State of New Jersey
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
PO BOX 712
TRENTON, NJ 08625-0712

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

JENNIFER VELEZ
Commissioner

VALERIE HARR
Director

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

A.B.,	
PETITIONER,	**ADMINISTRATIVE ACTION**
V.	**FINAL AGENCY DECISION**
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES & CAMDEN COUNTY BOARD OF SOCIAL SERVICES,	**OAL DKT. NO. HMA 965-2014**
RESPONDENTS.	

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this matter, consisting of the Initial Decision, the documents in evidence and the contents of the OAL case file. Both parties filed exceptions. Procedurally, the time period for the Agency Head to render a Final Agency Decision is August 21, 2014, in accordance with an Order of Extension.

This matter concerns Petitioner's eligibility date. At issue is one month. Camden County found that Petitioner was eligible for the Medically Needy

Program as of June 1, 2012. Petitioner is seeking a date of May 1, 2012 to start the penalty resulting from the transfer of $144,909.28. Petitioner also used $77,000 of her assets to purchase an annuity in March 2012 that paid her $7,007.11 for eleven months. This annuity was used to pay for Petitioner's nursing home care while she was penalized for the transfer.

Petitioner is seeking to have the transfer penalty run at the same time that the annuity purchased with her excess resource is paying her so as not to cause her any financial hardship during the penalty. This type of financial planning is called "half-a-loaf" where a Medicaid applicant gifts half of their assets while using the remaining half to pay for care during the transfer penalty. The Deficit Reduction Act of 2005 specifically sought to put an end to this planning by delaying the transfer penalty until the applicant was otherwise eligible for Medicaid. See N.M. v. Div. of Med. Assist. & Health Servs., 405 N.J. Super. 353. 362-63 (App. Div.), certif. denied, 199 N.J. 517 (2009) (explaining the Congressional intent behind the enactment of the DRA); see also Congressional Record: November 2, 2005 (House), 109th Congress (Representative Eric Cantor stating the DRA will allow us "to root out the asset transfer fraud that is going on ... which essentially allows those who could otherwise afford to pay for their health care services to become wards of the State"); Opening Statement of Senator Grassley, Chairman, Senate Finance Committee, Budget Hearing with Secretary Michael Leavitt, February 9, 2005 (stating "the DRA will ensure that ... elder law attorneys no longer exploit loopholes to get people with means onto Medicaid."). Under these rules, the applicant would have to meet the Medicaid eligibility standard before the penalty would begin. In that light, the annuity scenario was created wherein the applicant would outright transfer a portion of the assets and then purchase an annuity that would generate an income stream to pay the private pay rate while the penalty ran.

In a well-reasoned decision, the ALJ determined that, after a few errors, Camden County arrived at the correct conclusion that Petitioner was eligible as of June 1, 2012 and was subject to a penalty due to a transfer of $144,909.28 to her family members that resulted in a penalty period of 18 months and 20 days that ended on December 20, 2013. Petitioner is currently receiving Medicaid benefits.

Petitioner's exceptions argue that the eligibility date of June 1, 2012 is based on her resources.[1] She argues that since her resources were under $4,000 for May 2012 she was eligible for that month. However, Petitioner is confusing the resource standard with meeting the spenddown of her income under the Medically Needy Program. Any income received during the month is counted for eligibility purposes. See also 20 C.F.R. § 416.1123 "We count unearned income at the earliest of the following points: when you receive it or when it is credited to your account or set aside for your use. We determine your unearned income for each month."

Petitioner's monthly income of $8,989.37 is based on the various benefit and annuity checks she receives during the entire month. Receiving the annuity check after the first of the month is well above the income limit for institutional care which was $2,094 in 2012. See http://www.medicaid.gov/Medicaid-CHIP-ProgramInformation/ByTopics/Financing-and-Reimbursement/Downloads/SSI-

[1] Petitioner's exceptions do not address the other arguments she made at the hearing such as the amount of the penalty, claiming the eligibility date was in retaliation for a federal law suit and that she is entitled to a hardship waiver. Those issues were addressed and dismissed by the ALJ.

SpouseImpovStandards.pdf. Petitioner's only path to eligibility is to establish that her medical bills reduced her income. However, there is simply no bill to apply to her $8,989.37 in income to create eligibility for May 2012.

The Medically Needy Program is premised on using unpaid medical bills to reduce income to establish eligibility. N.J.A.C. 10:70-6.2. As Medically Needy sets payment for long term care "on the day following the day that spend down is met," absent a bill that could be used for spend down or a services to be covered by Medicaid, she is not otherwise eligible for benefits. See Medicaid Communication No. 95-11 Instructions at 4. Since a transfer penalty can only begin when Petitioner is otherwise eligibility for benefits, absent a service that could be covered by Medicaid, the transfer penalty cannot begin. In May 2012 she had no nursing home bills to reduce her income and, thus, no Medicaid eligibility. R-2.

Putting aside the transfer penalty, if Petitioner had applied for benefits with income of $8,989.37 the same result would apply as she had no unpaid medical bill to reduce her exorbitant monthly income and permit Medicaid eligibility as of a certain date. With eligibility being set as the day after spend down is met, Petitioner has not demonstrated that she had a medical bill that would reduce her income and render her eligible for Medically Needy benefits for any day in May 2012. N.J.A.C. 10:70-6.1(b)2.

Thus, as explained above and for the reason set forth in the Initial Decision, I hereby ADOPT the Initial Decision upholding the eligibility date and the assessment of the transfer penalty.

THEREFORE, it is on this 18th day of AUGUST 2014

ORDERED:

That the Initial Decision in this matter is hereby ADOPTED

Valerie Harr

Valerie Harr, Director
Division of Medical Assistance
and Health Services