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

B.P.,	:	
PETITIONER,	:	**ADMINISTRATIVE ACTION**
v.	:	**FINAL AGENCY DECISION**
	:	**OAL DKT. NO. HMA 06675-19**
UNION COUNTY BOARD OF SOCIAL SERVICES,	:	
RESPONDENTS.	:	

As Assistant Commissioner 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, the documents filed below and the Respondent's exceptions to the Initial Decision. Procedurally, the time period for the Agency Head to file a Final Agency Decision (FAD) in this matter is November 18, 2019 in accordance with an Order of Extension.

The matter arises regarding Petitioner's March 2018 application for Medicaid benefits. This was Petitioner's second Medicaid application. The first application, filed in January 2017, was denied and never appealed by Petitioner. The issue of that denial was

not transmitted to the Office of Administrative Law (OAL) and is not the subject of the current matter.

On or about March 13, 2018, Petitioner filed an application for Medicaid benefits with the Union County Board of Social Services (UCBSS). Petitioner was found eligible as of May 1, 2019 due to Petitioner's resources exceeding the $2,000 limit.[1] Petitioner's estate is challenging the eligibility date, asserting that Petitioner's eligibility should be calculated based on her first application for benefits in January 2017.

Petitioner's March 2018 application was filed by her daughter D.G. On May 8, 2018, Petitioner was determined to be incapacitated, and D.G. appointed guardian of her person and B.T. appointed guardian of her estate. B.T. maintains that she had no knowledge of the assets comprising Petitioner's estate prior to being appointed guardian and relied solely on UCBSS' specific requests for information in the Medicaid application process.[2] The UCBSS maintains that Petitioner's resources exceeded the limit until May 1, 2019. The ALJ concluded that UCBSS failed to meet its obligations under the Administrative Code by failing to promptly move the March 2018 application through the administrative process.[3] Consequently, the ALJ changed the date of Petitioner's eligibility despite the existence of resources exceeding the $2,000 limit.

The argument that UCBSS failed to assist Petitioner and, thus, requires the imposition of equitable considerations fails to recognize that the courts in New Jersey have rarely applied the doctrine of estoppel to governmental entities absent a finding of malice, Cipriano v. Department of Civil Serv., 151 N.J.Super. 86, 91(App.Div.1977), particularly when estoppel would "interfere with essential governmental functions." See also O'Malley v. Dep't of Energy, 109 N.J. 309, 316-18(1987) and Vogt v. Borough of Belmar, 14 N.J.

[1] The nursing facility in which Petitioner resides applied for Pre-Eligibility Medical Expenses and received payment of $19,000 for February, March and April 2019, the three months prior to Petitioner's effective date of Medicaid eligibility.
[2] B.T. testified that she did not know about the CDs and could not find such an obscure asset at a bank in Toms River, New Jersey. ID 3. However, as part of her post hearing argument that the CDs were transfers under the UTMA, Petitioner states that the Bank of America CDs were presented to Petitioner's grandchildren (at least one of whom may be B.T.'s child) as Christmas gifts. Petitioner's Brief at 9.
[3] The Initial Decision incorrectly identifies it as Petitioner's March 2013 application. ID at 5.

195, 205 (1954). Where public benefits are concerned, courts have gone farther to recognize that "[e]ven detrimental reliance on misinformation obtained from a seemingly authorized government agent will not excuse a failure to qualify for the benefits under the relevant statutes and regulations." Gressley v. Califano, 609 F.2d 1265, 1267 (7th Cir.1979). See also Office of Personnel Management v. Richmond, 496 U.S. 414, 110 S. Ct. 2465, 110 L.Ed. 2d 387 (1990) and Johnson v. Guhl, 357 F. 3d 403 (3rd Cir. 2004).

