



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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VALERIE HARR
Director

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

M.M.,
PETITIONER,
V.
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES &
MONMOUTH COUNTY BOARD OF
SOCIAL SERVICES,
RESPONDENTS.
ADMINISTRATIVE ACTION
FINAL AGENCY DECISION
and ORDER OF RETURN
OAL DKT. NO. HMA 2915-2015

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this matter, consisting of the Initial Decision, the documents in evidence and the contents of the OAL case file. No exceptions were filed in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is September 24, 2015, in accordance with an Order of Extension.

This matter concerns the transfer of assets by Petitioner totaling \$97,301.42. Petitioner does not contest the penalty associated with \$46,293.91

in cash that was transferred. Rather she contested the transfer of \$51,007.51 that was associated with the extinguishment of her life estate.

Petitioner's husband died in November 2006. His will left a life estate in the marital home to Petitioner. That life estate was conditioned to end upon her death, remarriage or upon entering a nursing home. In March 2014 Petitioner's Power of Attorney filed for benefits. She had entered the nursing home on March 18, 2014. That application was denied in June 2014. See ID at 2, fn. 1. Another application was filed in August 2014 that was granted in February 2015 with an eligibility date of March 1, 2014 and a 310-day penalty.

For the reasons that follow I hereby ADOPT and REVERSE the Initial Decision and RETURN the matter to Monmouth County to recalculate the penalty and the start date.

First, I do not find any justification for the March 1, 2014 eligibility date. Petitioner's application that was filed that month was denied. The August 2014 application sets a new eligibility date of no earlier than August 1, 2014 with the potential for three months retroactive benefits. Retroactive benefits are only available when the applicant would have been financially eligible in the three months prior to the application or in this case May 2014. N.J.A.C. 10:49-2.9(b). The termination of Petitioner's first Medicaid application was not transmitted to the OAL and was not subject to appeal. Thus, that application and its March 2014 date is closed to Petitioner. To that end, I am RETURNING the matter to Monmouth County to correct the Medicaid eligibility date based on the circumstances of the August 2014 application.

However, I do concur with the ALJ that Petitioner never had fee simple interest in the property and her rights were limited through her husband's will.

Instead this case would be controlled by Petitioner's failure to elect against her husband's will. Surviving spouses must avail themselves of assets even when the decedent has sought to exclude access. N.J.A.C.10:71-4.10(a) and (b)3. To that end the failure to challenge a will that restricts access to the deceased spouse's assets is considered a transfer of assets. I.G. v. DMAHS 386 N.J. Super. 282 (App. Div. 2006).

As Petitioner's husband died in 2006, Petitioner's right to elect against his estate would have expired in 2007.¹ As that is outside the five year lookback, Petitioner's transfer of assets she was entitled to under N.J.S.A. 3B:8-10 is moot. Thus, I conclude that, under the unique facts of this case, the extinguishment of the life estate was not a transfer of assets and should not have been included in the penalty.

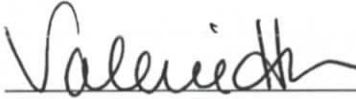
THEREFORE, it is on this ^{23rd} day of SEPTEMBER 2015

ORDERED:

That the Initial Decision in this matter is hereby ADOPTED with regard to Petitioner's life estate;

That Petitioner's Medicaid eligibility date of March 1, 2014 is REVERSED; and

That the matter is RETURNED to Monmouth County to calculate an eligibility date based on the August application and a penalty period as determined by this Final Agency Decision.



Valerie Harr, Director
Division of Medical Assistance
and Health Services

¹ There are other bequests including other real property owned by Petitioner's husband that would have affected the valuation of the estate. R-2.