



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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Acting Commissioner

KIM GUADAGNO
Lt. Governor

MEGHAN DAVEY
Director

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

B.K.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

MONMOUTH COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 18569-2016

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 Decision is June 9, 2017, 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 was received on April 25, 2017.

The matter arises regarding the denial of Petitioner's Medicaid application due to excess resources. Petitioner applied for Medicaid benefits in October 2016. She had entered an assisted living facility in June 2016. As a condition of entry, Petitioner signed a contract which required that she pay privately for services until May 31, 2018. The contract warns that the facility will not accept Medicaid benefits for Petitioner until that time period had elapsed. Nevertheless, Petitioner applied for Medicaid. Petitioner's home had been sold in August 2016 for approximately \$209,000. Her assets exceeded \$225,000 at that time. In October 2016, just prior to applying, Petitioner transferred \$173,238.04 out of the account, leaving a zero balance. ID at 3. Petitioner wishes to have Monmouth County find her otherwise eligible for Medicaid so as to run the transfer penalty while she is bound by the private pay contract.

The Initial Decision upheld the denial. In doing so, it was presumed that Petitioner "either has access to the transferred resources, or a third party will be using them, to satisfy her two-year contractual obligations to the facility." ID at 8. See Petitioner's brief at 4. Petitioner's argument that she would have been found eligible in the community conveniently omits the fact that she herself executed a contract to pay for two years. Rather the circumstances presented show that "her financial eligibility is a sham designed to have a Medicaid bed waiting for her when her transferred assets run out." ID at 8. Petitioner did not file exceptions to dispute this characterization of her transactions.

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.

Since the DRA, applicants and their advisors have sought to resurrect the “half-a-loaf” Medicaid scheme. Once such scheme was proffered with similar but more formal arrangements where some assets are transferred to family members to start a penalty period. The remaining assets were then transferred to a family member under the guise of a promissory note. The note would pay for the applicant’s care when the penalty was imposed. Those notes have been determined to be available resources for purposes of Medicaid. E.g., Sable v. Velez, No. 10--4647 (3rd Cir. July 12, 2011), Wesner v. Velez, 2010 169674 (D.N.J. 2010), F.P. v. DMAHS and Ocean County, OAL DKT. NO. HMA 2081-10, A.W. v. DMAHS and Union County, OAL DKT. NO. HMA 9286-09. The Initial Decision surmises that Petitioner “either has access to the transferred resources, or a third party will be using them, to satisfy her two-year contractual obligation to the facility, particularly as no other guarantor is noted in the contract as having accepted the obligation to pay the facility.” ID at 8. Petitioner has no interest in having Medicaid pay

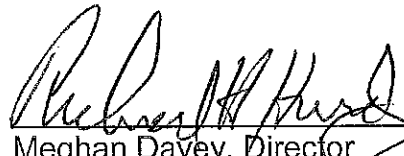

at the present time as she has no medical bills that Medicaid could pay if she had not transferred the funds. <sup>1</sup>

Based on my review of the record, I ADOPT the Initial Decision. The Initial Decision concurred that Monmouth County had correctly assessed the situation and denied Petitioner's Medicaid application.

THEREFORE, it is on this <sup>5<sup>th</sup></sup> day of JUNE 2017,

ORDERED:

That the Initial Decision is hereby ADOPTED.

  
Richard H. Hurd, Chief of Staff for  
Meghan Davey, Director  
Division of Medical Assistance  
and Health Services  


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<sup>1</sup> Monmouth County indicated that Petitioner's total resources are in dispute as there are two other possible bank accounts that could be attributable to Petitioner. ID at 3, fn. 4. Those resources do not affect the denial but would be subject to review under a subsequent application.