The United States Supreme Court has addressed the estoppel issue in the context of federal disability benefits. Office of Personnel Management v. Richmond, 496 U.S. 414, 110 S. Ct. 2465, 110 L.Ed. 2d 387 (1990). In that case the Court, in the majority opinion, held that, under the Appropriations Clause of the Constitution, the payments of benefits from the federal treasury are limited to those authorized by statute. Erroneous advice from a governmental employee regarding those benefits cannot estop the government from denying benefits not permitted by law. Article VIII, Section II of the New Jersey Constitution also has similar appropriations language. As the Medicaid Program is a cooperative federal-state program, jointly financed with federal and state funds, payment of Medicaid benefits from the state and federal treasuries must be authorized by law. The Supreme Court went on to note that:

> [estoppel] ignores reality to expect that the Government will be able to "secure perfect performance from its hundreds of thousands of employees scattered throughout the continent." Hansen v. Harris, 619 F.2d 942, 954 (CA2 1980) (Friendly, J., dissenting), rev'd sub nom. Schweiker v. Hansen, 450 U.S. 785, 101 S.Ct. 1468, 67 L.Ed.2d 685 (1981). To open the door to estoppel claims would only invite endless litigation over both real and imagined claims of misinformation by disgruntled citizens, imposing an unpredictable drain on the public fisc. Even if most claims were rejected in the end, the burden of defending such estoppel claims would itself be substantial.
> . . .
> The natural consequence of a rule that made the Government liable for the statements of its agents would be a decision to cut back and impose strict controls upon Government provision of information in order to limit liability. Not only would valuable informational programs be lost to the public, but the greatest impact of this loss would fall on those of limited means, who can least afford the alternative of private advice.

OPM v. Richmond, 496 U.S. 414, 433- 434,110 S. Ct. 2465, 2476 (1990).

The Richmond case was cited by the Third Circuit Court of Appeals, which also declined to apply estoppel against New Jersey in the context of determining Medicaid eligibility. Johnson v. Guhl, 357 F. 3d 403, 409-10 (3rd Cir. 2004). That court reached back even further to an 1868 Supreme Court case which held that "the Government could not be compelled to honor bills of exchange issued by a government official where there was no statutory authority for the issuance of the bills." Id.

Additionally, in matters where the FAD has reversed the Initial Decision's application of equitable estoppel for Medicaid benefits, the Appellate Division has found that reversal to be correct. See I.L. v. New Jersey Dept. of Human Services, Div. of Medical Assistance & Health Services, 389 N.J. Super. 354, 361 (App.Div. 2006); C.M. v. Division of Med. Assistance & Health Servs., 2006 N.J. Super. Unpub. LEXIS 244 (App.Div. Mar. 15, 2006)("Simply put, the Director cannot grant eligibility where there is none."); G.O. v. State Dep't of Human Servs., 2006 N.J. Super. Unpub. LEXIS 2467, 6-7 (App.Div. Sept. 18, 2006) "In reversing the initial decision, the Director determined that the ALJ had improperly applied the doctrine of equitable estoppel against the State. We concur. Office of Personnel Mgmt. v. Richmond, 496 U.S. 414, 433-34, 110 S. Ct. 2465, 2476, 110 L. Ed.2d 387, 404-05 (1990); Johnson v. Guhl, 357 F.3d 403, 409-10 (3rd Cir. 204)."

That said, the items in dispute are two certificates of deposit (CDs) held in trust for Petitioner's grandchildren. These CDs precluded Petitioner from being resource eligible until they were liquidated. Petitioner's representative argues that the CDs should not be counted as resources because they fall within the Uniform Transfers to Minors Act (UTMA). The Social Security Administration (SSA) has published POMS, which is a statement of the "publicly available operating instructions for processing Social Security claims." Wash. State Dep't of Soc. & Health Servs. v. Guardianship Estate of Keffeler, 537 U.S. 371, 385, 123 S. Ct. 1017, 154 L. Ed. 2d 972 (2003). The United States Supreme Court noted the deference due POMS. Ibid. "While these administrative interpretations are not products of formal rulemaking, they nevertheless warrant respect." Id. at 385. (citing Skidmore v.

