



**State of New Jersey**

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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

A.N.,	:	
	:	
PETITIONER,	:	<b>ADMINISTRATIVE ACTION</b>
	:	
V.	:	<b>FINAL AGENCY DECISION</b>
	:	
DIVISION OF MEDICAL ASSISTANCE :	:	<b>OAL DKT. NO. HMA 5980-07</b>
AND HEALTH SERVICES &	:	
PASSAIC COUNTY BOARD OF	:	
SOCIAL SERVICES,	:	
	:	
RESPONDENTS.	:	

As Director of the Division of Medical Assistance and Health Services (DMAHS), I have reviewed the record in this case, including the OAL case file, the documents in evidence and the Initial Decision in this matter. **Passaic** County filed exceptions in this matter.

Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is October 8, 2007, in accordance with N.J.S.A. 52:14B-10

which requires an Agency Head to adopt, reject, or modify the Initial Decision within 45 days of receipt. The Initial Decision in this matter was received on August 23, 2007.

This matter arises from the imposition of a transfer penalty due to Petitioner's transfer of his home to his son. Petitioner claimed that the transfer was exempt from penalty under the caregiver exemption. N.J.A.C. 10:71-4.10(d). The ALJ found that A.N. "suffered from dementia and knee joint immobility rendering him wheelchair bound and incapable of self care."

Passaic County filed exceptions pointing out that there is little medical evidence and documentation as to the extent of Petitioner's condition. The County also raises the question of how Petitioner was able obtain medication that were administrated more than once a day for the past two years without being under the care of a physician. I agree that this raises doubt over Petitioner's ability to claim the caregiver exceptions. In addition, I have reviewed the record as presented by Petitioner and FIND that it fails to demonstrate that Petitioner needed institutional level care during the two years prior to the transfer much less that the care rendered by his son was to such an extent to avoid institutionalization.

There is simply no competent medical evidence to support the finding that Petitioner's condition was such that he needed institutional level care during the two years prior to the transfer and that the care rendered by his son was to such an extent to avoid institutionalization. There was no live testimony by any medical expert and the only written document is a hearsay letter prepared by a physician from the nursing home where Petitioner resided. That letter does not indicate what he is relying on to make the statements regarding Petitioner's past

medical history. The fact that as of the date of the letter, May 18, 2007, Petitioner has advanced dementia is not helpful to this case as the time in question is the prior two years. The letter is further flawed as it is hearsay being offered for expert testimony without any opportunity to voir dire or to cross-examine the physician.

Rather I FIND that the medical records run counter to Petitioner's claim that he suffered from dementia and Alzheimer's disease. When Petitioner was seen at St. Joseph's emergency department in August 2006, Petitioner "appear[ed] in no apparent distress, Behavior is cooperative, Lethargic. Neuro: Level of Consciousness is lethargic, obeys commands, Oriented to person, place . . ." (P-5). Later that same day the physician documentation states "Psych: Awake. Alert with orientation to person, place and time. Behavior, mood and affect are within normal limits." An hour later the chart notes "Neuro: Orientation; appropriate for stated age, to person, place & time. Mentation: appropriate for stated age." When he was discharged, past medical history was noted as Tic Douloureux, severe hard of hearing and "no other past medical history."<sup>1</sup>

A prior emergency room visit in June of 2003 also indicates that Petitioner was alert, awake and oriented to person, place and time and his mental status was "clear." (P-8). Indeed none of the medical records presented by Petitioner show any indication that he was not alert and oriented during his encounters. There is no notation that he was ever diagnosed with senile dementia during the two years prior to transferring the home or that his son or

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<sup>1</sup> In a letter dated July 30, 2007, Petitioner's attorney purports to attach a medical record from St. Joseph's Hospital dated August 25, 2006 with a discharged date of September 5, 2006 stating that Petitioner suffered from dementia and Alzheimer's disease. No such document is contained in the record nor is there any Exhibit listed in the Appendix to the Initial Decision that comports with those dates. Rather the medical records show that Petitioner was found to be oriented to person, place and time as far back as 2003.

sons ever reported it during his medical visits. See P-5. I FIND that as of the month before Petitioner entered the nursing home, neither the emergency room nurse nor the emergency room physician documented any neurological difficulties. (P-5).

Significantly, during the time in question T.N. worked full time. (ID at 5). The record is silent on whether care was needed during those hours and who rendered it. If Petitioner was left alone for 8 or more hours a day, five days a week, there is no basis to find that he needed nursing home level of care. T.N. also claims A.N. was incontinent yet this information does not appear anywhere on the hospital or medical charts. It also begs the question, if he was in fact incontinent, how A.N. was left alone during the days T.N. worked.

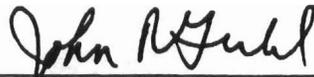
There is no doubt T.N. did provide care for his father, however, he has failed in his burden to demonstrate with competent evidence that Petitioner's physical or mental condition was such to have required special attention and care and that such care permitted Petitioner to reside at home rather than an institution for at least two years immediately prior to the date he became institutionalized. N.J.A.C. 10:71-4.10(d)4. See also 42 U.S.C.A. sec 1396p(c)(2)(a)(iv). I FIND the record before me does not support that Petitioner's condition was as alleged or that his condition required care that exceeded normal personal support activities during the relevant time period. Thus, I FIND that the transfer of Petitioner's house to T.N. does not meet the caregiver exemption.

THEREFORE, it is on this 4<sup>th</sup> day of OCTOBER 2007

ORDERED:

That the Initial Decision is hereby REVERSED for the reasons stated above;

That Passaic County shall determine and impose the penalty period for the transfer of the home.



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John R. Guhl  
Division of Medical Assistance  
and Health Services