



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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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**

O.T.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

PASSAIC COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 14447-2016

On REMAND FROM

OAL DKT. NO. HMA 5459-2016

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 filed below. No exceptions were filed in this matter. Procedurally, the time period for the Agency Head to file a Final Decision is November 26, 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 was received on October 12, 2018.

The matter arises regarding the penalty imposed on Petitioner's transfer of her home to her son in November of 2015. She had entered a nursing home in October 2015 after a series of falls. The son sought an exemption from the transfer penalty under the caregiver exemption which provides that an individual will not be subject to a penalty when the individual transfers the "equity interest in a home which serves (or served immediately prior to entry into institutional care) as the individual's principal place of residence" and when "title to the home" is transferred to a son or daughter under certain circumstances. N.J.A.C. 10:71-4.10(d). The son or daughter must have "resid[ed] in the individual's home for a period of at least two years immediately before the date the individual becomes an institutionalized individual" and "provided care to such individual which permitted the individual to reside at home rather than in an institution or facility." N.J.A.C. 10:71-4.10(d)(4) (emphasis added). This exemption mirrors the federal Medicaid statute. 42 U.S.C.A. § 1396p(c)(2)(A)(iv).

The prior Initial Decision was reversed and remanded for further findings on Petitioner's medical condition during the full two years prior to entering the nursing home. The prior hearing only provided two letters from a physician dated October 30 and November 2, 2015. Neither of the letters stated Petitioner was in need of nursing home care or described her medical conditions. Rather the letters were summary in nature and appeared to be inconsistent with the son's testimony. That testimony also described the son using vacation time for numerous medical visits and tests, however, the record only showed medical visits beginning in August 2015. As such the matter was remanded for further findings on Petitioner's medical condition.

On remand, Petitioner provided expert testimony and a report from Nabil Yazgi, M.D. The report was based on CAT scans and medical records that started in August 2015. Dr. Yazgi did not speak with Petitioner's treating physician, who provided letters in the first

hearing, or Petitioner or her son. It appears that there are no medical records that predate the August 2015 hospitalization.


The remand was to create a record as to Petitioner's medical diagnoses from October 2013 through October 2015 and Petitioner failed to do this. Dr. Yazgi could not do this as he did not treat Petitioner nor was he given any medical record prior to August 2015. In the post hearing brief, Petitioner's counsel argued that the lack of medical records were "due to Petitioner's refusal to see a doctor or receive care from anyone but her son." This is directly at odds with the prior hearing which produced letters from Petitioner's doctor recounting how the son transported Petitioner to medical appointments and administering her medications. Moreover, Petitioner's son had previously testified he accompanied his mother to numerous doctor's visits and medical tests. These assertions are at odds with each other and, despite the chance to clarify on remand, Petitioner failed to produce any evidence of her medical condition from 2013 to 2015.

Based on the record before me and the reasons set forth above and in the Initial Decision, I hereby ADOPT the Initial Decision finding that the transfer penalty was properly imposed. Petitioner has failed to provide credible evidence that would support that she required institutional level of care for the full two years prior to entering the nursing home so as to meet the caregiver exemption.

THEREFORE, it is on this ^{19th} day of NOVEMBER 2018,

ORDERED:

That the Initial Decision is hereby ADOPTED.


Meghan Davey, Director
Division of Medical Assistance
and Health Services