



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. HMA 04969-24

AGENCY DKT. NO. N/A

**Y.K.,**

Petitioner,

v.

**MONMOUTH COUNTY DIVISION  
OF SOCIAL SERVICES,**

Respondent.

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**Joseph P. Costa, Esq.,** for petitioner (Costa Legal Group, attorneys)

**Patrick J. Boyle, Esq.,** for respondent

Record Closed: November 8, 2024

Decided: November 26, 2024

BEFORE **MARY ANN BOGAN, ALJ:**

**STATEMENT OF THE CASE**

At issue in this Medicaid appeal is the availability of information and resources with respect to an applicant's inheritance of money and real property in Japan.

Petitioner Y.K. appeals respondent Monmouth County Division of Social Services' (MCDOSS) denial of her Medicaid application due to (1) her failure to provide information

about her share of her deceased father's savings account and real property in Japan, in violation of N.J.A.C. 10:71-2.2(e) and (2) excess resources because the value of her inheritance exceeds the resource standard of \$2,000, in violation of N.J.A.C. 10:71-4.5.

On appeal, Y.K. contends that (1) she provided MCDOSS with sufficient corroborating evidence regarding her resources and (2) the property in Japan and her share of the savings account should not have been counted as resources in her eligibility determination because those are unavailable resources. For the reasons cited below, petitioner complied with N.J.A.C. 10:71-2.2(e) and she is not ineligible for Medicaid benefits due to excess resources under N.J.A.C. 10:71-4.5.

### **PROCEDURAL HISTORY**

The matter was transmitted to the Office of Administrative Law (OAL) and filed on April 17, 2024, for determination as a contested case. N.J.S.A. 52:14B-1 to -15. The case was adjourned in advance of the hearing, after it was scheduled for a telephone hearing on May 3, 2024 and then on June 14, 2024. By letter dated August 15, 2024, the agency objected to petitioner's counsel acting also as petitioner's Designated Authorized Representative (DAR). The telephone hearing on August 16, 2024 was adjourned and rescheduled for an in-person hearing on October 17, 2024. The agency filed a motion on September 9, 2024, to disqualify petitioner's counsel. On October 8, 2024, petitioner filed a motion seeking an order to allow petitioner's counsel to continue his representation. By letter order issued on October 11, 2024, petitioner's counsel was not disqualified from the representation of petitioner's legal counsel. The case was heard in person on October 17, 2024. After the receipt of the transcript, the record closed on November 8, 2024.

### **STATEMENT OF FACTS**

After listening to testimony and reviewing the documentary evidence I **FIND** the following as **FACT**:

On October 4, 2023, Y.K.'s daughter, K.S., with the help of an attorney, filed a Medicaid application with MCDOSS on Y.K.'s behalf. (R-1.) Y.K. sought eligibility as of

October 1, 2023. Ibid. Y.K. was born in Japan and is a naturalized citizen of the United States. Ibid. On the application, K.S. listed several sources of income and resources, including property in Japan. Ibid. The attorney included with the application an explanatory letter about Y.K.'s income and resources. (P-2.) In the letter, the attorney provided details about Y.K.'s inheritance from her father. Ibid. Y.K.'s father died in 2014, and his estate included property in Japan and a savings account that would be split among six beneficiaries, including Y.K. Ibid. Legal battles over the estate, however, ensued in Japan and, at the time of Y.K.'s application, the estate had not been settled. Ibid. In the attorney's letter, he informed MCDOSS that he expected final resolution of the estate matter on December 10, 2023. Ibid.

MCDOSS provided Y.K. with a "Non-Discrimination Statement" that advises applicants that New Jersey's Medicaid program "does not discriminate on the basis of race, color, national origin, age or disability" and "[p]rovides free language services to people whose primary language is not English," including "[i]nformation written in other languages." (R-4.)

On January 24, 2024, MCDOSS sent Y.K. a request for information regarding several items, including the property in Japan. (R-4.) With respect to the property, MCDOSS asked for information about any incumbrances on the property, the property's fair market value, and whether the property had been sold. Ibid. MCDOSS also asked for a copy of the deed to the property and a letter from a Japanese court regarding the status of the estate matter and the value of the estate. Ibid.

