



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

M.R.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

BURLINGTON COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

ORDER OF RETURN

OAL DKT. NO. HMA 9864-2016

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. Both parties filed exceptions in this matter. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is January 2, 2018 in accordance with an Order of Extension.

The matter arises regarding the transfer of \$56,000 assets to Petitioner's daughter and the purchase of a \$40,000 annuity so as to pay for nursing home care while under penalty. On a Motion for Summary Decision, the Initial Decision found that Burlington County's imposition of a \$40,000 penalty for the purchase price of the annuity was incorrect. While I agree with this conclusion, there are other issues within the record of the case that require it to be returned to Burlington County for further action.

When Petitioner purchased the annuity in October 2015, she was afforded the right to revoke the purchase and have the funds returned to her. All annuity contracts are required to include "provisions or has 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. Sellers of annuities must also "make reasonable efforts to obtain and record information about the suitability of the product for the solicited consumer and the consumer's acknowledgement of the information recorded." [http://www.state.nj.us/dobi/bulletins/blt09\\_12.pdf](http://www.state.nj.us/dobi/bulletins/blt09_12.pdf). The New Jersey Department of Banking and Insurance issues notices informing consumers about their rights when purchasing an annuity. See <http://www.state.nj.us/dobi/pressreleases/pr170405.html> and <http://www.state.nj.us/dobi/pressreleases/pr140410.html>. As evidenced by the signed receipt, Petitioner did not receive the annuity until November 7, 2015. This renders the annuity subject to cancellation and available resource for November 2015.

As such the earliest month of resource eligibility was December 2015 so as to start the \$56,000 transfer penalty.

However, the nursing home bill raises other questions that are not explained by the record. It appears that Petitioner has \$2,341 in other income as that amount was paid for two consecutive billing months. There is also a payment of \$1,576.20 in December 2015. As the bank statements show that the only income placed in the Qualified Income Trust is the annuity payment, if those other amounts are income, Petitioner may not be income eligible as that income remained outside a QIT. Income outside the QIT is counted towards eligibility and, in 2015, the income standard was \$2,199. See Medicaid Communication No. 15-02. Thus, I am RETURNING the matter to Burlington County for further development regarding Petitioner's income and to establish the penalty commencing no earlier than December 2015.

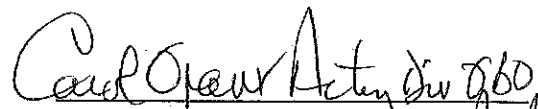
THEREFORE, it is on this <sup>28th</sup> day of DECEMBER 2017,

ORDERED:

That the Initial Decision is hereby ADOPTED in that the purchase of the annuity does not constitute a transfer of assets;

That the Initial Decision is hereby REVERSED as to the November 1, 2015 eligibility date; and

That the matter is RETURNED to the Burlington County for further action on the eligibility date on which to start the \$56,000 penalty in accordance with the above.

  
Meghan Davey, Director  
Division of Medical Assistance  
and Health Services  
