



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

P.O. Box 712
Trenton, NJ 08625-0712

CHRIS CHRISTIE
Governor

ELIZABETH CONNOLLY
Acting Commissioner

KIM GUADAGNO
Lt. Governor

MEGHAN DAVEY
Director

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

P.R. :
PETITIONER, : ADMINISTRATIVE ACTION
V. : FINAL AGENCY DECISION
DIVISION OF MEDICAL ASSISTANCE : OAL DKT. NO. HMA 5481-2012
AND HEALTH SERVICES & :
HUNTERDON COUNTY BOARD OF :
SOCIAL SERVICES, :
RESPONDENTS. :

As Director of the Division of Medical Assistance and Health Services (DMAHS), I have reviewed the record in this case, including the OAL case file, the documents in evidence and the Initial Decision in this matter. No exceptions were filed in this matter. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is March 17, 2016, in accordance with an Order of Extension.

Petitioner was found eligible for benefits in March 2011. Hunterdon County identified her income to consist of Social Security, and two pensions. All told she receives \$3,753.37 in monthly income. In January 2011, Petitioner's mother established a Special Needs Trust and placed her two pensions \$1,885.67 into that account. Rather than use the income to contribute to her cost of care, Petitioner's sister and trustee used it for to repay her mother for care at a group home, pay for hired companions and pay legal fees that total over \$74,000. Petitioner is seeking to have these pensions be excluded from eligibility and diverted from paying her contribution to care under N.J.A.C. 10:70-6.2 and 42 CFR § 435.725.

I concur with the Initial Decision's finding that the pension payments here are not assignable as they are issued pursuant to the Employee Retirement Income Security Act of 1974 (ERISA). ERISA requires that "[e]ach pension plan shall provide that benefits provided under the plan may not be assigned or alienated." 29 U.S.C. § 1056(d)(1). Accord 26 U.S.C.A. § 401(a) and 26 C.F.R. § 1.401(a)-13(c)(1)(i),(ii).

Petitioner's pensions are correctly included in her eligibility and post-eligibility determinations.

Under the Medically Needy rules, an individual with income that exceeds the standard must spend down the excess income on allowable incurred medical expenses. N.J.A.C. 10:70-6.2. Such expenses must be "provided, prescribed, or recommended by a qualified and appropriately licensed medical practitioner" and must be "submitted with sufficiently detailed information and documentation to determine the allowableness of the expense." N.J.A.C. 10:70-6.2(a)2 and 3. Such documentation must include the date of the service, name of provider, the nature of the service, the name of the individual to

whom the service was provided, and the total amount of the bill.” N.J.A.C. 10:70-6.2(a)3. When an individual is in a nursing home, the nursing home bill is used to meet spend down.

Petitioner is seeking to have certain payments attributed to her spend down and to be diverted from her cost of care in the nursing home. There are three expenditures for which she is seeking such exclusionary treatment. First she is seeking to pay to two individuals, described as “privately hired personal care companions”, \$600 a month. ID at 11. She is also seeking \$250 a month for transportation to non-medical events as well as funds to repay her mother for expenses she incurred prior to becoming eligible for Medicaid benefits. ID at 3. The Initial Decision found that the latter two expenses are not medical and cannot be applied to her spend down liability.¹ I concur with that finding. However, I disagree that Initial Decision’s find that the companion services rise to the level of medical expenses.

As this case was decided pursuant to a motion for summary judgement, no testimony was presented. In support of these companion payments Petitioner produced an unsigned 17-page report from Brenda Holcomb, D.O. and a certification from her sister which were not subject to cross-examination. However, taking the documents for the truth of the matter asserted, the companions that Petitioner hired are unlicensed and uncertified to perform any tasks that could be considered “medical” in nature.

¹ The Initial Decision noted that Petitioner had not demonstrated that the transportation services were medically necessary. As Medicaid does pay for medically necessary transportation, any payments by Petitioner would supplant a covered service.

Petitioner's supplemental submission on August 4, 2014 states that there is no bill "as the caregivers we hired do not work through an agency." As there must be "sufficiently detailed information and documentation" the lack of billing, specificity or dates of services run afoul of N.J.A.C. 10:70-6.2. The third party descriptions of the companion services either show the payments were used to supplant services required to be performed by the nursing home or are truly social and not medical in nature.

For example, the report from Dr. Holcomb goes into great length about Petitioner's loss of weight and how the companions are needed to feed her. As Hunterdon County noted the nursing home is required to provide staffing to meet the resident's needs and specifically provide staff for those residents who need assistance with eating. See N.J.A.C. 8:39-17.3 and 8:39-17.4. To that end, the hired companions are supplanting a regulatory required and Medicaid covered nursing home service. See H.D. v. DMAHS and Bergen County Board of Social Services, OAL Dkt. No. HMA 11263-12, FAD signed March 13, 2013 and R.F. v. DMAHS and Mercer County Board of Social Services, OAL Dkt. No. HMA 8282-11, FAD signed December 14, 2011.

The other tasks performed by the individuals are merely companionship. Their tasks include talking to Petitioner, "tell[ing] her stories, listen[ing] to music with her, and entertain[ing] her" and doing "angel" readings with tarot cards. While there is no doubt these tasks make Petitioner happy, it cannot be said that they rise to the level of medical services.

Thus, I REVERSE the finding that that Petitioner is entitled to reduce her contribution to care and use \$600 a month to pay for companionship. As the Initial Decision affirmed the termination of Petitioner's benefits, Petitioner is no longer eligible

under the Medically Needy program. As a result, she must establish a Qualified Income Trust (QIT) should she wish to reapply for Medicaid benefits.²

Based on my review of the record and the applicable law, for the reasons set forth above, I hereby ADOPT the Initial Decision finding that the pension income is properly attributable to Petitioner to under eligibility and post-eligibility Medicaid rules. However, I REVERSE the finding that the companion services are medical services but find that they either supplant services already covered by Medicaid or are merely social tasks that cannot be used to reduce Petitioner's contribution to her nursing home care.

THEREFORE, it is on this 16th day of MARCH 2016

ORDERED:

That the Initial Decision is hereby ADOPTED in part; and

That the Initial Decision is hereby REVERSED in part.



Meghan Davey, Director
Division of Medical Assistance
and Health Services

² If a Medically Needy recipient changes their living arrangement (moving from a nursing facility to an assisted living or into the community) or fails to qualify through the Medically Needy program rules, they can no longer use the Medically Needy rules to retain eligibility. See www.state.nj.us/humanservices/dmahs/clients/QIT_FAQs.pdf