In a timely response, Y.K.'s attorney provided untranslated copies of a Japanese court's final judgment regarding the estate and a land registry deed. (P-3.) Y.K.'s attorney also noted that Y.K.'s daughter had been told by the Japanese lawyers who represented Y.K. in the estate matter that they were working on English translations, that they were working on settling the estate, including calculations of Y.K.'s share of the savings account, and that the total value of the estate is "under dispute" in a separate legal proceeding. Ibid.

Y.K.'s attorney also informed MCDOSS that a potential buyer of the land and a building on the land had been found. Ibid. The potential buyer was interested in purchasing the property for 90 million yen, which was apparently in line with the property's appraised value of 93 million yen. Ibid. There were certain complications regarding the sale, which had not yet been finalized. Ibid.

The records provided to MCDOSS by Y.K.'s representatives include copies of numerous emails between K.S. and Japanese entities regarding information and updates on the status of the court proceedings, the savings account, and the real property. Ibid. Y.K.'s representatives also offered to enter into a plan of liquidation with MCDOSS regarding the inheritance. Ibid.

On February 16, 2024, MCDOSS sent another request for information, including English translations of the court judgment and land registry deed, and a letter from K.S. promising to repay Medicaid once Y.K. received her inheritance. (R-4.) In response, Y.K.'s attorney informed MCDOSS that Y.K. was still waiting for the judgment and deed to be translated into English, and K.S. provided a letter promising to repay Medicaid upon receipt of the inheritance. (P-4.)

Prior to determining eligibility, the assigned caseworker conferred with her direct supervisor who presented testimony in this case. The supervisor testified that once she reviewed the case documents and the caseworkers write up, the supervisor on March 26, 2024, having not received the translated documents, signed the eligibility decision letter denying Y.K.'s application for failure to provide that information and due to excess resources because "it appears [Y.K.] is entitled to 1/6 of her father's savings account (undisclosed amount which can be liquidated) and inherited land located in Okinawa, Japan." (P-1.)

By letter dated April 2, 2024, Y.K. asked the Division of Medical Assistance and Health Services (DMAHS) for a fair hearing to contest MCDOSS' denial of her application. Ibid. In the letter, Y.K.'s attorney argued that the denial was improper because (1) the savings account and real property were not "available resources" under Medicaid law because her share of the savings account was in the custody of the Japanese law firm

and Y.K. could not access her share yet and because her inherited property was in the process of being sold, but the sale had not yet been completed and (2) Y.K. complied with MCDOSS' requests for information and provided evidence that the property and savings account were unavailable resources and that K.S. had tried, but had not yet received the translated documents MCDOSS sought. Ibid.

### **LEGAL ANALYSIS AND CONCLUSIONS**

In order to qualify for Medicaid in New Jersey, an applicant must provide a county welfare agency (CWA) with documentation verifying her financial eligibility and such verifications must show that the applicant is financially eligible for the program.

First, under N.J.A.C. 10:71-2.2, a Medicaid applicant must provide sufficient information for the CWA to determine her financial eligibility. In this regard, an applicant must "[a]ssist the CWA in securing evidence that corroborates his or her statements" on the application and "[r]eport promptly any change affecting his or her circumstances." N.J.A.C. 10:71-2.2(e).

A CWA also has responsibilities during the application process, including "[a]ssist the applicants in exploring their eligibility for assistance" and "[m]ake known to the applicants the appropriate resources and services both within the agency and the community, and, if necessary, assist in their use." N.J.A.C. 10:71-2.2(c).

Generally, a CWA must process an application for Medicaid Managed Long-Term Services and Supports (MLTSS) in forty-five days. N.J.A.C. 10:71-2.3. But "[w]here substantially reliable evidence of eligibility is still lacking at the end of the designated period; the application may be continued in pending status" in "exceptional cases." N.J.A.C. 10:71-2.3(c).

Such exceptional circumstances include the CWA's "determination to afford the applicant, whose proof of eligibility has been inconclusive, a further opportunity to develop additional evidence of eligibility before final action on his or her application" and "[c]ircumstances wholly outside the control of both the applicant and CWA." Ibid.

