



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
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Director

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

M.D.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES AND
MERCER COUNTY BOARD OF
SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 2730-2018

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in these consolidated cases, including the Initial Decision, the OAL case file and the documents filed below. Respondent filed exceptions in this matter. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is September 27, 2018 in accordance with an Order of Extension.

The matter arises regarding the recovery of \$371,777.46 in incorrectly paid benefits. Petitioner has been receiving Medicaid since October 2012. The application stated that Petitioner had no resources and no income. R-1. Petitioner signed the application as did her daughter. Her daughter provided additional information that she supported Petitioner. In the two subsequent redeterminations, it was again certified that she had neither income

certified that she had neither income nor resources. In September 2015 Petitioner disclosed she had a "PNA" or Personal Needs Account with around \$140 but no income. R-4. In August 2016 she reported the same amount of resources but no income. These two redeterminations were signed by an employee of the nursing home where she resided.

In October 2017, Petitioner was again residing with her daughter and disclosed for the first time that she had a Chase Bank account. R-4. At this point, Mercer County requested information about this previously undisclosed bank account. Petitioner's daughter responded as Power of Attorney and disclosed that Petitioner received a "\$250-300 pension in India account." R-10. This was the first time an Indian bank account was disclosed.

Mercer County determined that Petitioner's undisclosed Indian bank account had balances that exceeded the \$2,000 resource standard at the time she first applied, the account had a balance of \$13,421 and rose to \$17,432 in February 2015. All told, Petitioner's bank account exceeded \$2,000 from October 2012 through May 2017 and August 2017 through November 2017. Her Medicaid expenses for these months were \$371,777.46.

The Initial Decision determined that Petitioner's resources were unavailable to her from October 2012 through March 2015. Moreover, it was recommended that the overpayment be waived. Based upon my review of the record, I hereby REVERSE the Administrative Law Judge's recommended decision that the overpayment amount should be modified and then waived. I cannot agree with this based on the record. Petitioner or individuals acting on her behalf repeatedly omitted information about her income and resources on five separate certifications to Mercer County. ID at 3. On the sixth certification filed in October 2017, Petitioner stated for the first time that she had an account with Chase Bank. It was only after inquiries by Mercer County about the Chase account

that Petitioner's daughter, as her Power of Attorney, disclosed that there was an Indian pension and another bank account. ID at 4.

Petitioner's claim that the funds in the Indian bank account were inaccessible flow from her daughter's testimony and are not supported by any credible evidence. A finding of fact based on hearsay must be supported by competent evidence. N.J.A.C. 1:1-15.5(b), the **residuum rule**, requires "some legally competent evidence" to exist "to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness." Banks often operate worldwide through ATMs and debit cards. Nothing in the record supports the claim that the funds could only be withdrawn by family and friends traveling to India.

A resource is deemed available if the applicant has "the right, authority or power" over it. N.J.A.C. 10:71-4.1(c). There is no question that Petitioner had the right to the pension check and the bank account. Indeed she specifically authorized her daughter to have "full access to and authority over" the account when Petitioner executed the Power of Attorney in 2014. R-11. In order to transfer that authority, Petitioner had to have that authority.

Here it is not one but two accounts that were not disclosed. Only when asked about the first account, did Petitioner disclose the second account and her monthly income. The certified responses by Petitioner or individuals acting on her behalf either crossed out the questions asking about income and resources or wrote "none" or "Ø". Unlike the other cases, there was no explanation as to why this financial information was affirmatively omitted. Thus, I find no basis to waive the overpayment.

THEREFORE, it is on this 25th day of SEPTEMBER 2018,

ORDERED:

That the Initial Decision is hereby REVERSED;

That Petitioner subject to the overpayment as set forth in the February 28, 2018 letter; and

That Mercer County may enter a payment plan to recoup the overpayment.


Meghan Davey, Director
Division of Medical Assistance
and Health Services