



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

ESTATE of B.S.,
PETITIONER,
v.
DIVISION OF MEDICAL ASSISTANCE
& HEALTH SERVICES &
ATLANTIC COUNTY BOARD OF
SOCIAL SERVICES,
RESPONDENTS.
ADMINISTRATIVE ACTION
FINAL AGENCY DECISION
OAL DKT. NO. HMA 7474-2016
and
OAL DKT. NO. HMA 19142-2016

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. Petitioner filed exceptions in this matter. Procedurally, the time period for the Agency Head to file a Final Agency Decision is October 5, 2017, in accordance with an Order of Extension.

Petitioner was found otherwise eligible as of January 1, 2016 and subject to a penalty for transferring \$33,630.55. Atlantic County determined Petitioner was ineligible due to excess income and resources in November 2015 and excess income in

December 2015. Petitioner is seeking to have the transfer penalty start in November 2015 so as to align the penalty with a Croatian Annuity she purchased to pay for her care while she was being penalized for the transfer.

Petitioner had been receiving benefits since June 1, 2015 while the sale of her home was pending. She received the proceeds from the sale in September 2015 but her eligibility continued through October 2015 as notice of the sale was not received by Atlantic County until September 28, 2015. Petitioner sought to engage in Medicaid planning and transfer funds so as to incur a penalty. She then used additional funds to purchase of an annuity paying her \$6,002.51 a month. That purchase created an income stream exceeding the monthly income standard of \$2,199. This required the establishment of a Qualified Income Trust (QIT) in order to be found eligible for Medicaid. Eligibility in the months of November and December 2015 are at issue.

It is undisputed that Petitioner received income in excess of \$2,199 during the month of December 2015 that was not placed in the QIT. Her Social Security benefit of \$1,388.90 and a pension check of \$1,809.36 rendered her ineligible. R-1 at 41. Petitioner only placed the \$6,002.51 in the QIT account. With a total of \$3,198.26 outside of the QIT account, she is not eligible in December 2015.

The question turns to whether Petitioner established Medicaid eligibility in November 2015 so as to start the penalty period. The Initial Decision determined that Petitioner failed to meet the eligibility requirements for income and resources in November 2015 and I concur.

In establishing a QIT, the individual must execute a trust document and open a bank account that is linked to the QIT. Here the bank account Petitioner opened was in her name. While the niece is identified as the trustee in the QIT document, the bank

account does not mention the QIT. Rather the title of the account shows Petitioner has the authority over the account. The Initial Decision determined that there was “no credible evidence” to show that this was “a clerical error on the part of [the] bank.” ID at 9. This was not corrected until December 4, 2015. As such, Petitioner's annuity payment of \$6,002.51 was not placed in a QIT bank account so as to be excluded income in November 2015 and was properly included towards the income threshold.

The Initial Decision went on to find that Petitioner also had access to the funds she used to purchase the annuity. Annuities are governed by state law and are heavily regulated. To that end all annuity contracts are required to include “provisions or have attached to it a notice stating that during a period of not less than 10 days after the date the initial owner receives the annuity, the owner may cancel the annuity and receive from the insurer a prompt refund of any account value of the annuity, including any contract fees or other charges, by mailing or otherwise surrendering the annuity together with a written request for cancellation.” N.J.A.C. 17B:25-39. Petitioner claims she signed a waiver of the “free-look period” that prevented her from accessing the funds in October 2015. That signed document was not provided at the time Petitioner applied for Medicaid and appears to have been provided at the hearing date in April 2017. ID at 12. However, other documents provided show that, when the annuity was issued, Petitioner was instructed to complete delivery receipt as she “may cancel this contract before midnight of the tenth day from the date of its receipt.” R-1 at 32. As Petitioner was over income for the month of November, the effect of the document provided at the hearing does not change her ineligibility that month.

Petitioner filed exceptions in this matter and included approximately 400 pages of documents. The exceptions appear to be a compilation of text from Petitioner's Motion for Summary Judgment and Post-Hearing Submission. These arguments were raised before the ALJ and do not have bearing on the Initial Decision.


I must note that the 400 pages attached to the exceptions do not correspond to documents marked by the ALJ. Pursuant to N.J.A.C. 1:1-18.4(c), "[e]vidence not presented at the hearing shall not be submitted as part of an exception, nor shall it be incorporated or referred to within exceptions." For example, the exceptions reference the Initial Decision identified as P-1, which was not part of the record below. There are five references to P-2 in the exceptions. There is no P-2 identified in the Initial Decision's appendix. ID at 15. Additionally, within the 400 pages, are documents listed as P-9 and P-10. There are also no corresponding documents identified as P-9 and P-10. See ID at 15. Additionally, the exceptions contain documents marked as P-3 through P-8 that differ from the description of the Exhibits marked by the ALJ. As such, I am rejecting the 400 pages as they do not comport with the record before the ALJ.

Thus, I ADOPT the Initial Decision that set Petitioner's eligibility date as of January 1, 2016 with a transfer penalty of 101 days.

THEREFORE, it is on this ^{20th} day of SEPTEMBER 2017,

ORDERED:

That the Initial Decision is hereby ADOPTED.


Meghan Davey, Director
Division of Medical Assistance
and Health Services