



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**

W.G.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES AND
MORRIS COUNTY BOARD OF
SOCIAL SERVICES,
RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 4470-2019

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 and the documents filed below. Neither party filed exceptions in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is February 20, 2020 in accordance with an Order of Extension.

An application was filed on Petitioner’s behalf in January 2019. The application was denied on March 4, 2019 due to failure to provide bank statements as well as due to

excess resources stemming from a mortgage he held. Petitioner's niece and Power of Attorney designated counsel for the nursing facility as his designated authorized representative (DAR).

The matter was briefed as a motion for summary disposition as there were not material facts in dispute. Morris County had twice requested the bank statements and they were not provided. Additionally, Petitioner's role as the lender on a private mortgage is not in dispute. Neither is the fact that the unpaid balance on the mortgage at the time of application was \$189,900.72.

The Initial Decision upheld the denial on the basis of the failure to provide the missing bank statements. As Petitioner did not argue that he was incorrectly denied for failure to produce the statements, I concur with this holding. However, the Initial Decision went on to find that the mortgage note held by Petitioner is not an asset. I disagree and for the reasons that follow, reverse the Initial Decision on this finding.

The mortgage note is a negotiable asset. The Initial Decision assumes that it would be the borrower's responsibility "to find another lender to loan it the outstanding balance." ID at 7. Rather Petitioner has the ability to sell the secured note on the secondary mortgage market. This market is "a vehicle for linking the mortgage market with the broader capital market; secondary market transactions can involve two private lenders, a private lender and a government-sponsored secondary market agency [e.g. Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation], or a private lender and a private conduit company.' (Edson & Jacobs, *The Secondary Mortgage Market Guide* (1986) § 1.03, at p. 1-12.) As used here, the term 'secondary market' refers to the sequence in which lenders acquire the first lien and then sell the note at a discount to a private or public investor. (Augustine & Zarro, *Cal. Real Estate Law and Practice* (1986) § 100.11, at pp. 100-117.)" *Guild Mortgage Co. v. Heller*, 193 Cal. App. 3d 1505 (1987), fn.1.

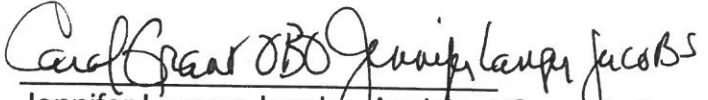
The case cited in the Initial Decision was a private promissory note between a Medicaid applicant and a relative wherein the applicant transferred funds to the relative in return for monthly payments. The note in this matter is secured by property and has proven to be negotiable as it was transferred from one borrower to another. Thus, it was correctly determined to be an available resource. Moreover, Social Security Administration list mortgages as a type of liquid resource. See 20 CFR § 416.1201 (b). The POMS also state that an "owner of the agreement (the seller), a promissory note or property agreement is a resource". See POMS SI 01140.300.

THEREFORE, it is on this ^{17th} day of FEBRUARY 2020,

ORDERED:

That the Initial Decision is hereby ADOPTED in part with regard to Petitioner's failure to provide information; and

That the Initial Decision is hereby REVERSED in part and Petitioner's ownership of the mortgage note is a countable resource.


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



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JENNIFER LANGER JACOBS
Assistant Commissioner

February 19, 2020

William Masto, Esq.
Burgeon Legal Group, Ltd.Co.
10517 Ocean Highway, Unit
4-27

Re: FINAL AGENCY DECISION

Witold Groncki

OAL Dkt No. HMA 04470-2019

Dear Sir or Madam

Enclosed is the Final Agency Decision rendered in the above captioned matter.

If you are dissatisfied with the decision, you have the right to seek judicial review by the Appellate Division, Superior Court of New Jersey, Richard J. Hughes Complex, P.O. Box 006, Trenton, New Jersey 08625. A request for judicial review must be initiated within 45 days from the date of receipt of the decision. If you have any questions concerning an appeal to the Appellate Division, you should call (609) 815-2950.

Very truly yours,

A handwritten signature in black ink, appearing to read "Meredith Van Pelt".

Meredith Van Pelt, Esq.

Office of Legal & Regulatory Liason
DMAHS

MVP:GO
Enclosure

C: County-Morris - Erica Johnson

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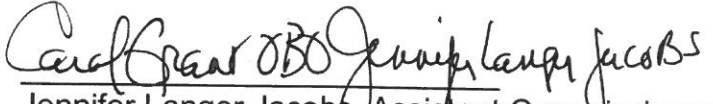
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