 210, 217-19 (App. Div. 2004), certif. denied, 182 N.J. 425 (2005).

The argument that Union County failed to assist Petitioner and, thus, requires the imposition of equitable considerations fails to recognize that the courts in New Jersey have rarely applied the doctrine of estoppel to governmental entities absent a finding of malice, Cipriano v. Department of Civil Serv., 151 N.J. Super. 86, 91 (App. Div. 1977), particularly when estoppel would "interfere with essential governmental functions." See also O'Malley v. Dep't of Energy, 109 N.J. 309, 316-18 (1987) and Vogt v. Borough of Belmar, 14 N.J. 195, 205 (1954). Where public benefits are concerned, courts have gone farther to recognize that "[e]ven detrimental reliance on misinformation obtained from a seemingly authorized government agent will not excuse a failure to qualify for the benefits under the relevant statutes and regulations." Gressley v. Califano, 609 F.2d 1265, 1267 (7th Cir. 1979). See also Office of Personnel Management v. Richmond, 496 U.S. 414, 110 S. Ct. 2465, 110 L. Ed. 2d 387 (1990) and Johnson v. Guhl, 357 F. 3d 403 (3rd Cir. 2004).

The United States Supreme Court has addressed the estoppel issue in the context of federal disability benefits. Office of Personnel Management v. Richmond, 496

U.S. 414, 110 S. Ct. 2465, 110 L.Ed. 2d 387 (1990). In that case the Court, in the majority opinion, held that, under the Appropriations Clause of the Constitution, the payments of benefits from the federal treasury are limited to those authorized by statute. Erroneous advice from a governmental employee regarding those benefits cannot estop the government from denying benefits not permitted by law. Article VIII, Section II of the New Jersey Constitution also has similar appropriations language. As the Medicaid Program is a cooperative federal-state program, jointly financed with federal and state funds, payment of Medicaid benefits from the state and federal treasuries must be authorized by law. The Supreme Court went on to note that:

[estoppel] ignores reality to expect that the Government will be able to "secure perfect performance from its hundreds of thousands of employees scattered throughout the continent." Hansen v. Harris, 619 F.2d 942, 954 (CA2 1980) (Friendly, J., dissenting), rev'd sub nom. Schweiker v. Hansen, 450 U.S. 785, 101 S.Ct. 1468, 67 L.Ed.2d 685 (1981). To open the door to estoppel claims would only invite endless litigation over both real and imagined claims of misinformation by disgruntled citizens, imposing an unpredictable drain on the public fisc. Even if most claims were rejected in the end, the burden of defending such estoppel claims would itself be substantial.

...
The natural consequence of a rule that made the Government liable for the statements of its agents would be a decision to cut back and impose strict controls upon Government provision of information in order to limit liability. Not only would valuable informational programs be lost to the public, but the greatest impact of this loss would fall on those of limited means, who can least afford the alternative of private advice.

OPM v. Richmond, 496 U.S. 414, 433- 434, 110 S. Ct. 2465, 2476 (1990).

Petitioner's argument that the concurring opinion in Richmond is precedential is without basis and ignores the majority's final statement that "[a]s for monetary claims, it is enough to say that this Court has never upheld as an assertion of estoppel against the Government by a claimant seeking public funds. In this context there can be no estoppel, for courts cannot estop the Constitution." Id. at 434.

The Richmond case was cited by the Third Circuit, Court of Appeals which also declined to apply estoppel against New Jersey in the context of determining Medicaid eligibility. Johnson v. Guhl, 357 F. 3d 403, 409-10 (3rd Cir. 2004). That court reached back even further to an 1868 Supreme Court case which held that “the Government could not be compelled to honor bills of exchange issued by a government official where there was no statutory authority for the issuance of the bills.” Id.

Additionally, in matters where the FAD has reversed the Initial Decision’s application of equitable estoppel for Medicaid benefits, the Appellate Division has found that reversal to be correct. See I.L. v. New Jersey Dept. of Human Services, Div. of Medical Assistance & Health Services, 389 N.J. Super. 354, 361 (App.Div. 2006); C.M. v. Division of Med. Assistance & Health Servs., 2006 N.J. Super. Unpub. LEXIS 244 (App.Div. Mar. 15, 2006)(“Simply put, the Director cannot grant eligibility where there is none.”); G.O. v. State Dep’t of Human Servs., 2006 N.J. Super. Unpub. LEXIS 2467, 6-7 (App.Div. Sept. 18, 2006) “In reversing the initial decision, the Director determined that the ALJ had improperly applied the doctrine of equitable estoppel against the State. We concur. Office of Personnel Mgmt. v. Richmond, 496 U.S. 414, 433-34, 110 S. Ct. 2465, 2476, 110 L. Ed.2d 387, 404-05 (1990); Johnson v. Guhl, 357 F.3d 403, 409-10 (3rd Cir. 204).”

Likewise, even when Medicaid benefits were granted incorrectly, the government is still entitled to recoup the incorrectly paid benefits. See S.E. v. Div. of Med. Assistance & Health Servs., 2006 N.J. Super. Unpub. LEXIS 1386 (App.Div. June 6, 2006) “Even though the local agency mistakenly granted petitioner the benefits in question, we cannot allow her to take advantage of this mistake at the public’s expense. The erroneous action of the local agency does not warrant estopping DMAHS from

recouping benefits that were improperly received. County of Morris v. Fauver, 153 N.J. 80, 104, 707 A.2d 958 (1998) (noting that in the absence of compelling circumstances, equitable estoppel will not be invoked against a governmental entity).”

Moreover, at the time Petitioner applied for benefits, his POA signed a document that he would not be eligible if his income was above \$2,022. R-2. While the income limit had increased to \$2,199 in 2016, Petitioner’s income of \$2,640.70 exceeds both these standards. As noted by the ALJ, Petitioner neither inquired nor questioned that limit. ID at 5. Even if Petitioner was told about the QIT, the Medicaid program cannot establish eligibility based on presumptions that an applicant would have followed a course of action. Rather there must be objective proof regarding his eligibility and, until November 2016, his income exceeded the Medicaid standards. See Gressley v. Califano, 609 F.2d 1265, 1267 (7th Cir.1979) "Where a party claims entitlement to benefits under federal statutes and lawfully promulgated regulations, that party must satisfy the requirements imposed by Congress. Even detrimental reliance on misinformation obtained from a seemingly authorized government agent will not excuse a failure to qualify for the benefits under the relevant statutes and regulations.”

THEREFORE, it is on this ^{9th} day of AUGUST 2017

ORDERED:

That the Initial Decision is hereby ADOPTED for the reasons set forth above.


Meghan Davey, Director
Division of Medical Assistance
and Health Services