



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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KIM GUADAGNO
Lt. Governor

ELIZABETH CONNOLLY
Acting Commissioner

VALERIE HARR
Director

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

W.S.,
PETITIONER,
v.
DIVISION OF MEDICAL ASSISTANCE
& HEALTH SERVICES,
RESPONDENT.
ADMINISTRATIVE ACTION
FINAL AGENCY DECISION
OAL DKT. NO. HMA 13126-2012

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 is July 27, 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 June 12, 2015.

Petitioner has applied for Medicaid benefits in March 2012. In August 2012, the application was denied due to excess resources. Specifically, Petitioner's ownership of a life insurance policy and three annuities set his resources at \$126,187.77. During the hearing process Petitioner was afforded the opportunity to present documentation relating to the annuities that would demonstrate that they could not liquidated or the income stream sold on a secondary market. Instead, the only document in the record was the first page of one of the annuity contracts that was not sufficient to support Petitioner's allegations. P-4.

The Initial Decision upheld the denial by finding that Petitioner had failed to provide sufficient information regarding the availability of the annuities. A resource is "available" when the person has the right, authority, or power to liquidate the resource or the person's share of it. N.J.A.C. 10:71-4.1(c). Mistrick v. Division of Medical Assistance and Health Services 154 N.J. 158, 176 (1998). The burden of proving unavailability is on the applicant. Ibid. The Appellate Division has held that the annuity owned by a community spouse was an available resource and was properly included in the eligibility determination. See N.M. v. DMAHS and Monmouth County Board of Social Services, 405 N.J. Super. 353 (2009), cert. den. 2009 N.J. LEXIS 572 (N.J., May 19, 2009). The annuity company provided information that each annuity had a cash surrender value of \$41,862.04. R-2. Petitioner's contention that the annuities are not available is not supported by the record.

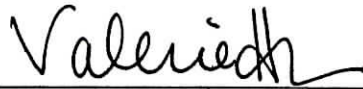
Moreover, even if Petitioner's annuities could not be considered a resource, Petitioner's Medicaid eligibility is stymied by the fact that his Social Security income of \$1,744 and monthly annuity payments totaling \$315 would render him income ineligible for Medicaid.

Thus, I hereby ADOPT the Initial Decision which upheld the denial of  
Petitioner's Medicaid application.

THEREFORE, it is on this <sup>17<sup>th</sup></sup> day of JULY 2015

ORDERED:

That the Initial Decision is hereby ADOPTED.



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Valerie Harr, Director  
Division of Medical Assistance  
and Health Services