



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

P.C.,
PETITIONER,
v.
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES AND
MIDDLESEX COUNTY BOARD OF
SOCIAL SERVICES,
RESPONDENTS.
ADMINISTRATIVE ACTION
FINAL AGENCY DECISION
OAL DKT. NO. HMA 11293-2015

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 February 22, 2016 in accordance with an Order of Extension.

The matter arises regarding Petitioner's Medicaid eligibility date. Petitioner resided in an assisted living (AL) facility since 2009. She applied for benefits in April 2014 with the assistance of an elder care company. That application was denied on

August 2, 2014 for failure to provide information. R-1. At that time individuals with gross income above \$2,163 or 300% of the 2014 SSI Federal Benefit Rate (FBR) were not eligible for Medicaid if residing in an AL facility. Since Petitioner's monthly income is in excess of \$3,000, Medicaid eligibility could only be established if she resided in a nursing facility under the Medically Needy Program. The Medically Needy program provides health care coverage to certain groups of medically needy persons whose income and/or resources exceed the standards for the regular Medicaid program by spending down excess income on covered medical services. See N.J.A.C. 10:70-1.1. The Medically Needy program only covers certain services. See N.J.S.A. 30:4D-3i(8).

As of December 1, 2014, New Jersey received federal authority to cease covering nursing home services under Medically Needy and permit applicants, who needed institutional level of care in a nursing facility, an AL facility or home and had income in excess of \$2,163 to place the excess income in a Qualified Income Trust (QIT), also known as a Miller Trust, and obtain Medicaid benefits. See 42 U.S.C. § 1396p(d)(4)(B). Simply put, federal law permits income placed in a QIT to be excluded when determining financial eligibility for Medicaid for those at an institutional level of care. Prior to the December 1, 2014 effective date that permitted the use of QITs in New Jersey, Petitioner was not eligible for Medicaid benefits as her income exceeded the \$2,163 limit for those living in an AL facility. Petitioner remained in the AL facility until January 2015 when she moved into a nursing facility.

The documents in the record are clear that when Petitioner entered the nursing home in January 2015 the Medically Needy Program, which permitted eligibility without the need for a QIT, had ceased covering nursing home services. DMAHS had provided public information in the months leading up to this change, including setting up a

dedicated email address for questions. Medicaid Communication No. 14-15 (dated December 19, 2014). Additional information, including Frequently Asked Questions (FAQs), information about opening a QIT bank account and a QIT template, were originally posted to the DMAHS website in October 2014. See <http://www.state.nj.us/humanservices/dmahs/clients/mtrusts.html>. Moreover, Petitioner's nursing home produced a document issued in December 2014 by Health Care Association of New Jersey, the professional association for nursing homes, that gave advice on QITs. That document clearly states that "a resident whose effective date of Medicaid eligibility is December 1, 2014 or later and whose income is in excess of the Medicaid Only Cap will be required to establish a Qualified Income Trust in order to become Medicaid eligible." P-1. Petitioner had no Medicaid effective date prior to December 1, 2014. She resided in an AL facility until January 2015. Her high income prevented her from establishing Medicaid eligibility in that facility until December 1, 2014 and only after she established a QIT.

In producing the documents for the hearing, the nursing home highlighted the next section of the Association's guidance that states that "a resident whose initial eligibility date will be retroactively effective prior to December 1, 2014 will to be [sic] reviewed for financial eligibility as Medically Needy." P-1. Petitioner sought an eligibility date of January 1, 2015, the first month she resided in a nursing facility. In order to have a Medicaid eligibility date prior to December 1, 2014, Petitioner would have had to be residing in a nursing facility before that date.

While I understand the allegations that Middlesex failed to inform Petitioner of the need for a QIT, there were multiple documents both on the DMAHS website and provided by the nursing home's own professional channels that clearly stated Petitioner

was required to have a QIT to establish eligibility on any date after December 1, 2014. See OPM v. Richmond, 496 U.S. 414; 110 S. Ct. 2465 (1990) (Erroneous advice from a governmental employee regarding benefits cannot estop the government from denying benefits not permitted by law). The requirement that Petitioner establish a QIT if she entered the nursing home after December 1, 2014 was apparent in the documents prepared and published by DMAHS and by the nursing home's professional association. Thus, I FIND that May 1, 2015 is the correct date for Petitioner's Medicaid eligibility.

I do note Petitioner may be entitled to a deduction for her Pre-Eligibility Medical Expenses (PEME) for non-reimbursable and necessary medical expenses that occurred in the three months prior to Medicaid eligibility. The nursing facility may complete the PEME Request Form and submit it to the Middlesex County Board of Social Services for consideration.

THEREFORE, it is on this ^{11th} day of FEBRUARY 2016,

ORDERED:

That the Initial Decision is hereby REVERSED; and

That Petitioner's eligibility date of May 1, 2015 stands.



Valerie Harr, Director
Division of Medical Assistance
and Health Services