

State of New Jersey

DEPARTMENT OF HUMAN SERVICES DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES PO Box 712 Trenton, NJ 08625-0712

STATE OF NEW JERSEY

CAROLE JOHNSON Commissioner

JENNIFER LANGER JACOBS Director

DEPARTMENT OF HUMAN SERVICES DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES J.D., 1 : PETITIONER, ADMINISTRATIVE ACTION : : FINAL AGENCY DECISION : : ٧. OAL DKT. NO. HMA 02820-20 2 : 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 matter, consisting of the Initial Decision, the documents in evidence and the contents of the OAL case file. No exceptions to the Initial Decision were filed. Procedurally, the time period for the Agency Head to render a Final Agency Decision is November 30, 2020 in accordance with <u>N.J.S.A</u>. 52:14B-10, which requires an Agency Head to adopt, reject or modify the Initial Decision within 45 days of the agency's receipt. The Initial Decision was received on October 13, 2020.

PHILIP D. MURPHY Governor

SHEILA Y. OLIVER Lt. Governor I hereby ADOPT the findings, conclusions and recommended decision of the Administrative Law Judge in their entirety and incorporate the same herein by reference.

This case arises from the November 11, 2019, Union County Board of Social Services' (UCBSS) notice of eligibility and issuance of a seven day transfer penalty due to Petitioner's transfer of \$2,500. Petitioner, though the Designated Authorized Representative he appointed on May 28, 2019, filed a request for a fair hearing which was transmitted to the Office of Administrative Law (OAL) on February 26, 2020. Prior to the OAL hearing, Petitioner passed away. The ALJ adjourned the matter twice to determine if there was a representative of Petitioner's estate who could proceed on her behalf. On October 9, 2020, she was informed that there was no record of an estate for Petitioner in Union County. Consequently, the ALJ closed the record.

The ALJ correctly noted the Appellate Division's decision in <u>L.M. v. DMAHS</u>, No. A-6014-17T1, (App. Div. April 30, 2020) wherein the court stated:

In addition, permitting an applicant to be representated after the applicant's death is not the equivalent of providing that a designation as DAR made while the applicant is alive through a power of attorney remains effective after the applicant's death. To the contrary, 42 C.F.R. §435.923(c) provides that a DAR appointment terminates when "there is a change in the legal authority upon which it was based."

THEREFORE, it is on this 17th day of NOVEMBER 2020,

ORDERED:

That the Initial Decision is hereby ADOPTED.

Jennifer Langer Jacobs, Director Division of Medical Assistance and Health Services