



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

R.L.,	:	
	:	
PETITIONER,	:	ADMINISTRATIVE ACTION
	:	
v.	:	FINAL AGENCY DECISION
	:	
DIVISION OF MEDICAL ASSISTANCE	:	OAL DKT. NO. HMA 9762-2014
	:	
AND HEALTH SERVICES AND	:	
	:	
MIDDLESEX 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 November 20, 2017, in accordance with an Order of Extension.

The matter arises regarding the termination of Petitioner's Medicaid benefits and the transfer of assets. At issue is Petitioner's failure to elect against her husband's

estate. Through his will, her husband had specifically sought to omit any direct bequests and placed only what Petitioner would be entitled to under the spousal elective share in a supplemental needs trust. He further restricted the use of those funds for Petitioner's supplemental needs and sought to prevent the funds from being used for Petitioner's nursing home care or being counted as an available resource. See Article IV. It appears that Petitioner's elective share may have been placed in escrow in April 2015. See Order placing matter on inactive list dated March 3, 2016. Petitioner filed for a fair hearing and received continuing benefits until her death in 2016.

The circumstances in this case show that Petitioner did have a statutory right to access her late husband's assets. New Jersey law entitles a surviving spouse during his lifetime to an elective share of one-third of the decedent spouse's augmented estate. N.J.S.A. 3B:8-1, -11. The purpose of the elective share law is to avoid the surviving spouse from being disinherited and not being adequately provided for by the decedent. See McKay v. Estate of McKay, 205 N.J. Super. 609, 618 (Law Div. 1984). See N.J.S.A. 3B:8-1. A "surviving spouse or domestic partner has a right of election to take an elective share of one-third of the augmented estate under the limitations and conditions hereinafter stated, provided that at the time of death the decedent and the surviving spouse or domestic partner had not been living separate and apart in different habitations or had not ceased to cohabit as man and wife, either as the result of judgment of divorce from bed and board or under circumstances which would have given rise to a cause of action for divorce or nullity of marriage to a decedent prior to his death." N.J.S.A. 3B:8-1.

Petitioner argued that these limitations applied to her marriage. I concur with the Initial Decision that, without evidence of marital discord, the institutionalization of

one member of a couple due to Alzheimer's disease does not create a cause of action for divorce. See In re Estate of Brown, 448 N.J. Super. 252 (App. Div. 2017). Petitioner provided no evidence of such discord but rather relied on her medical diagnoses.

For purposes of Medicaid, surviving spouses must avail themselves of assets even when the decedent has sought to exclude access. N.J.A.C.10:71-4.10(a) and (b)3. To that end, the failure to request the elective share or to challenge a will that restricts access to the deceased spouse's assets is considered a transfer of assets. See I.G. v. DMAHS 386 N.J. Super. 282,289 (App. Div. 2006) where, the Appellate Court upheld the finding that the use of such a discretionary trust has the "practical effect" of forcing the taxpayers of New Jersey to bear the burden of supporting [I.G.] while she resides in the nursing home and receives Medical assistance." See also Tannler v. DHSS, 211 Wis. 2d 179, 564 N.W.2d 735, 741 (1997); Matter of John G. Faller v. Colorado Dept. of Health Care Policy and Financing, 66 P. 2d 114 (2012 Colo. App.), finding that elective share assets placed in trust and distributed so as to maintain Medicaid benefits were available to determine eligibility; Matter of Estate of Dionisio v. Westchester County Dept. of Social Servs., 244 App. Div. 2d 483, 665 N.Y.S.2d 904 (1997), leave to appeal denied, 91 N.Y.2d 810 (1998) (Widow's waiver of her marital rights to a portion of her husband's estate was a transfer of resources for purpose of qualifying for medical assistance.); Matter of Mattei, 169 Misc. 2d 989, 647 N.Y.S.2d 415 (1996) (No functional difference between renunciation of inheritance and non-exercise of right of spousal election because both are rights of inheritance and assets for Medicaid purposes.).

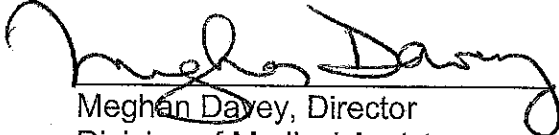
Thus, for the reasons set forth above and those contained in the Initial Decision which is incorporated by reference, I hereby ADOPT the Initial Decision. However, Petitioner requested continuation of benefits so that the transfer penalty was not imposed. The matter is RETURNED to Middlesex County to calculate the penalty and recover the incorrectly paid benefits. It appears that Petitioner's elective share may have been placed in escrow in April 2015. See Order dated March 3, 2016.

THEREFORE, it is on this ^{17th} day of OCTOBER 2017,

ORDERED:

That the Initial Decision is hereby ADOPTED as to Petitioner being subject to a transfer penalty for her failure to claim an elective share against her husband's estate; and

That the matter is RETURNED to Middlesex County to set the penalty amount and take necessary action to recover the incorrectly paid benefits.


Meghan Davey, Director
Division of Medical Assistance
and Health Services