

Petitioner, through her sister, applied for Medicaid benefits in July 2014 after entering the nursing home earlier that month.¹ Atlantic County found Petitioner eligible as of January 1, 2015 and granted the use of her income to pay her Pre-Eligibility Medical Expenses (PEME) at the nursing home for October, November and December 2014. At issue are funds belonging to Petitioner worth \$4,700 that made her resource ineligible prior to January 1, 2015. Petitioner's son and Power of Attorney requested the fair hearing.

The Initial Decision reversed the implicit denial of eligibility for July, August and September 2014, finding that had the son "known in September that the spend down was necessary, he could have prepaid the funeral at that time" and "once he knew the spend down was required, [the son] promptly disposed of the excess funds." ID at 4. The Initial Decision continued to find \$4,700 was inaccessible to Petitioner because they were in an "account [that] was situated in a bank in California, three thousand miles from New Jersey." ID at 5. Putting aside the fact that banking and financial transactions are done in a global marketplace, there is no doubt the funds belonged to Petitioner and were controlled by her Power of Attorney. As her son was empowered to act as her fiduciary, these funds were accessible to Petitioner rendering I.L. vs. DMAHS, 389 N.J. Super. 354 (2006) inapplicable.

Further, I do not find that the record supports the finding that Petitioner's son was unaware that her funds needed to be spent down.² In a letter dated September 9, 2014 Petitioner's son indicates that he was acting under advice from an attorney to move

¹ The record contains another Medicaid application dated April 2014 and signed by Petitioner's sister. There is no indication what became of that application but it does show acknowledgement of the resource limit some three months before the July 2014 application that is at issue here.

² Interestingly, the argument does not claim that Petitioner was unaware of the resource standard; just that the funds had to be spent down. See P-1. ("I understand that the balance in my mother's bank account was over the limit to receive the back benefits.").

Petitioner's funds back to her account and that he would use those funds to prepay for her funeral. P-1. However, he failed to use the funds in this regard until December 2015 which permitted the January 1, 2015 date.

There is no indication that the September 9, 2014 letter was received by Atlantic County on or around that date as it was attached to an email with nine .pdf files. Petitioner's son attempted to resend that email on September 22, 2014 to two different Atlantic County staff members and the email server refused to deliver the email. P-1.

For some reason, it is nearly two months later, on November 14, 2014, that Petitioner's sister calls Atlantic County and her son begins to correspond with the office regarding the application. In an email dated November 15, 2014 and received by Atlantic County, Petitioner's son states that Petitioner's sister told him that he needs to spend down below \$4,000. P-1. Atlantic County corrects him on the resource standard and tells him that Petitioner cannot have more than \$2,000 and that Medicaid will not pay the nursing home bill until her resources are at or below that amount. Yet, even after writing in September and again in November that he plans to spend down Petitioner's funds, Petitioner's resources remain above \$4,700 until December 2014.

While Atlantic County permitted additional time beyond the 45 days to process this case, the record shows that Petitioner's son was aware of the need to reduce his mother's assets since September 2014. As there are a number of ways to appropriately spend down excess resources, the counties cannot dictate financial advice to families on how to accomplish this. Atlantic County cautioned that the nursing home bill would not be covered and that this may be a prudent place to spend down the funds. Petitioner's son, however, followed the spend down he mentioned in the September 2014 email and used the funds to prepay a funeral as well as for a legal retainer.

Petitioner's argument that "the delay in the spend down resulted from the failure of the agency to advise her representative that a spend down was required" also fails. ID at 3. Petitioner's son implies he was aware in September 2014 that he needed to reduce her assets by suggesting purchasing a prepay burial. The fact that Atlantic County did not condone this course of action does not render Petitioner eligible. See Johnson v. Guhl, 357 F. 3d 403, 409-10 (3rd Cir. 2004) citing an 1868 Supreme Court case which held that "the Government could not be compelled to honor bills of exchange issued by a government official where there was no statutory authority for the issuance of the bills" and Gressley v. Califano, 609 F.2d 1265, 1267 (7th Cir.1979) in which the Seventh Circuit elaborated on the general rule, stating "[t]he government could scarcely function if it were bound by its employees' unauthorized representations. Where a party claims entitlement to benefits under federal statutes and lawfully promulgated regulations, that party must satisfy the requirements imposed by Congress. Even detrimental reliance on misinformation obtained from a seemingly authorized government agent will not excuse a failure to qualify for the benefits under the relevant statutes and regulations."

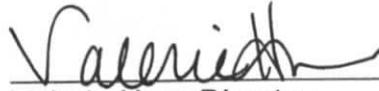
Thus, for the reason set forth above, I hereby REVERSE the Initial Decision and set Petitioner's eligibility date at January 1, 2015.

THEREFORE, it is on this ^{16th} day of SEPTEMBER 2015

ORDERED:

That the Initial Decision is hereby REVERSED; and

That Petitioner's eligibility date remains January 1, 2015.



Valerie Harr, Director
Division of Medical Assistance
and Health Services