



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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TRENTON, NJ 08625-0712

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Governor

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Lt. Governor

SARAH ADELMAN
Commissioner

JENNIFER LANGER JACOBS
Assistant Commissioner

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

L.M.,
PETITIONER,

v.

UNION COUNTY BOARD OF
SOCIAL SERVICES,

RESPONDENTS.

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: **ADMINISTRATIVE ACTION**
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: **ORDER OF REMAND**
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: **OAL DKT. NO. HMA 04843-22**
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As Assistant Commissioner for 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 entire contents of the OAL case file, and Petitioner's exceptions to the Initial Decision were filed. Procedurally, the time period for the Agency Head to file a Final Agency Decision is October 21, 2022, in accordance with an Order of Extension. The Initial Decision was received on July 21, 2022.

The issue presented here is whether or not the Union County Board of Social Services (MCBSS) correctly denied Petitioner's March 1, 2022 Medicaid application because she was not residing in a Medicaid certified facility. Petitioner resides in an assisted living facility (ALF). She has been residing in that facility, as a private pay resident, since June 2021. It is undisputed that the ALF is not a Medicaid certified facility. Consequently, Medicaid cannot pay for the care she receives at the ALF because she is not receiving Medicaid services.

Petitioner argues that the designation of the ALF as Medicaid certified is not determinative of eligibility because MLTSS services are provided in the community, including one's own residence, and that need not be Medicaid certified. However, residence in an ALF differs from that in your home. Specifically, residents of an ALF contract with the facility for certain services. Traditionally, ALFs provide many of the services that MLTSS covers in one's home, i.e. medication management; assistance with dressing, grooming, bathing; light housekeeping and laundry. Notably missing from the record and residency agreement are those services which the ALF has agreed to provide specifically for the Petitioner pursuant to the assessment referenced in Article I of the residency agreement. I am curious to know what MLTSS services Petitioner seeks that are not already provided by the ALF?

Additionally, it appears from the information provided on Petitioner's application, that cash was transferred to her daughter with the understanding that her daughter would use the money to pay for her care at the ALF. (See Petitioner's Brief). If such an agreement exists, Petitioner would have access to that money and could potentially be over resources. Additionally, if Petitioner were seeking to trigger the start of a transfer penalty, Petitioner's residence in a facility where she could not have Medicaid pay for her care would prevent the start of the penalty period. See 42 U.S.C.A. 1396p(c)(1)(d)(i).

Therefore, I am REMANDING the matter to the OAL for additional documents and testimony regarding Petitioner's contract with the ALF to provide her with services; which services the ALF has agreed to provide and which services the ALF has agreed to assign to

an outside party and any corresponding requirements. Additional testimony is also needed with regard to those services Petitioner is seeking to have Medicaid provide through the MLTSS program, and why these services are not duplicative of those provided by the ALF? I am also seeking information with regard to the transfer of assets as it appears on Petitioner's application, and whether Petitioner is seeking eligibility now in order to begin a possible transfer penalty?

THEREFORE, it is on this 18th day of OCTOBER 2022,

ORDERED:

That the Initial Decision is hereby REVERSED and REMANDED.



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