



State of New Jersey
 DEPARTMENT OF HUMAN SERVICES
 DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
 PO Box 712
 TRENTON NJ 08625-0712
 TELEPHONE 1-800-356-1561

JON S. CORZINE
Governor

JENNIFER VELEZ
Commissioner
JOHN R. GUHL
Director

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

G.L.,	:	
	:	
PETITIONER,	:	ADMINISTRATIVE ACTION
	:	
v.	:	FINAL AGENCY DECISION
	:	
DIVISION OF MEDICAL ASSISTANCE	:	OAL DKT. NO. HMA 5080-08
	:	
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 motions filed below. Both parties filed exceptions. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is October 23, 2008, in accordance with an Order of Extension.

At issue is whether a promissory note made by G.L. and her son for \$86,000 is a transfer for less than fair market value. G.L. receives monthly

payments of over \$7,000 for 12 months. The ALJ found that the note met the provisions of the Deficit Reduction Act of 2005 and was not a transfer for less than fair market value. The ALJ also found that the note cannot be sold on the open market.

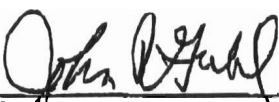
Having reviewed the terms of the note, I concur that it meets the requirements of the DRA regarding a transfer of assets. I FIND that there is no competent evidence that the note cannot be sold on the "open market." A finding of fact based on hearsay – a sentence in a brief relating statements made to Petitioner's attorney by a third party - must be supported by competent evidence. N.J.A.C. 17:1-15.5(b), the **residuum rule**, requires "some legally competent evidence" to exist "to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness." No such evidence was presented in this matter.

THEREFORE, it is on this ^{23rd} day of OCTOBER 2008,

ORDERED:

That the Initial Decision is hereby ADOPTED in so far as the promissory note meets the terms of the DRA regarding transfers of assets; and

That the Initial Decision is REVERSED in its finding regarding the whether the note can be purchased.



John R. Guhl, Director
Division of Medical Assistance
and Health Services