



The matter arises regarding the denial of Petitioner's second Medicaid application due to questions about her residency. Petitioner has a home in New Jersey but left to live with her daughter in Arizona over Christmas 2018. She had reapplied for Medicaid at that time and was seeking Long-Term Services and Supports (LTSS) benefits at a nursing facility (NF).

In order to receive LTSS services, Petitioner had to be found clinically eligible. The mechanism for this is a pre-admission screening (PAS) that is completed by "professional staff designated by the Department, based on a comprehensive needs assessment which demonstrates that the recipient requires, at a minimum, the basic NF services described in N.J.A.C. 8:85-2.2." N.J.A.C. 8:85-2.1(a). See also, N.J.S.A. 30:4D-17.10, et seq. As this assessment is done in-person, the applicant must be in New Jersey at the time of the assessment.

The Initial Decision reversed the denial by finding that Petitioner was a New Jersey resident. The issue is more that Petitioner decided to remain outside of New Jersey for "an indefinite period of time" for more than a temporary visit. While Ocean County's use of N.J.A.C. 10:71-3.7(b) to deny Petitioner's application may not be precise, the circumstances here are not really contemplated by the regulations. The regulation cited addresses beneficiaries who travel outside of New Jersey and remain there for an indefinite period of time. Petitioner was not a beneficiary but an applicant who was not present in New Jersey at the time of application and had no date of return. The family's desire to keep Petitioner in Arizona was a barrier to complete her application as an in-person clinical assessment was required. There was no concrete plan to have her return to New Jersey to complete the clinical assessment. Thus, she remained outside of the state for an indefinite time and prevented the completion of her Medicaid determination.

For the reasons that follow, I hereby REVERSE and REMAND the matter to OAL for further testimony and production of documents. I note that Ocean County sought to

adjourn the August 16, 2019 hearing so as to have witnesses present. ID at 2. That request was denied. As such Ocean County was unable to present witnesses that it asserted in exceptions would contradict the daughter's testimony and certification. As the certification forms the basis of the Initial Decision, Ocean County should have been allowed to present the employee the daughter alleged she spoke with. On remand, both Ocean County and Petitioner should present witnesses to explain these conversations.

It is unclear what remedy Petitioner is seeking. She applied for LTSS benefits which can only be provided after a clinical assessment is performed.<sup>1</sup> Medicaid eligibility cannot be granted until the earliest date that both clinical and financial eligibility are established. In this case the clinical eligibility was established July 1, 2019 and Medicaid benefits were opened with the imposition of a transfer penalty.

There is no evidence in the record that Petitioner was present in New Jersey when OCCO sought to assess her in January of 2019 or that she returned to New Jersey prior to the July 2019 assessment by OCCO. Petitioner has appealed the subsequent October 1, 2019 determination that Petitioner was eligible as of July 1, 2019 and subject to a penalty period.<sup>2</sup> That appeal is pending under OAL docket HMA 14994-2019. That appeal only objected to the imposition of the penalty but not the July 1, 2019 eligibility date set by OCCO and used by Ocean County. Significantly, the June 14, 2019 certification by the POA omits any mention of Petitioner's current whereabouts or that Petitioner had returned to New Jersey.

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<sup>1</sup> It is also unclear if Petitioner's income required a finding of clinical eligibility to permit Ocean County to use the special income levels which permits states to cover those over 100% and up to 300% of the SSI federal benefit rate. 42 U.S.C. §1396a(a)(10)(A)(ii) (V) See also 42 C.F.R. § 435.1005. The record only shows her self-reported Social Security income which is close to the 2019 income limit. Until the clinical assessment is completed, Petitioner might not have established financial eligibility.

<sup>2</sup> The record shows that Ocean County had determined that Petitioner had transferred assets for less than fair market value in 2018 and 2019 including the transfer of her home as well as the establishment of a trust. R-1 and R-4. Transfer penalties can only begin when the individual is eligible for medical assistance and would be receiving institutional level of services but for the penalty period. See 42 U.S.C.A. § 1396p(c)(1)(D)(ii). With Petitioner outside of New Jersey her clinical assessment could not be performed and her eligibility date to start the penalty was in limbo.

Under a cover letter dated July 22, 2019, Petitioner's attorney filed a new application seeking May 1, 2019 eligibility and stating that she needed to "be assessed by OCCO immediately as she has been accepted into a Nursing Home."<sup>3</sup> The letter does not state whether Petitioner was in New Jersey or residing in a New Jersey facility as of the date of the letter.

The exceptions filed by Ocean County point out the disparity between Petitioner's daughter's certification and testimony and the recognized roles of the CWA and OCCO. Contrary to the testimony, Petitioner was never approved for Medicaid under the application filed in December 2018 as both the clinical and financial determinations must be completed. ID at 4. Nor would Julie Ibrahim, an Ocean County employee, have "called to schedule Petitioner's Medicaid physical assessment." That is OCCO's role. Moreover, the point of contact for the application was Maurice Giro, Esq. and Ocean County stated they reached out to his office when they learned Petitioner was in Arizona. By the time Ocean County denied the case, the application had been pending for three months and there is no indication that Petitioner was in New Jersey prior to the denial so a clinical assessment could be performed.

Thus, I hereby REVERSE and REMAND this matter to OAL for further findings directly related to Petitioner's presence in New Jersey prior to the July 2019 clinical assessment. Such findings should be supported by airline tickets or other proof of travel for Petitioner for her date of return to New Jersey. Petitioner should provide documentation that she made Ocean County or OCCO aware of her return. Likewise, Ocean County should be permitted to produce the witnesses it was denied due to the refusal to adjourn the August hearing date.

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<sup>3</sup> Nursing facilities are required to submit an LTC-2 form to the Office of Community Choice Options (OCCO) when a resident enters their facility and needs to have a clinical assessment performed. See N.J.A.C. 8:85-1.8 and N.J.A.C. 8:85-2.1. As such, the facility referenced in that letter was required to send a form when Petitioner entered the facility.

Additionally on remand, the record should be amended to include the two attachments cited in P-1 as well as the joint stipulation cited on page 7 of the Initial Decision. Neither the attachments nor the joint stipulation are in the case file.

THEREFORE, it is on this <sup>9<sup>th</sup></sup> day of JANUARY 2020,

ORDERED:

That the Initial Decision is hereby REVERSED; and

That the matter is REMANDED for further findings.



Jennifer Langer Jacobs, Assistant Commissioner  
Division of Medical Assistance  
and Health Services