



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
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Assistant Commissioner

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

N.B.,

PETITIONER,

v.

MONMOUTH COUNTY DIVISION

OF SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 00702-21

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 Office of Administrative Law (OAL) case file. Neither Party filed exceptions to the Initial Decision. Procedurally, the time period for the Agency Head to render a Final Agency Decision is June 2, 2022 in accordance with an Order of Extension. The Initial Decision was received on March 1, 2022.

This matter arises from the Monmouth County Division of Social Services' (MCDSS) December 8, 2020 imposition of a 556-day penalty for the transfer of \$198,959 during the look-back period. On December 24, 2020, Petitioner passed away. On that same day, Goldie Ribiat of Application Pros, acting as Petitioner's Designated Authorized Representative (DAR), submitted a request for fair hearing. Ribiat was granted that authority by S.C., Petitioner's nephew and Power-of-Attorney. On December 30, 2020, this office received Ribiat's fair hearing request. The request did not disclose that Petitioner had passed away. On January 8, 2021, the matter was transmitted to the OAL for hearing.

The critical issue of standing overrides any discussion of the Medicaid denial for failure to provide information necessary to determine eligibility. S.C. executed the DAR on or about February 3, 2020.¹ That authorization ceased when Petitioner passes away on December 24, 2020. L.M. v. Division of Med. Assistance & Health Servs., Dkt. No. A-6014-17T1, 2020 N.J. Super. Unpub. LEXIS 791 (App. Div. April 30, 2020) and M.F. v. Div. of Med. Assistance & Health Servs., No. A-2254-17T2, 2019 N.J. Super. Unpub. LEXIS 733 (Super. Ct. App. Div. Apr. 1, 2019). See also E.D. v. DMAHS, HMA 05284-18, Final Decision, (September 4, 2018) and G.C. v. DMAHS, HMA 03582-19, Order on Remand, (October 24, 2019). There is no authority to permit a DAR to continue after death. The appointment of a DAR is meant to be voluntary and revocable. 42 C.F.R. § 435.923; E.B. v. Division of Med. Assistance & Health Servs., 431 N.J. Super. 183 (App. Div. 2013). Upon the death of the applicant, a key boundary placed upon such an appointment vanishes – the legal authority underlying the appointment changes, and the individual can no longer revoke the appointment. 42 C.F.R. § 435.923. Additionally, the designation form that Petitioner signed provides that it is revocable at any time, similar to the revocability of a power of attorney. See N.J.S.A. 46:2B-8.10. This federally mandated revocability provision is rendered meaningless if the

¹ Although difficult to decipher, it appears that S.C. signed the DAR on February 3, 2020, two days before the document was Judah Ribiat of Application Pros.

designation survives the applicant's death.

The DAR designation is analogous to a limited Power of Attorney for the purposes of pursuing a Medicaid application or appeal. The attorney-in-fact is no longer permitted to act on the principal's behalf once he receives notification of the principal's death. See N.J.S.A. 46:2B-8.5. While the DAR may not have been aware of Petitioner's death when she mailed the request for the fair hearing, she most certainly should have known by the time the matter was transmitted to the OAL. Nevertheless, Ribiat did not notify the court that Petitioner was deceased until seven month later at the scheduled fair hearing on July 1, 2021, at which point the hearing was adjourned to give the DAR time to obtain letters of administration. After multiple adjournments, the hearing was held on January 27, 2022.² I note that the record does not contain any evidence that S.C. was granted letters of administration or that he hired counsel to appear on behalf of Petitioner's estate.³

I FIND the DAR designation ended upon Petitioner's death and Goldie Ribiat had no authority or standing to request a fair hearing. While my finding is dispositive of this issue, I will address the transfer penalty for the sake of completeness.

With regard to the 556-day penalty for the transfer of \$198,959 during the look-back period, I hereby adopt the findings and conclusions of the Administrative Law Judge (ALJ) in their entirety, and I incorporate the same herein by reference. In a thorough, well-reasoned decision, the ALJ affirmed the 556-day transfer penalty.

Medicaid law contains a presumption that any transfer for less than fair market value during the look-back period was made for the purpose of establishing Medicaid eligibility. See E.S. v. Div. of Med. Assist. & Health Servs., 412 N.J. Super. 340 (App. Div. 2010); N.J.A.C. 10:71-4.10(i). The applicant, "may rebut the presumption that assets were transferred to establish Medicaid eligibility by presenting convincing evidence that the assets

² The record remained open until February 10, 2022, at Petitioner's request, to submit a brief. Petitioner ultimately did not submit any brief to the court.

³ The September 10, 2021 letter from Goldie Ribiat that contains hearsay and double hearsay, states that S.C. had not yet obtained letters of administration and that "we were simply appealing a decision for the nursing home to receive payment. There would be no reimbursement to the estate."

were transferred exclusively (that is, solely) for some other purpose.” N.J.A.C. 10:71-4.10(j). It is Petitioner's burden to overcome the presumption that the transfer was done – even in part – to establish Medicaid eligibility. The presumption that the transfer of assets was done to qualify for Medicaid benefits may be rebutted “by presenting convincing evidence that the assets were transferred exclusively (that is, solely) for some other purpose.” N.J.A.C. 10:71-4.10(j). Here, Petitioner was unable to rebut the presumption that the transfers for less than fair market value were made to establish Medicaid eligibility.

At issue are several checks made out to either cash or Petitioner's nephew, S.C. The checks did not show that these transfers were payments for Petitioner's benefit. S.C. testified that he hired an individual, M.S., to take care of the Petitioner at a rate of \$1200 per week for approximately five years. In addition to his testimony, S.C., submitted letters from friends and neighbors stating that M.S. was Petitioner's caretaker. These are hearsay, out-of-court statements submitted as proof of the matters asserted. As such, these statements are subject to the **residuum rule**, which requires "some legally competent evidence" to exist "to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness." N.J.A.C. 1:1-15.5(b). I agree with the ALJ and I FIND that the record contained no legally competent evidence to support these documents.

Furthermore, there is no evidence in the record that the transactions were used to pay for a caretaker's salary or Petitioner's living expenses. The records contains nothing which establishes the type of care or services provided, the type and terms of compensation, or the fair market value of the compensation. There is no written agreement between the Petitioner and her caregiver to this effect. There is nothing to establish when M.S's employment began or when it ended. Additionally, there is no evidence of a pattern of payment to M.S. For someone who paid an employee approximately \$62,000 per year for five years, Petitioner presented only twenty copies of checks that covered the period from November 8, 2019 through March 4, 2020. Of those twenty checks, only six referenced or were endorsed by M.S. Petitioner was unable to rebut the presumption that the transfers

for less than fair market value were to qualify for Medicaid. N.J.A.C. 10:71-4.10. Accordingly, the MCBSS properly imposed the \$198,959 transfer penalty for a period of 556 days.

THEREFORE, it is on this 9th day of MAY 2022,

ORDERED:

That the Initial Decision is ADOPTED.



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