



care provided must exceed normal personal support activities and Petitioner's physical or mental condition must be such as to "require special attention and care." Id. The applicant's son or daughter must have "resid[ed] in the individual's home for a period of at least two years immediately before the date the individual becomes an institutionalized individual" and "provided care to such individual which permitted the individual to reside at home rather than in an institution or facility." N.J.A.C. 10:71-4.10(d)(4) (emphasis added). This exemption mirrors the federal Medicaid statute. 42 U.S.C.A. § 1396p(c)(2)(A)(iv).

The ALJ upheld the determination by MCBSS, and I see no basis to find otherwise. As noted in the Initial Decision, Petitioner became institutionalized in 2018 when she was became clinically eligible for Medicaid and began receiving home and community based services, specifically Adult Medical Day Care and Personal Care Assistant services. Therefore, Petitioner needed to present evidence that she required nursing facility level of care from July 2016 to July 2018. The record contains no such evidence. Additionally, the home and community based services Petitioner began receiving in September 2018, paid for by Medicaid, allowed Petitioner to remain in her home until November 2021.

THEREFORE, it is on this 29<sup>th</sup> day of DECEMBER 2022,

ORDERED:

That the Initial Decision is hereby ADOPTED.



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