



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**

R.K.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

CAPE MAY COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 12342-2016

On REMAND FROM

OAL DKT. NO. HMA 19099-2015

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. Respondent filed exceptions in this matter. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is January 16, 2018 in accordance with an Order of Extension.

The matter arises regarding Petitioner's transfer of her one-third share of a home she owned with her daughter and son-in-law during the lookback period. Petitioner

applied for Medicaid benefits in August 2015. She had been residing in a nursing home since April 2015. Petitioner disclosed that she had transferred her share of a house to her daughter in November 2011. Cape May County assessed a transfer penalty for assets totaling \$66,027.99 and found that Petitioner was otherwise eligible as of May 1, 2015 to start the 199-day penalty period.

The first Initial Decision found that Petitioner's 2011 transfer of her portion of a home met the caregiver exemption so that there would be no penalty period. That decision was reversed and remanded to OAL for further findings. Specifically, that Order of Remand, which is incorporated by reference, found the medical evidence provided was insufficient to determine Petitioner's medical condition during the pertinent two year period as the physician did not appear to be treating Petitioner but rather a friend of Petitioner's daughter. Furthermore, the documents from lay individuals were flawed and were not credible evidence.

On remand, the Initial Decision sets the two year period as beginning May 2013 based on Petitioner's institutionalization in May 2015. ID at 7. I do not agree that is the time period as Petitioner entered the nursing home in April 23, 2013 after being hospitalized in March 2013 from a fall. ID at 3. However, even using the May 2013 date, the record fails to provide any medical records for six months from May 2013 through November 7, 2013 when Petitioner was referred to hospice for her primary diagnosis of congestive heart failure. ID at 3. The medical records then go on to show the care she received from the hospice provider.

Nothing in the record addresses Petitioner's medical condition from the May 2013 date set forth in the Initial Decision. The prior certification from Dr. Jenny Lynn Cook was discounted as there were questions as to whether Dr. Cook treated

Petitioner. Petitioner provided no medical documentation prior to November 2013. The testimony that Petitioner did provide simply discusses those documents as of that date. Thus, I FIND there is no medical evidence regarding Petitioner's medical diagnoses and condition during the entire two years prior to her institutionalization and Petitioner has not met the two year requirement.

The ALJ found that the health care services Petitioner received from her private insurance and Medicare benefits cannot be considered when determining if the child's care was the reason Petitioner remained out of the institution for at least two years. However, the plain language of the regulation and federal law require that the child who "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). See also 42 U.S.C.A. § 1396p(c)(2)(A)(iv). Petitioner's own witness from the hospice provider stated it was the provider's "goal . . . to coordinate services for petitioner to enable her to remain in her daughter's home as long as possible." ID at 4.

The reliance by the ALJ on a letter written by Mary Valori-Schmidt, the former Director of Nursing at the hospice, does not stand scrutiny. That letter, dated February 19, 2016 was identified by Daniel Mikus, the Administrator of the hospice program. Ms. Valori-Schmidt did not testify and this is not a business record as it was written specifically for the OAL matter. The author was not subject to cross-examination and the statements are hearsay. Thus, I hereby reject this letter and the conclusions based on it.

Based on the record in this matter, Petitioner failed to provide medical documents to chronologically fulfill the entire two year time period for meeting the caregiver exemption for transfer penalties. Whether using the March 2015

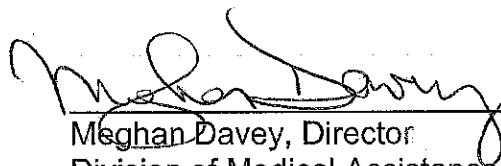
hospitalization or the April 2015 institutionalization date, or the Initial Decision's May 2013 date to set the two year period, Petitioner provided no medical evidence whatsoever about her condition from March 2013 through November 2013.

THEREFORE, it is on this ^{16th} day of JANUARY 2018,

ORDERED:

That the Initial Decision is hereby REVERSED; and

That the transfer penalty is upheld.


Meghan Davey, Director
Division of Medical Assistance
and Health Services