



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. HMA 00503-24

AGENCY DKT. NO. N/A

R.C.,

Petitioner,

v.

**MONMOUTH COUNTY DIVISION OF
SOCIAL SERVICES,**

Respondent.

R.C., petitioner, appearing pro se

Tanisha Hudley, Fair Hearing Liaison, for respondent, appearing pursuant to
N.J.A.C. 1:1-5.4(a)-3

Record Closed: May 3, 2024

Decided: May 23, 2024

BEFORE **MARY ANN BOGAN**, ALJ:

STATEMENT OF THE CASE

The petitioner, R.C., appeals the denial of her application for New Jersey Family Care Medicaid benefits for the Aged, Blind, or Disabled (ABD) as determined by the respondent, Monmouth County Division of Social Services (MCDSS). The petitioner applied for ABD benefits on August 16, 2023. (R-A.) MCDSS denied the petitioner's

application because the petitioner had available and countable resources in excess of the maximum allowable to qualify for ABD benefits. N.J.A.C. 10:72-4.5.

PROCEDURAL HISTORY

On November 6, 2023, the petitioner was notified that her ABD application was denied. (R-F.) The petitioner timely requested a fair hearing, and the matter was transmitted to the Office of Administrative Law, where it was filed to be heard as a contested case. N.J.S.A. 52:14B-1 to -15 and 14F-1 to -13. The matter was heard on May 3, 2024, via telephone hearing, and the record closed on that date.

TESTIMONY AND FACTUAL DISCUSSION

In reviewing the petitioner's application, MCDSS determined that real property titled in petitioner's name, other than her primary residence, was an available and countable resource with an assessed value of \$152,700. She also owns bank accounts valued at \$2,088.96. (R-B.)

On November 6, 2023, MCDSS denied the petitioner's application for ABD benefits because petitioner was over the maximum resource level for eligibility as of August 6, 2023. This was based on the petitioner's ownership of the real property.

Petitioner maintains that the real property should not be a countable resource because in March 1997 her father bought the real property and titled it in petitioner's name to protect her disabled brother and provide him with housing because he was disabled and could not manage his own affairs.¹ Petitioner also introduced her Last Will and Testament which provides a life estate for her brother and bequeaths the home to any children her brother may have or in the alternative to petitioner's children to demonstrate that she has no beneficial interest in the home beyond title which has since been transferred. (P-1.) Petitioner also introduced a fully executed and notarized

¹ At the hearing, the petitioner referred to the deed executed on April 5, 2024, that transferred the real property from her name to a Trust to safeguard the home for her brother, to buttress this position. After the deed was filed, petitioner filed a second Medicaid application, and the agency granted benefits effective May 1, 2024. (R-E.)

"Agreement" between herself, and her former spouse, dated July 12, 2002. (P-2.) In this Agreement, it states that her former spouse waives interest in the property, and it acknowledges that the property belongs to R.C.'s brother. This letter is hearsay and does not fall under any of the recognized exceptions to the hearsay rules. While hearsay may be admitted in administrative hearings, it still must be supported by some legally competent evidence to support an ultimate finding of fact. N.J.A.C. 1:1-15.5(b).

I FIND the following as FACT:

There is legally competent evidence to support the hearsay assertions set forth in the Agreement marked as P-2, and this Tribunal accepts this letter, to support the petitioner's credible testimony regarding the family plan to title the real property in her name to plan and provide a stable home for a disabled family member.

Petitioner provided credible testimony about the content of her Last Will and Testament, that provides a life estate to her brother and a residuary bequest to any children he may have, and also provides competent evidence to support the position that the real property was not intended to be an available resource for petitioner's benefit. (R-E.)

