

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER Lt. Governor

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
PO Box 712
TRENTON, NJ 08625-0712

CAROLE JOHNSON Commissioner

MEGHAN DAVEY

Director

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

E.D.,

PETITIONER,

٧.

DIVISION OF MEDICAL ASSISTANCE:

AND HEALTH SERVICES AND

OCEAN COUNTY BOARD OF

SOCIAL SERVICES.

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 05284-2018

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Office of Administrative Law (OAL) case file and the Initial Decision. No Exceptions were filed. Procedurally, the time period for the Agency Head to file a Final Decision is September 10, 2018, in accordance with an Order of Extension. The Initial Decision was received on June 12, 2018.

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 χ^{χ} 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