



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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PHILIP D. MURPHY  
Governor

SHEILA Y. OLIVER  
Lt. Governor

CAROLE JOHNSON  
Commissioner

JENNIFER LANGER JACOBS  
Assistant Commissioner

STATE OF NEW JERSEY  
DEPARTMENT OF HUMAN SERVICES  
DIVISION OF MEDICAL ASSISTANCE  
AND HEALTH SERVICES

M.K.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE :

AND HEALTH SERVICES AND :

GLOUCESTER COUNTY BOARD OF :

SOCIAL SERVICES, :

RESPONDENTS. :

ADMINISTRATIVE ACTION

ORDER OF RETURN

OAL DKT. NO. HMA 00025-2020

As Assistant Commissioner of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision, the Settlement Agreement, the OAL case file and the documents filed below. Neither party filed exceptions in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is October 1, 2020 in accordance with an Order of Extension.

The matter arises regarding the imposition of a transfer penalty from January 1, 2020 through July 3, 2020. Petitioner does not contest that she is subject to a penalty for gifting \$65,181.93. Rather she seeks to have the penalty run while she receives annuity payments to cover the cost of her nursing home. The parties settled the matter stating "that the annuity checks that were issued to [the nursing home] in Oct-Dec 2019 will not be considered an overpayment or make the client ineligible for Medicaid during those months in exchanged for a fair hearing withdrawal from M.K.'s counsel." For the reason that follow, I hereby REJECT the settlement and RETURN the matter to Gloucester County for further review about the facts of the case and the issuance of a new outcome letter.

While the record is sparse, there is sufficient information to glean that Petitioner was receiving Medicaid benefits when she sold her home in September 2019. The process from the sale rendered her ineligible for benefits. Medicaid benefits continued to be paid on Petitioner's behalf until January 1, 2020. Petitioner, however, also paid the nursing home with the annuity income she procured in order to cover the transfer penalty as part of her Medicaid planning. That payment constituted a double payment to the nursing home which is prohibited. N.J.S.A. 30:4D-6c. Contrary to this prohibition, counsel for Petitioner created an accounting fiction with the nursing home to have the October, November and December annuity payments be held to apply to future bills in April, May and June 2020 that had not been incurred. See email dated February 24, 2020.

Rather as the Settlement Agreement correctly points out, the annuity payments the nursing home received rendered her ineligible for benefits. Gloucester County cannot ignore this. The scant record indicated that as of January 1, 2020, the annuity payments were still available to Petitioner so that eligibility could not commence that month to start the penalty. Gloucester County must review the case so as to start the penalty when

Petitioner met income and resource standards and render a new outcome letter.

Thus, I hereby REJECT the Settlement Agreement as it is inconsistent with law and RETURN the matter to Gloucester County for further action in accordance with this decision.

29th  
THEREFORE, it is on this day of SEPTEMBER 2020,

ORDERED:

That the Settlement Agreement is hereby REJECTED; and

That the matter is RETURNED to Gloucester County for further action and issuance of a new outcome letter.



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