



**State of New Jersey**

OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. HMA 05980-07

AGENCY DKT. NO. 1610037826

A.N.,

Petitioner,

v.

**DIVISION OF MEDICAL ASSISTANCE  
AND HEALTH SERVICES & PASSAIC  
COUNTY BOARD OF SOCIAL SERVICES,**

Respondents.

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**Donald D. Vanarelli, Esq., for petitioner**

**Bruce Murray, Institutional Medicaid Supervisor and Mark Steven, Medicaid Administrator, for respondent Passaic County Board of Social Services**

**Division of Medical Assistance and Health Services, respondent, appearing pursuant to N.J.A.C. 1:1-5.6(a)**

Record Closed: August 6, 2007

Decided: August 16, 2007

**BEFORE JAMES A. GERAGHTY, ALJ:**

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

Petitioner A.N. contests the DMAHS and Passaic County Board of Social Services ("agency") May 25, 2007 denial of his application for institutional Medicaid due to his failure to prove that his son, T.N., was his primary caregiver during the two years prior to the date A.N. became institutionalized. (Exhibits P-10) He requested a hearing through counsel on June 6, 2007. The matter was transmitted to the Office of Administrative Law ("OAL") on July 15, 2007. A hearing was held August 6, 2007 and the record closed that day.

**STATEMENT OF THE ISSUES**

The issue is whether petitioner's residence, which he transferred by gift to his son T.N. is excluded from his resources pursuant to N.J.A.C. 10:71-4.1 for purposes of Medicaid eligibility.

**STATEMENT OF FACTS**

Based on the testimony and documentary evidence of record, I FIND the uncontradicted facts to be as follows:

Since August 2006, petitioner A.N. resided at the Daughters of Miriam Nursing & Rehabilitation Center in Clifton, New Jersey. (Exhibits P-1, P-2). His application for institutional Medicaid was denied because of excess resources. Specifically, on January 15, 2007, he transferred title to his residence to his son T.N. who had been living with him. (Exhibit P-3). Petitioner claims that the transfer qualifies for an exclusion from his resources for Medicaid purposes under what is characterized as the Caregiver Child Exception. To qualify, the "child" must have resided with the applicant for at least two years before the latter became institutionalized. During that time the applicant must have needed institutional level medical care and must have received it from the caregiver child. In this case, the two-year period is September 2004 through

September 2006. A.N. deceased July 16, 2007. Nevertheless, petitioner's claim is being pursued by his estate.

At the OAL hearing, T.N., and his brother A.N. testified on behalf of their father's estate. T.N. testified that he lived with his father A.N. at the family residence on Sixth Avenue in Clifton, New Jersey since 1964. Petitioner A.N. was employed by a public utility retiring in 1976. He did not have a primary care physician and T.N. brought him to what were rare doctor appointments. (Collective Exhibits P-9). During his retirement A.N.'s physical and mental health declined. He became wheelchair bound after his knees deteriorated. (Exhibit P-8). After A.N.'s spouse passed away in 1980, T.N. became his primary caregiver, occasionally assisted by his brother A.N. who did not reside with them.

T.N. assisted his father with activities of daily living as A.N. became less capable of self care. T.N. prepared meals, shopped, cleaned house, did errands, and obtained as well as administered medications. He made and received phone calls on his father's behalf as the latter suffered hearing loss. T.N. also retrofitted the home to accommodate his father by installing grip bars, ramps for a wheelchair, and lower-level shelving. T.N. furnished these services and rendered such assistance during the two-year period prior to his father's entering Daughters of Miriam permanently. A.N. was completely incapable of self care and had to rely entirely on T.N. and, to a lesser extent, on his other son A.N. to avoid institutionalization.

T.N. worked full time and had only his brother to assist him when needed. Petitioner A.N. had no healthcare aide.

During 2005 and again in 2006, A.N. began to suffer chronic head pain. He was hospitalized at St. Joseph's Regional Medical Center and then sent to Daughters of Miriam for rehabilitation although the source of the head pain was never definitely diagnosed. (Exhibit P-4, P-5, and P-6). While at rehabilitation he suffered a fall and needed again to be hospitalized. (Exhibit P-7). After this event he was returned to Daughters of Miriam, not for rehabilitation, but for custodial care.

A.N. had been confined to a wheelchair for seven or eight years before his permanent admittance at Daughters of Miriam. He was unable to stand because the cartilage in his knees deteriorated. He never had surgery.

T.N. monitored and administered his father's medications more than once a day the entire two-year period before A.N. was institutionalized. During this time he needed to assist his father at the toilet until he became incontinent in 2006 needing adult diapers. T.N. changed the diapers and cleaned his father.

A.N., brother of T.N. confirmed his brother's testimony and testified that his father A.N. suffered from senile dementia and Alzheimer's disease. His father did not like and rarely visited doctors because of various unsatisfactory experiences over the years.

By letter of July 30, 2007, petitioner's counsel verified these facts to the agency. (Exhibit P-11). T.N. also submitted a certification that A.N. did not have a regular physician. (Exhibit P-12).

#### FINDINGS OF FACT

Based on the testimony and documentary exhibits, I FIND:

1. T.N., son of ninety-two years old petitioner A.N. lived with his father at the family residence for more than two years before his father was institutionalized at the Daughters of Miriam Nursing Home in Clifton, New Jersey in August 2006.
2. Before being institutionalized, A.N. transferred ownership of the family residence in which he and his son T.N. had been living to T.N.

