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State of New Jersey
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
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Commissioner

VALERIE HARR
Director

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

M.M.,	:	
	:	
PETITIONER,	:	ADMINISTRATIVE ACTION
	:	
V.	:	FINAL AGENCY DECISION
	:	
DIVISION OF MEDICAL ASSISTANCE	:	OAL DKT. NO. HMA 6410-2014
	:	
AND HEALTH SERVICES &	:	ON REMAND HMA 18632-2013
	:	
BERGEN COUNTY BOARD OF	:	
	:	
SOCIAL SERVICES,	:	
	:	
RESPONDENTS.	:	

As Director of 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 contents of the OAL case file. Petitioner filed exceptions were filed in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is October 27, 2014, in accordance with an Order of Extension.

This matter concerns the denial of Petitioner's application for Medicaid benefits due to her income exceeding the private pay rate for nursing home care. It is undisputed that her total income pays for her long term care benefits. However, Petitioner is seeking to transfer assets that she would otherwise need to spend down and use an annuity purchased solely for the purpose of paying for her benefits while she is being penalized. The issue becomes when Petitioner became otherwise eligible for the Medicaid Needy program so as to start the penalty.

Petitioner filed two sets of exceptions, which are not permitted by the rules. The second is dated August 5, 2014 with an attachment of a Medicaid Communication regarding retroactive benefits. This matter does not concern retroactive benefits. The first letter dated August 3, 2014 contains an email and appointment notification received by Petitioner's attorney and that was not part of the record below. N.J.A.C. 1:1-18.4(c) clearly states "[e]vidence not presented at the hearing shall not be submitted as part of an exception, nor shall it be incorporated or referenced within exceptions." Thus, I hereby reject those documents and any arguments in the exceptions that referenced them.

On remand, Petitioner was to demonstrate that there was an unpaid medical bill in July 2013 that would render her otherwise eligible.¹ Petitioner failed to address this. However, the prior decision noted that Petitioner's August 2013 application certified that there were no unpaid medical bills for the prior

¹ The record shows Petitioner's attorney received a letter from the annuity broker dated June 24, 2013 with the instructions to have the Delivery Receipt signed. This contradicts other documents in the record. As the ten day revocation period that commences upon the signed delivery receipt, the annuity value appears to have remained available to Petitioner as through July 1, 2013, rendering her ineligible for that month. However, as Petitioner failed to establish eligibility in July 2013, the discrepancy does not alter on the eligibility date.

three months and the documents show that Petitioner had no nursing home bills to reduce her income and, thus, no Medicaid eligibility. OAL Dkt. HMA 18632-2013 at R-1 at 6 and P-2.

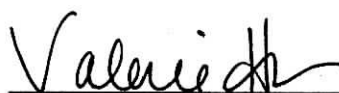
The Medically Needy Program is premised on using unpaid medical bills to reduce income to establish eligibility. N.J.A.C. 10:70-6.2. As Medically Needy sets payment for long term care "on the day following the day that spend down is met," absent an unpaid bill for services that could be covered by Medicaid, she is not otherwise eligible for benefits. See Medicaid Communication No. 95-11 Instructions at 4. Since a transfer penalty can only begin when Petitioner is otherwise eligible for benefits, absent an unpaid bill, the transfer penalty cannot begin. With eligibility being set as the day after spend down is met, Petitioner has not demonstrated that Medicaid would have paid for services under the Medically Needy program for any day in July 2013. N.J.A.C. 10:70-6.1(b)2. Thus, the first day that Petitioner could have been otherwise eligible for Medicaid is August 1, 2013.

Thus, while I ADOPT the Initial Decision but MODIFY Petitioner's eligibility date to be established as of August 1, 2013 rather than August 5, 2013.

THEREFORE, it is on this 27th day of OCTOBER 2014

ORDERED:

~~That the Initial Decision in this matter is hereby ADOPTED.~~



Valerie Harr, Director
Division of Medical Assistance
and Health Services