



# State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

PO Box 712

TRENTON, NJ 08625-0712

PHILIP D. MURPHY  
*Governor*

SHEILA Y. OLIVER  
*Lt. Governor*

CAROLE JOHNSON  
*Commissioner*

JENNIFER LANGER JACOBS  
*Assistant Commissioner*

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

H.D.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

MONMOUTH COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 8269-2019

As Assistant Commissioner for 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. Petitioner filed exceptions in this matter. Procedurally, the time period for the Agency Head to file a Final Decision is August 10, 2020 in accordance with an Order of Extension.

The matter arises regarding the denial of Petitioner's March 2019 application for Medicaid. Petitioner resided in an assisted living facility. Unlike nursing homes, assisted living facilities only have to set aside a certain number of beds for Medicaid eligible residents

N.J.A.C. 8:33H-1.7. Petitioner entered the facility as private pay and subsequently applied for Medicaid. In the course of processing the application, Monmouth County requested information regarding any security deposit held by the facility and whether there was a Medicaid bed available. On April 5, 2019 the executive director of the assisted living responded in writing that there was no Medicaid bed available. There is also a March 29, 2019 email to Petitioner's counsel from a law firm representing the assisted living facility confirming that there are no available Medicaid beds and "[t]he facility is will [sic] not accept her on Medicaid if and when she is eligible." R-3 and R-5. Monmouth County also requested information about various transfers to her family and to a home contractor. Some of these transfers were identified as transfers of assets. R-5. On June 5, 2019 the application was denied as Petitioner was not in a Medicaid eligible bed and for the "failure to supply corroborating evidence necessary to determine eligibility."

The Initial Decision upholds the denial and I concur. At the hearing Petitioner argued that the assisted living facility would accept Medicaid payments for her care and produced a letter dated January 20, 2020 from a different executive director of the facility. However, as the Initial Decision pointed out the facility and its attorneys repeatedly told Petitioner and Monmouth County through October 2019 that it had no Medicaid-eligible beds and would not accept Medicaid for payment for Petitioner's care. This is critical as in order to start the penalty, Monmouth County must set the date the individual becomes Medicaid eligible and would be receiving institutional level of services but for the penalty period. See 42 U.S.C.A. 1396p(c)(1)(d)(i). Petitioner's residence in a facility where she could not have Medicaid pay for her care prevented the start of the penalty period. At the time of the denial and for months afterwards, the facility and its attorneys affirmed that Medicaid could not pay for Petitioner's care as well as indicated that she was required to pay privately per the terms of her residency agreement with the facility. ID at 3.

The Initial Decision noted deficiencies with Petitioner's proofs, specifically P-1, as it relates to the date it was signed. In exceptions Petitioner argued that P-1, the residency agreement, was authentic. Petitioner's argument about authenticity of the document is misplaced. It is the weight afforded the documents that were at issue. The document in the record is not the complete residency agreement. It proceeds sequentially to page 12 and then, after a two page errant evidence list, continues at page 23 and 24 before jumping again to page 40 and concluding with an unnumbered page. P-1. At minimum 28 pages are missing, making the document unreliable.

Even without the questions raised by P-1 which goes to Petitioner's requirement for private pay, there are two documents from the assisted living facility that Petitioner could not receive Medicaid institutional level benefits while residing at the facility. R-3. Indeed the Initial Decision found "[t]he primary problem for petitioner is the fact the facility represented to MCDSS as late as October 2019, and certainly during the MCDSS consideration of the application, the facility did not have a Medicaid bed and would not accept Medicaid payments." ID at 6. Without this acceptance of Medicaid payment, the penalty could not begin. R-5. While Petitioner attempted reverse the two prior written statements from the facility with the production of P-2 in January 2020, Petitioner provided no testimony from the facility to explain the contradictions. The exception does not counter that finding but for a statement that Petitioner's son's testimony about the facility's participation in Medicaid and that P-2 showed "it [the facility] accepted Medicaid" for Petitioner. That statement is untenable as Petitioner's son cannot give testimony about the facility or the facility's documents or the application of the rules regarding Medicaid beds for assisted living facilities as he is not associated or employed by the facility. Rather the documents show that facility and its attorneys unequivocally told Monmouth County and Petitioner's counsel on March 29 and April 9, 2019 that Medicaid benefits would not pay her care at the facility. R-3. Without

Petitioner being otherwise eligible for Medicaid to pay for her care in March 2019, the application was properly denied.

THEREFORE, it is on this 5th day of AUGUST 2020,

ORDERED:

That the Initial Decision is hereby ADOPTED.

A handwritten signature in cursive script, appearing to read "Jennifer Langer Jacobs".

---

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