Swift & Co., 323 U.S. 134, 139-140, 65 S. Ct. 161, 89 L. Ed. 124 (1944)); see also James v. Richman, 547 F.3d 214, 218 n.2 (3d Cir. 2008). Additionally, in Elizabeth Blackwell Health Center for Women v. Knoll, the Third Circuit found that interpretive rules by an agency with lawmaking authority (as opposed to legislative rules) will get deference even if the agency's interpretation is not made pursuant to that lawmaking authority. 61 F.3d 170 (3rd Cir. 1995). In that case, a manual from HCFA, now CMS, providing guidance to States about Medicaid plans was deemed an interpretative rule and given deference. See United States v. Mead Corp., 533 U.S. 218, 229, 121 S. Ct. 2164, 150 L.Ed.2d 292 (2001).("A very good indicator of delegation meriting Chevron treatment [is an] express congressional authorization to engage in the process of rulemaking or adjudication that produces regulations or rulings for which deference is claimed."). The Third Circuit has also cited POMS and afforded it deference in a case regarding the denial of Medicaid eligibility due to excess resources. Sable v. Velez, 437 Fed. App'x 73, 77 (3d Cir. 2011) (non-precedential) ("Sable II"). Thus, "while POMS cannot thoughtlessly or rigidly be transplanted from the Social Security context to the Medicaid context, it is entitled to consideration." Landy v. Velez, 958 F. Supp. 2d 545, 553 (D. N.J. 2013).

POMS offers guidance with regard to transfers to minors under the UTMA. According to POMS, "UTMA assets are not the custodian's resources for SSI purposes because he or she cannot legally use any of the funds for his or her support and maintenance." POMS SI 01120.205. However, the POMS goes on to explain that the custodian must confirm a UTMA transfer by providing documentation, including an appropriate titling on a certificate of deposit, reflecting it is being held by an adult custodian with reference to the state UTMA. POMS SI 01120.205. "If there is no document designating an UTMA transfer, do not develop further. Instead, proceed as if there had been no allegation of an UTMA transfer." POMS SI 01120.205

The documents provided by Petitioner show only a CD held in trust for another individual. Under the New Jersey UTMA, "a person may, pursuant to R.S. 46:38A-19,

make a transfer by irrevocable gift to, or the irrevocable exercise of a power of appointment in favor of, a custodian for the benefits of a minor." N.J.S.A. 38A-8. N.J.S.A. 46:38A-19 provides that custodial property is created and a transfer is made when the transfer is accompanied by the designation "custodian for...(name of minor) under the New Jersey Uniform Transfers to Minors Act." There is no indication on the face of the document that this transfer was made pursuant to the UTMA, and Petitioner had failed to present any documentation supporting her assertion that these were transfers made pursuant to the UTMA.[4]

Petitioner has not established that the transfers at issue were irrevocable and made pursuant to the UTMA. As a result, the cash value of the CDs were available to the Petitioner and countable as a resource. N.J.A.C. 10:71-4.1(b). "Resource eligibility is determined as of the first moment of the first day of the month." N.J.A.C. 10:71-4.5(a)(1); see also N.J.A.C. 10:71-4.1(e). As Petitioner did not liquidate the CDs until April 2019, UCBSS correctly determined her eligibility date to be May 1, 2019.

THEREFORE, it is on this 18th day of NOVEMBER 2019,

ORDERED:

That the Initial Decision is hereby ADOPTED.

Jennifer Langer Jacobs, Assistant Commissioner
Division of Medical Assistance
and Health Services

[4] After the hearing, Petitioner was asked to present documents consistent with her testimony that were not presented at the hearing. While these documents do not meet the UTMA requirements, Respondent did not have the opportunity to cross examine Petitioner and they should not have been admitted into evidence.