

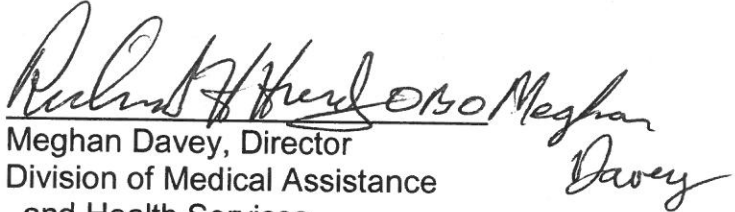
This matter arises from the imposition of a penalty period on Petitioner E.D.'s eligibility for Medicaid benefits by Respondent Ocean County Board of Social Services due to a transfer of resources. Through a Designated Authorized Representative (DAR), E.D. requested a fair hearing. The Administrative Law Judge (ALJ) was advised at the hearing that E.D. had died the month before. The ALJ was further advised that there were no assets in E.D.'s estate, that E.D.'s daughter had no personal financial obligation to the nursing facility that cared for her parent and that no letters testamentary or letters of administration had been or were going to be obtained. Based on these facts, the ALJ found that the DAR's authority to act on behalf of E.D. expired upon E.D.'s death. The ALJ noted that N.J. Court Rule 4:34-1 and case law allow for the substitution of a party to an action upon the death of that party. However, because letters testamentary or letters of administration had not been and were not going to be obtained, no one was or would be representing E.D.'s estate at the hearing. The ALJ therefore dismissed E.D.'s appeal. Finally, the ALJ stated that if the nursing facility wished to obtain letters as a creditor of E.D.'s estate, it could reapply to challenge the transfer penalty.

Based on my review of the record, I concur with the ALJ's conclusions that the authority of E.D.'s DAR to act on E.D.'s behalf expired upon E.D.'s death and that, because no one would be representing E.D.'s estate at the hearing, the appeal should be dismissed. However, I REVERSE the ALJ's conclusion that if the nursing facility were to obtain letters as a creditor of E.D.'s estate that it could reapply to challenge the transfer penalty. There is no statutory or regulatory authority to adjudicate disputes in this forum between private parties such as the dispute here between the nursing facility and E.D.'s estate as to the estate's financial obligations to the nursing facility.

THEREFORE, it is on this 4th day of SEPTEMBER 2018,

ORDERED:

That the Initial Decision is hereby ADOPTED in PART and REVERSED in PART; and
Petitioner's appeal is DISMISSED.


Meghan Davey, Director
Division of Medical Assistance
and Health Services