



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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Commissioner

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Director

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

M.A.M.,	:	
	:	
PETITIONER,	:	ADMINISTRATIVE ACTION
	:	
v.	:	FINAL AGENCY DECISION
	:	
DIVISION OF MEDICAL ASSISTANCE	:	OAL DKT. NO. HMA 13089-2014
	:	
AND HEALTH SERVICES AND	:	
	:	
MORRIS 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 documents in evidence. Petitioner filed exceptions. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is March 6, 2015, 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 January 20, 2015.

M.A.M. filed an application for Medicaid in May 2013. She was found eligible as of April 1, 2013 with a penalty period of nine months and nineteen days.¹ Petitioner had been institutionalized since June 2012, first for rehabilitation following hospitalization for a fall and then for long term care in August 2012. As week after being admitted to the nursing home, Petitioner deeded her residence to her son while retaining a life estate interest. That deed contains a citation to N.J.A.C. 10:71-4.7(d)4, a Medicaid rule that exempts from penalty transfers of home to children who provided care to the institutionalized parent. Subsequently Petitioner's son used her assets, which in August 2012 were just under \$175,000, to pay for substantial renovations to the home. Morris County tallied these payments as well as other transfers and imposed a penalty for \$75,225.32.

Petitioner claims that the transfers for the home renovations were done so that she could return home. Her son testified that he was told that Petitioner "would need a caregiver" and set about doing renovations. ID at 3. However, the ALJ found that Petitioner's children failed to articulate a plan that would permit Petitioner to return home and how those renovations were designed to help Petitioner, who was wheelchair bound. ID at 4. For example, there was no explanation how the replacement of a double sink with a single sink was to help Petitioner. The grip handle in the tub was later "clarified" to be part of a soap dish built into the wall of the tub. Such a handle is attached by mortar and cannot be used as a grab bar to support handicapped individual in accessing a tub. See generally 2010 ADA Standards for Accessible Design http://www.ada.gov/regs2010/2010ADASTandards/2010ADASTandards_prt.pdf.

¹ Petitioner's penalty period ended on January 19, 2014. It is represented that she passed away January 31, 2014.

In exceptions Petitioner argued that the Initial Decision's findings that Petitioner's children could not reasonably believe that she would return home "flies in the face of their testimony that was absolutely contrary to that position." Exceptions at 4. However, Petitioner fails to either paraphrase or provide a transcript of the testimony she claims supports that conclusion. In contrast, the Initial Decision contains summaries of the testimony and explains that neither of Petitioner's children ever "talked to the medical or support staff [at the nursing home] about the possibility of" Petitioner returning home. ID at 5. Petitioner's son testified that the renovations were made for a third-party caregiver's room, a role that he had previously filled. However, there was no plan to obtain an aide and he did not know the cost or how the aide would be paid. Curiously, "he thought the cost would be borne by insurance, but did not really know." ID at 4.

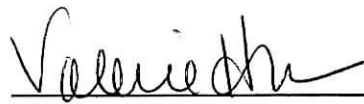
To that end, it appears that Medicaid planning was afoot since July 2012 when Randy Spector, D.O, Petitioner's physician, penned a "To Whom It May Concern" letter opining that if Petitioner's son "was not living at the home . . . for the past two years . . . [Petitioner] would not have been able to stay by herself." Petitioner's brief, Exhibit N. This attempts to mirror the two year requirement that would permit Petitioner to transfer her home to her son without incurring a penalty when she applied for Medicaid. N.J.A.C. 10:71-4.10(d)4. Moreover, when Petitioner transferred her home to her son a month later she included a reference to the Medicaid regulation that exempts transfers of the home to a caregiver child. It is a regulation that has no application to the transfer of real property unless the grantor is contemplating applying for Medicaid. The facts show that Petitioner was clearly positioning herself to obtain Medicaid benefits which requires a maximum resource limit of \$4,000, something Petitioner's daughter stated she became aware of in August 2012. ID at 5. As such I FIND the record supports the conclusion that the transfer of Petitioner's assets were done in contemplation of Medicaid.

Thus, for the reasons set forth in the Initial Decision and as amplified above, I hereby ADOPT the Initial Decision and FIND that Morris County properly found that Petitioner had transferred \$75,255.32 and imposed a penalty.

THEREFORE, it is on this 27 day of FEBRUARY 2015

ORDERED:

That the Initial Decision is hereby ADOPTED.



Valerie Harr, Director
Division of Medical Assistance
and Health Services