Second, once the CWA has sufficient information regarding an applicant's resources, the CWA must determine whether the applicant is resource eligible. To be eligible, an individual's resources may not exceed \$2,000 in value. N.J.A.C. 10:71-4.5(c). An applicant's "[r]esource eligibility is determined as of the first moment of the first day of each month." N.J.A.C. 10:71-4.1(e). 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 or her support and maintenance." N.J.A.C. 10:71-4.1(b). Moreover, "[b]oth liquid and nonliquid resources shall be considered in the determination of eligibility, unless such resources are specifically excluded under the provisions of N.J.A.C. 10:71-4.4(b)." Ibid.

A resource must also be "available" for purposes of an eligibility determination. N.J.A.C. 10:71-4.1(c). A resource is available if "[t]he person has the right, authority or power to liquidate real or personal property or his or her share of it[.]" Ibid. When evaluating an applicant's available resources, "[t]he CWA shall verify the equity value of resources through appropriate and credible sources." N.J.A.C. 10:71-4.1(d).

Under N.J.A.C. 10:71-4.4(b)(6), excludable resources include:

The value of resources which are not accessible to an individual through no fault of his or her own.

- i. Such resources include, but are not limited to, irrevocable trust funds, property in probate, and real property which cannot be sold because of the refusal of a co-owner to liquidate.
- ii. Inaccessible resources shall be reevaluated (regarding their accessibility) at every redetermination.

[N.J.A.C. 10:71-4.4(b)(6).]

There is also a nearly forty-year-old Medicaid Communication that DMAHS issued about the liquidation of resources and the excludability of certain liquid and non-liquid resources. Medicaid Communication No. 87-26 (September 24, 1987) (P-7). Under that policy, a CWA may, when determining an applicant's resource eligibility, temporarily



exclude certain nonliquid resources if “the Medicaid applicant . . . agree[s] to and cooperate[s] in a plan of liquidation.” Ibid.

The policy defines a nonliquid resource as, but not limited to, such things as buildings and land. Ibid. Generally, under a plan of liquidation, an applicant must agree to “sell or liquidate a nonliquid resource” within six months. Ibid. And upon expiration of the plan, the CWA shall include the resource in determining the applicant’s resource eligibility if the resource(s) has not yet been liquidated. Ibid.

Nonetheless, the policy recognizes an exception to the inclusion requirement upon the end of a liquidation plan: if the applicant “satisfactorily demonstrate[s] to the [CWA] that reasonable effort has been made to sell the resource on the open market and the only barrier to its sale is the inability to find a buyer.” Ibid. In such cases, “the resource shall be excluded as inaccessible in accordance with N.J.A.C. 10:71-4.4(b)(6)” and “[a] finding of inaccessibility shall be reassessed at each redetermination of program eligibility.” Ibid.

Finally, New Jersey’s Medicaid regulations recognize that “discrimination on the ground of race, color, national origin or handicap” is prohibited under the Medicaid program. N.J.A.C. 10:71-8.8.

- I. **Y.K. provided sufficient corroborating evidence of her financial eligibility under N.J.A.C. 10:71-2.2 by providing MCDOSS with the documents the agency requested, i.e., a copy of the final judgment from a Japanese court and a copy of the land registry deed.**

Y.K. complied with N.J.A.C. 10:71-2.2(e) by “[a]ssist[ing] the CWA in securing evidence that corroborates his or her statements” about her inheritance. In particular, as requested, Y.K. provided MCDOSS with a copy of the final judgment from a Japanese court regarding Y.K.’s father’s estate and with a copy of the land registry deed. As such, Y.K. complied with N.J.A.C. 10:71-2.2(e). Despite the county welfare agency’s insistence that Y.K. provide those documents with English translations, such insistence was unreasonable and cannot be grounds for denying her application under N.J.A.C. 10:71-2.2(e).