3. During the two-year period in question, A.N. suffered from senile dementia, was confined to a wheelchair, and was incapable of self care.
4. From September 2004 through September 2006, T.N. was the primary caregiver to his father. He monitored and administered his father's medication, brought him to and from doctors' appointments, dressed and groomed his father, assisted him at the toilet, and later when his father became incontinent, changed his adult diapers. T.N. prepared his father's meals and retrofitted the home to facilitate his disabilities and to provide for his safety.
5. Without the care provided by T.N. to A.N. from September 2004 through September 2006, A.N. would not have been able to remain in the community since he was incapable of self care.
6. A.N. did not have a regular attending physician in the two-year period prior to his admittance into a nursing home, and his counsel was unable to obtain reports from those who did attend him during that time.
7. The agency did not adduce evidence contradicting these findings.

#### LEGAL AUTHORITY AND ANALYSIS

Among the various Medicaid programs, a disabled person who does not seek a money payment may apply for the Medicaid Only program. N.J.A.C. 10:71-1.1, et seq. To qualify, a disabled person must live in the community and meet the requirements of the supplementary security income ("SSI") program. Id. at section 1.3. An institutionalized disabled person who does not qualify for SSI may be eligible for Medicaid Only. Ibid. For purposes of Medicaid Only, a disabled person:

(a) ... is unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months . . . .

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(b) A physical or mental impairment is an impairment which results from anatomical, physiological or psychological abnormalities which are demonstrable by medically acceptable clinic and laboratory diagnostic techniques . . . .

Id. at section 3.12.

There are income and resource limits. Id. at subchapters 4 and 5. Real property owned by the applicant would be a countable resource. Id. at section 4.1. An individual's principal residence is excludable from countable resources. Id. at section 4.4(b). The resource limit is \$2,000. Id. at section 4.5(c). An individual shall be ineligible for institutional level services through Medicaid if that person disposed of assets at less than fair market value within thirty-six months of becoming institutionalized or applying for Medicaid as an institutionalized individual unless the transfer was of the individual's principal residence, and title was transferred to:

A son . . . of the institutionalized individual . . . who was residing in the individual's home for a period of at least two years immediately before the date the individual becomes an institutionalized individual and who has provided care to such individual which permitted the individual to reside at home rather than in an institution or facility.

- I. The care provided by the individual son or daughter for the purpose of the subchapter shall have exceeded normal personal support activities (for example, routine transportation and shopping). The

individual's physical or mental condition shall have been such as to require special attention and care. The care provided by the son or daughter shall have been essential to the health and safety of the individual and shall have consisted of activities such as, but not limited to, supervision of medication, monitoring of nutritional status, and ensuring the safety of the individual.

Id. at section 4.10(d)4.

The undisputed facts as found above reveal that during the two-year period immediately preceding his application for Medicaid, petitioner A.N. suffered from dementia and knee joint immobility rendering him wheelchair bound and incapable of self care. During this time his son T.N. lived with him and became his principal caregiver at a level exceeding normal personal support. T.N. administered his father's medication, prepared his meals and otherwise saw to his nutritional needs, maintained his principal residence, and modified it to accommodate his father's wheelchair and to guarantee his safety. It is clear that T.N.'s care was essential to allow A.N. to remain at home in the community. Otherwise, institutionalization would have been necessary.

### CONCLUSIONS

Based on the foregoing findings of fact and legal authority, I CONCLUDE that the totality of the circumstances establish that A.N. qualified for the child caregiver exception to the countable resource requirements for Medicaid Only institutional benefits, and therefore, I further CONCLUDE that the value of the residence transferred by A.N. to his son T.N. is not an includable resource for Medicaid purposes.

### DISPOSITION AND ORDER

Based on the foregoing findings of fact and conclusions of law, I decide this matter in favor of petitioner and ORDER that the agency reevaluate petitioner's Medicaid Only eligibility excluding the value of his principal residence in Clifton, New Jersey from countable resources.

I hereby FILE my initial decision with the DIRECTOR OF THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES for consideration.

This recommended decision may be adopted, modified or rejected by the DIRECTOR OF THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES, the designee of the Commissioner of the Department of Human Services, who by law is authorized to make a final decision in this matter. If the Director of the Division of Medical Assistance and Health Services does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within seven days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the DIRECTOR OF THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES, Mail Code #3, PO Box 712, Trenton, New Jersey 08625-0712, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

8/16/2007  
DATE

Date Received at Agency:

AUG 22 2007  
DATE

pb/tbj

James A. Geraghty  
JAMES A. GERAGHTY, ALJ

8-22-07

Mailed to Parties:

James A. Geraghty  
DIRECTOR AND  
COUNSEL ADMINISTRATIVE LAW JUDGE  
OFFICE OF ADMINISTRATIVE LAW

APPENDIX

Witnesses

For Petitioner:

T.N. petitioner's son

A.N. petitioner's son

For Respondent:

Bruce Murray Institutional Medical Supervisor

Exhibits

For Petitioner:

P-1 Daughter's of Miriam letter

P-2 Admission Notice from nursing home

P-3 January 15, 2007 Quit Claim Deed A.N. to T.N.

P-4 Clinic Report September 13, 2005 regarding headaches

P-5 St. Joseph's Hospital August 3, 2006 pain assessment report

P-6 St. Joseph's Hospital November 4, 2206 Neurology Consultation Report

P-7 St. Joseph's Hospital August 4, 2006 report regarding fall

P-8 Hackensack University Medical Center June 18, 2003 knee replacement diagnosis

Collective P-9 Medical Reports April 9, 1987 through May 18, 2006

P-10 Medicaid Denial Notice

P-11 Attorney letter regarding petitioner's death and condition prior thereto

P-12 T.N. January 20, 2007 certification

For Respondent:

None.