

This matter arises from the Morris County Office of Temporary Assistance's (MCOTA) May 21, 2020 notice of Petitioner's eligibility for the Medicaid program effective May 1, 2020. On September 3, 2020, Petitioner appealed the effective date of eligibility claiming that resources affecting the date were not available to him. On September 24, 2020, the matter was transmitted to the OAL for a hearing. On July 22, 2021, the OAL issued an Initial Decision. On October 18, 2021, the matter was remanded to the OAL. On March 11, 2022, the record was closed and the Initial Decision issued on March 25, 2022. The only outstanding issues concern the accessibility of Petitioner's Qualified Joint and Survivor Annuity (QJSA) and the effective date of his Medicaid eligibility.

First, the issue of standing must be addressed. In fair hearings, representation "shall be pursuant to N.J.A.C. 1:10B-5.1," which provides, "An applicant/recipient may appear at a proceeding without representation or may be represented by an attorney or by a relative, friend or other spokesperson pursuant to the procedures set forth in N.J.A.C. 1:1-5.4. See: 42 C.F.R. 431.206(b)(3). A reading of the regulations makes it abundantly clear that anyone authorized to act in the place of the actual individual whose Medicaid eligibility is at issue does so only as an agent for and on behalf of that individual. J.H. v. Division of Medical Assistance and Health Services and Mercer County Board of Social Services, HMA 06733-09 & 06734-09, Interlocutory Order (December 15, 2009). The party at interest in the application and in the fair hearing is always the individual. *Id.*

When this matter was transmitted to the OAL in September 2020, Petitioner's guardian, M.J., had made the request for fair hearing on his behalf. During the first OAL hearing in this matter, an attorney from Harwood Lloyd appeared on behalf of M.J. On remand, Harwood Lloyd appeared before the court on behalf of the Petitioner, Cheshire House, Designated Authorized Representative (DAR) of M.J. While it is troubling that there is no DAR form in the record, I am more troubled by that portion of the Initial Decision which notes that M.J. "assigned his [Petitioner] rights and interests in the claim to the nursing home,

which provided services to E.J. on an uninterrupted basis while the application was pending, who is now represented by Beth Barnhard, Esq.” ID at 2. Based on this statement, it seems that the facility, not Petitioner, is represented in this matter. The regulations for Medicaid benefits create a hearing a process for recipients and applicants separate from that of providers.” A.T. v. Division of Medical Assistance and Health Services and Monmouth County Board of Social Services, HMA 12107-04, Initial Decision (August 22, 2005). Although not certain from the record below, it appears that the facility, which has no independent standing in this matter, is inappropriately using the OAL as a forum to have its claims paid. However, for purposes of completeness the issue of the effective date of Petitioner’s eligibility is addressed below.

On or about October 17, 2019, Petitioner, through his guardian, filed an application for Medicaid benefits with the MCOTA.¹ The application did not disclose the existence of Petitioner’s QJSA in the amount of \$12,495.92. On October 31, 2019, November 18, 2019, and January 6, 2020 MCOTA requested information necessary to determine Petitioner’s Medicaid eligibility. Each notice, as well as the Medicaid application itself, advised Petitioner of the \$2,000 resource limit.

In December 2019, Petitioner disclosed the annuity to MCOTA. Despite being notified of the \$2,000 resource limit, Petitioner took no steps to liquidate the QJSA until February 2020. On February 20, 2022, MCOTA issued a letter to Petitioner regarding the need to liquidate the QJSA and included instructions from Prudential’s website. The instructions advised that due to the nature of the QJSA, Petitioner’s estranged wife would need to sign a release in order for the funds to be disbursed. On February 25, 2020, Petitioner began the process of liquidation which was memorialized in an agreement that required disbursement of the funds within ninety days. By May 11, 2020, M.J. advised MCOTA that he received the

¹ Petitioner’s brother, M.G., was appointed his guardian on February 20, 2019. (J-1).

distribution check. Thereafter, the money was deposited in to Petitioner's Special Needs Trust (SNT).