Y.K. is of Japanese origin. When her father died, she inherited certain assets that her father owned in Japan. Y.K.'s representatives disclosed those assets to MCDOSS and explained to the agency that she had not yet received her inheritance due to ongoing legal battles and other complications in Japan. As part of the application process, MCDOSS specifically asked Y.K. for copies of a court judgment and a land registry deed. Y.K.'s representatives provided MCDOSS with the requested documents. Because the documents were in Japanese, MCDOSS asked Y.K. to provide the agency with English translations of those documents. And when Y.K. did not provide the translated documents in a timely manner, MCDOSS denied her application in part for failure to comply with N.J.A.C. 10:71-2.2.<sup>1</sup>

The denial of Y.K.'s application on this basis was inappropriate. As stated in N.J.A.C. 10:71-8.8, federal law prohibits discrimination on the basis of national origin in the Medicaid program. Y.K. is of Japanese origin and she inherited assets in Japan.

After Y.K.'s representatives timely provided MCDOSS with the requested documents, MCDOSS could have and should have had the documents translated into English, rather than put the onus on Y.K.'s representatives. Every Medicaid application includes a "Non-Discrimination Statement" that advertises free translation services under New Jersey's Medicaid program. And under N.J.A.C. 10:71-2.2(c), a CWA like MCDOSS is required to "[a]ssist the applicants in exploring their eligibility for assistance" and "[m]ake known to the applicants the appropriate resources and services both within the agency and the community, and, if necessary, assist in their use." For these reasons, MCDOSS should have arranged for the requested documents to be translated from Japanese to English.

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<sup>1</sup> The record also shows that MCDOSS appropriately kept Y.K.'s application in pending status past the forty-five-day period for processing an application due to exceptional circumstances under N.J.A.C. 10:71-2.3(c). First, it appears that MCDOSS did not send its first request for information until January 24, 2024, or three months after Y.K. applied. And it appears from the record that exceptional circumstances for keeping the application in pending status existed due to the unique circumstances and complications regarding Y.K.'s inheritance in Japan - "[c]ircumstances wholly outside the control of both the applicant and CWA." Finally, Y.K.'s representatives provided the documents specifically requested by MCDOSS before the end of the extended application period.



In sum, Y.K. complied with N.J.A.C. 10:71-2.2(e) by providing MCDOSS with the documents the agency requested and the fact that the documents were in Japanese does not affect this conclusion.

**I. Y.K.'s share of her father's savings account and property in Japan do not render her ineligible for excess resources.**

Y.K. is also not resource ineligible because of her share of her father's savings account and real estate in Japan since those resources were, at the time of her application, and apparently remain, inaccessible to her despite her reasonable efforts to liquidate those resources.

In addition to denying Y.K.'s application for failure to provide information, MCDOSS denied Y.K.'s application for excess resources under N.J.A.C. 10:71-4.5 because she "is entitled to 1/6 of her father's savings account (undisclosed amount which can be liquidated) and inherited land located in Okinawa, Japan." Y.K., however, provided MCDOSS with evidence that those resources were unavailable to her at the time of her application and her representatives offered to enter into a liquidation plan with MCDOSS by which Y.K. would give the agency the proceeds from the liquidation of those resources. Y.K.'s representatives informed MCDOSS that Y.K. could not access her share of the savings account because the money was in the custody of a Japanese lawyer who had yet to settle that portion of her father's estate. Y.K.'s representatives also provided documentation showing that the Japanese property had been listed for sale and that, although a buyer for the property had been found, the sale had not yet been finalized. Finally, on appeal, Y.K. has confirmed that the status of those two resources has not changed and that she has not yet received the proceeds of her inheritance.

Under these facts, Y.K. is not ineligible for Medicaid due to the savings account money or property. First, her share of the savings account is not yet an available resource because her lawyer in Japan has yet to convert her share into cash that she may use for her support and maintenance and, because her share is in the custody of the lawyer in Japan for estate purposes, the resource is unavailable to her because she lacks the "the right, authority or power to liquidate [the] property or his or her share of it[.]"

Second, under Medicaid Communication No. 87-26 and N.J.A.C. 10:71-4.4(b)(6), the property in Japan is not an available resource because she has “satisfactorily demonstrated . . . that reasonable effort has been made to sell the resource on the open market and the only barrier to its sale is the inability to find a buyer.” As such, “the resource shall be excluded as inaccessible in accordance with N.J.A.C. 10:71-4.4(b)(6).”

