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State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

THE KAY LAW FIRM LLC

CHRIS CHRISTIE
Governor

P.O. Box 712
Trenton, NJ 08625-0712

ELIZABETH CONNOLLY
Acting Commissioner

KIM GUADAGNO
Lt. Governor

VALERIE HARR
Director

March 20, 2015

Stephanie M. Kay, Esq.
The Kay Law Firm
608 Sherwood Parkway
Mountainside, NJ 07092

Re: FINAL AGENCY DECISION

Minna Yeskin
OAL Dkt. No. HMA 5391-2014

Dear Counsel:

Enclosed is the Final Agency Decision rendered in the above-captioned matter.

If you are dissatisfied with the decision, you have the right to seek judicial review by the Appellate Division, Superior Court of New Jersey, Richard J. Hughes Complex, P.O. Box 006, Trenton, New Jersey 08625. A request for judicial review must be initiated within 45 days from the date of receipt of the decision.

Yours very truly,

Meredith Van Pelt, Esq.
Office of Legal and Regulatory
Liaison/DMAHS

MVP:go
Enclosure

C: Donna Firca, FHL



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

M.Y.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

& HEALTH SERVICES &

UNION COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 5391-2014

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 documents filed below. No exceptions were filed in this matter. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is March 19, 2015.

Petitioner was found eligible for Medicaid benefits as of February 1, 2011.

~~However, she was found to have transferred funds totaling \$246,371.62 which resulted~~

in a 33 month and 25 day penalty ending November 26, 2013. The transferred funds are from an inheritance from her late sister, whose estate was administered by Petitioner's late husband due to her mental incapacity. In a prior fair hearing under docket number HMA 281-2012 it was determined that Petitioner failed to rebut the presumption that the assets were transferred to qualify for Medicaid. The matter was remanded to Union County to make a determination on the request for an undue hardship waiver. N.J.A.C. 10:71-4.10(q). Union County denied the hardship waiver.

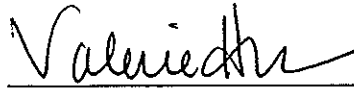
N.J.A.C. 10:71-4.10q(1)(i) provides that undue hardship exists when a transfer penalty "would deprive the applicant/beneficiary of medical care such that his or her health or his or her life would be endangered" and when "the transferred assets are beyond his or her control and that the assets cannot be recovered. The applicant/beneficiary shall demonstrate that he or she made good faith efforts, including exhaustion of remedies available at law or in equity, to recover the assets transferred."

I have reviewed the record and the facts of this case and FIND that due to the unique circumstances presented by Petitioner that a waiver of the transfer penalty is warranted. It was alleged Petitioner's husband had gambled it away. While his testimony demonstrated he was a life-long gambler, he could not verify that these funds were used in such a manner. The testimony by Petitioner's late husband and her son indicated that Petitioner had no control over the family finances and relied on her husband to make decisions both before and after becoming incompetent. Thus, due to the unique circumstances of this case I ADOPT the Initial Decision's finding that Petitioner warrants a waiver of the transfer penalty.

THEREFORE, it is on this 19th day of MARCH 2015

ORDERED:

That the Initial Decision is hereby ADOPTED.



Valerie Harr, Director
Division of Medical Assistance
and Health Services