Participation in the Medicaid program will be denied if the resources of an individual exceed \$2000 as of the first moment of the first day of the month. See N.J.A.C. 10:71-4.5. A "resource" is defined as "any real or personal property which is owned by the applicant . . . and which could be converted to cash to be used for his/her support and maintenance." See 20 C.F.R. § 416.1201(a) and N.J.A.C. 10:71-4.1(b). If the individual has the right, authority or power to liquidate the property, it is considered a resource. Ibid. A resource is "countable" for purposes of eligibility determinations if it is "available to the applicant/beneficiary or any person acting on his or her behalf." N.J.A.C. 10:71-4.1(c)(3) (emphasis added). Petitioner has the right, authority and power, albeit conditional, to liquidate the QJSA in question. Therefore, it is available to the Petitioner and countable as a resource.

However, Medicaid Communication No. 87-26 (effective August 18, 1987) instructs the county to temporarily exclude the value of a non-liquid resource if the Medicaid applicant or recipient agrees to and cooperates with a plan of liquidation. Once the resource is liquidated, if the individual's countable resources exceed the maximum limit, the county welfare agency will terminate eligibility until the individual's resources are spent-down to the appropriate limit. Based on information provided during the application process, MCOTA determined that the QJSA in question was a non-liquid resource that could not be liquidated or negotiated within 20 working days. See Medicaid Communication No. 87-26 (i.e. the policy indicates that special conditions must be met before payment can be made). As a result, on February 25, 2020, the MCOTA and Petitioner entered into a liquidation agreement wherein Petitioner acknowledged that the value of the QJSA exceeded the Medicaid limit for eligibility and agreed to liquidate the QJSA within ninety days. As long as Petitioner honored the liquidation agreement, the resource would remain excluded for the period of time

specified in the plan of liquidation. See Medicaid Communication No. 87-26. The evidence in the record below indicates that Petitioner was able to liquidate the QJSA in question and deposit the proceeds into a Special Needs Trust (SNT) within the ninety days required by the agreement. There is no evidence in the record to support a finding that the processing of Petitioner's application or his ability to liquidate the QJSA was hindered by the State shutdown due to the Covid-19 pandemic. Therefore, due to the unique facts and circumstances in this case, I FIND that the amount of the QJSA should have been considered excluded for the duration of the agreement and eligibility should have been calculated as of February 1, 2020.

Finally, the ALJ finds that MCOTA's May 21, 2020 notice was deficient because it did not specifically state why the effective date of eligibility was May 1, 2020. In so doing, the ALJ cites to Ortiz v. Eichler, 794 F.2nd 889 (3rd Cir. 1986). In Ortiz, the Third Circuit in found that Delaware failed to provide adequate notice when denying or terminating AFDC, Food Stamps or Medicaid benefits but did not award benefits to the members of the class as a remedy for the due process violations. MCOTA neither denied nor terminated Petitioner's benefits in this case. Rather, MCOTA provided Petitioner with the effective date of his eligibility. If Petitioner disagreed with the effective date, the notice provided him with appeal rights. Although I do not believe that MCOTA's notice was deficient, to the extent it is viewed as such, the remedy for inadequate notice is not the award of benefits, but a determination of whether the Petitioner meets the eligibility requirements. C.R. v. Div. of Medical Assistance and Health Servs., HMA 9058-09, Final Agency Decision (December 14, 2009). Moreover, the fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. Matthews v. Eldridge, 424 U.S. 319, 333 (1976). Accordingly, inadequate notice is a procedural defect that may be cured by a de novo hearing. In re Appeal of Darcy, 114 N.J. Super. 454, 461 (App. Div. 1971).

THEREFORE, it is on this ^{13th} day of JUNE 2020,

ORDERED:

That the Initial Decision is hereby ADOPTED but MODIFIED to reflect that the reason for the February 1, 2020 effective date concerns action taken pursuant to the liquidation agreement and was not the result of any delay caused by the State shut down due to the Covid-19 pandemic.

A handwritten signature in black ink, appearing to read "Jennifer Langer Jacobs". The signature is written in a cursive style with some loops and flourishes.

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