Finally, in addition to the letter provided to MCDOSS by Y.K.’s daughter to repay Medicaid once Y.K receives her share of the inheritance, Y.K.’s representative also represented their agreement to enter a formal liquidation plan with MCDOSS to use the savings account money and real estate proceeds for her support and maintenance once the monies from her inheritance are received.

I **CONCLUDE** Y.K. complied with N.J.A.C. 10:71-2.2(e) by providing MCDOSS with the requested documents regarding her inheritance despite the fact that the documents were in Japanese. I further **CONCLUDE** that petitioner’s share of her father’s savings account and real estate in Japan are unavailable resources that do not render her ineligible for Medicaid due to excess resources under N.J.A.C. 10:71-4.5. I further **CONCLUDE** that the case shall be **RETURNED** to MCDOSS to **PROCESS** the application to determine Y.K.’s Medicaid eligibility as of October 1, 2023, in accordance with the legal conclusions regarding Y.K.’s compliance with N.J.A.C. 10:71-2.2(e) and the inaccessibility of Y.K.’s savings account money and real estate in Japan under the resource rules and Medicaid Communication No. 87-26.

### **ORDER**

It is hereby **ORDERED** that the decision of the Monmouth County Division of Social Services is **DENIED**. Petitioner’s appeal is **GRANTED**. I further **ORDER** that the case shall be returned to MCDOSS to process the application to determine petitioner’s eligibility as of October 1, 2023.

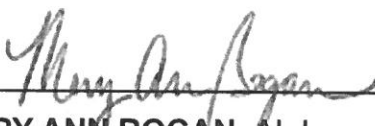
I **FILE** this initial decision with the **ASSISTANT COMMISSIONER OF THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**. This recommended

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.

November 26, 2024

DATE

  
\_\_\_\_\_  
MARY ANN BOGAN, ALJ

Date Received at Agency:

\_\_\_\_\_

Date Mailed to Parties:

\_\_\_\_\_

MAB/nn

## **APPENDIX**

### **WITNESSES**

#### **For petitioner**

None

#### **For respondent**

Arti Sinha, Supervisor

### **EXHIBITS**

#### **For petitioner**

- P-1 Fair Hearing Request, filed April 2, 2024 and MCDSS Denial Letter, dated March 26, 2024
- P-2 Application Cover Letter, dated October 10, 2023 and Procedural History and Material Facts, dated October 4, 2023
- P-3 MCDSS Request for Information, dated January 24, 2024; Petitioner's Reply to MCDSS, dated February 6, 2024 and Procedural History and Material Facts, dated February 6, 2024
- P-4 MCDSS Request for Information, dated February 16, 2024 and Petitioner's Reply to MCDS, dated February 29, 2024
- P-5 Petitioner's emails to caseworker, dated February 16, 2024
- P-6 Petitioner's Reply to MCSS, dated March 22, 2024
- P-7 Medicaid Communication No. 87-26 and C.B. v. MCDSS Final Decision, dated August 17, 2021
- P-8 Post-Denial Correspondence ("Fuji")
- P-9 Post-Denial Correspondence ("Nakama Legal Affairs Services Office")
- P-10 Atria Senior Living ALF and Balance as of August 2024

- P-11 Pre-Admission Screening (PAS) and Clinically eligibility approval on March 27, 2024
- P-12 N.J.A.C. 10:71-4.4(b)6 Excludable resources
- P-13 N.J.A.C. 10:71-4.4(b) Excludable resources
- P-14 Medicaid Communication No. 87-26, dated September 24, 1987
- P-15 Email chain, dated October 2-3, 2024

**For respondent**

- R-1 Application
- R-2 Denial letter
- R-3 Medicaid Citations
- R-4 RFI letters mailed to the DAR
- R-5 DAR form
- R-6 Yen to US Dollar conversion
- R-7 Cover letter, dated February 6, 2024
- R-8 Cover letter, dated February 29, 2024
- R-9 Cover letter, dated March 22, 2024