



State of New Jersey
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Governor

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Carole Johnson
Commissioner

Meghan Davey
Director

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

ESTATE of L.P.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES,

RESPONDENT.

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ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 14673-17

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 in evidence. Both parties filed exceptions. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is October 15, 2018, in accordance with N.J.S.A. 52:14B-10 which requires an Agency Head to adopt, reject, or modify the Initial Decision within 45 days of receipt. The Initial Decision in this matter was received on August 30, 2018.

This matter concerns the lien placed on Petitioner's property to reimburse the State of New Jersey for \$132,755.39 in correctly paid benefits. N.J.S.A. 30:4D-7.2a. Petitioner's son and daughter claim that they were not aware that Medicaid would seek reimbursement from the estate, and that Petitioner's son believed that the estate would reimburse him for personal loans made to his mother while she was living. Petitioner also requested a waiver of the lien due to hardship. N.J.A.C. 10:49-14.1(h).

The Initial Decision determined that a lien for correctly paid benefits was properly placed on the property owned by Petitioner at the time of her death. N.J.S.A. 30:4D-7.2(a)(3). See also 42 U.S.C. § 1396p(b)(4)(b) and N.J.A.C. 10:49-14.1(1). Moreover, it is well settled that under federal and state law DMAHS must take "all necessary action to recover the cost of benefits correctly provided to a recipient from the estate of said recipient." Estate of DeMartino v. Division of Medical Assistance and Health Services, 373 N.J. Super. 210, 218 (App. Div. 2004), certif. denied, 182 N.J. 425 (2005)

The Initial Decision addressed the hardship waiver standard found at N.J.A.C. 10:49-14.1. The criteria for finding that the lien creates a hardship require a showing that the lien would exhaust the estate and if satisfaction of the lien would cause the heirs to seek public assistance themselves. That was not done here and the ALJ correctly found that Petitioner's family had not met the requirement.

In exceptions, Petitioner argued that they were not told that a Medicaid lien could attach to the Petitioner's property and therefore, their right to make an informed decision was taken away. However, the ALJ correctly points out that Petitioner's son and daughter both executed documents that explicitly states that Medicaid disbursements may be reimbursable to the State from the estate of the recipient. Petitioner also indirectly raised the argument that the lien on the home was improper

due to the caregiver exemption found in N.J.A.C. 10:71-4.7(d). That regulation permits a waiver of a penalty imposed for a transfer of assets that occurs prior to or after establishing Medicaid eligibility. Petitioner did not transfer the home to her son or daughter during her lifetime. As such, the caregiver exemption is inapplicable to this matter.

Thus, based on my review of the record and the facts in this case, I hereby ADOPT the Initial Decision in its entirety.

THEREFORE, it is on this ^{21st} day of SEPTEMBER 2018,

ORDERED:

That the Initial Decision is hereby ADOPTED.


Meghan Davey, Director
Division of Medical Assistance
and Health Services