LEGAL DISCUSSION

Medicaid is a federally created, state-implemented program designed, in broad terms, to ensure that people who cannot afford necessary medical care are able to obtain it. See 42 U.S.C. 1396, et seq., Title XIX of the Social Security Act. Medicaid provides "medical assistance to the poor at the expense of the public." DeMartino v. Div. of Med. Assistance & Health Servs., 373 N.J. Super. 210, 217 (App. Div. 2004) (citing Mistrick v. Div. of Med. Assistance & Health Servs., 154 N. J. 158, 165 (1998)); Atkins v. Rivera, 477 U.S. 154, 156 (1986); 42 U.S.C. 1396-1. Medicaid is intended to be a funding of last resort for those in need. N.J.S.A. 30:4D-2. Although a state is not required to participate in the Medicaid program, once a state elects to participate, it must comply with the Medicaid statute and federal regulations. 42 U.S.C. 1396a. New Jersey participates in the Medicaid program pursuant to the New Jersey Medical Assistance and

Health Services Act, N.J.S.A.30:4D-1, et seq. The Division of Medical Assistance and Health Services (DMAHS) is the state agency designated, pursuant to 42 U.S.C. 1396a(5), to administer the New Jersey Medicaid program. N.J.S.A. 30-4D-7. The petitioner is seeking Medicaid benefits under the New Jersey Family Care-ABD program.

Individuals are not eligible for benefits through the Medicaid program if their available income or resources exceed the limitations set forth under the law. Resources, for determination of ABD eligibility, are broadly defined as any resources "which could be converted to cash to be used for [an applicant's] support and maintenance." N.J.A.C. 10:71-4.1(b). Resources are available to an applicant when those resources are either under their "right, authority or power to liquidate" or where those resources have been "deemed available to the applicant." *Id.* at (c)(1) and (2). The applicable resource eligibility standard under N.J.A.C. 10:72-4.5 for ADB benefits is \$4,000 for an individual.

MCDSS was responsible for establishing the petitioner's resource eligibility as an applicant for ABD benefits. The ABD "resource criteria and eligibility standards apply to all applicants and beneficiaries." N.J.A.C. 10:71-4.1(a). Pursuant to the governing regulations, MCDSS must evaluate the petitioner's resource eligibility "as of the first moment of the first day" of the month of the petitioner's application. N.J.A.C. 10:71-4.2 (e).

Real property other than a primary home is generally a countable resource. However, here the evidence demonstrates the intention in titling the property in a name other than the disabled brother was to ensure that he would have a stable place to live. At that time, there would have been no idea that titling the home in this manner would affect another medically needy family member's access to benefits. Accordingly, I **CONCLUDE** that the evidence demonstrates that petitioner did not have unrestricted access to the real property to "convert to cash" to be used for her own care. Petitioner has met the burden of proving by a preponderance of the evidence that the real estate was never "available" to her, and the act performed over twenty-seven years ago of titling the property in her name did not create an available and countable resource.

Furthermore, the value of petitioner's bank accounts are not valued above the statutory resource limit of \$4,000 set forth in N.J.A.C. 10:72-4.5.

I **CONCLUDE** petitioner is not over resourced and Medicaid benefits should be approved.

ORDER


It is hereby **ORDERED** that the determination of MCDSS to deny the petitioner's application for Aged, Blind or Disabled benefits is hereby **REVERSED**. Petitioner's appeal is **GRANTED**.

I **FILE** this initial decision with the **ASSISTANT COMMISSIONER OF THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**. This recommended decision is deemed adopted as the final agency decision under 42 U.S.C. § 1396a(e)(14)(A) and N.J.S.A. 52:14B-10(f). The **ASSISTANT COMMISSIONER OF THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES** cannot reject or modify this decision.

If you disagree with this decision, you have the right to seek judicial review under New Jersey Court Rule 2:2-3 by the Appellate Division, Superior Court of New Jersey, Richard J. Hughes Complex, PO Box 006, Trenton, New Jersey 08625. A request for judicial review must be made within 45 days from the date you receive this decision. If you have any questions about an appeal to the Appellate Division, you may call (609) 815-2950.

May 23, 2024

DATE



MARY ANN BOGAN, ALJ

Date Received at Agency:

May 23, 2024

Date Mailed to Parties:

May 23, 2024

MAB/nn/lam

APPENDIX

WITNESSES

For petitioner

R.C.

For respondent

Debra Piscitelli, Supervisor

EXHIBITS

For petitioner

P-1 Last Will and Testament

P-2 Agreement

For respondent

R-A Application for ABD Medicaid benefits

R-B Aged Blind and Disabled Budget

R-C Asset Verification System Report

R-D Account Transactions

R-E Property Deed, dated April 5, 2024

R-F MCDSS Eligibility Decision, dated November 6, 2023