



*State of New Jersey*

DEPARTMENT OF HUMAN SERVICES  
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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*Director*

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

E.H.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE  
AND HEALTH SERVICES,

RESPONDENT.

**ADMINISTRATIVE ACTION**

**FINAL AGENCY DECISION**

**OAL DKT. NO. HMA 9133-2016**

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this matter, consisting of the case file, the documents in evidence and the Initial Decision. Neither party filed exceptions. Procedurally, the time period for the Agency Head to file a Final Agency Decision is December 22, 2016 pursuant to an Order of Extension.

This matter concerns Petitioner's placement in a nursing facility. Petitioner suffers from developmental disability, seizures and Dravet syndrome. After the decline of her mother while Petitioner was hospitalized, her father became unable to care for her. Petitioner sought to move to Eastern Star, a nursing facility.

Federal and state law sets up a gatekeeping process to prevent individuals from being inappropriately placed in nursing homes.<sup>1</sup> As part of the Omnibus Budget Reconciliation Act (OBRA) enacted in 1987, Congress developed the Preadmission Screening and Resident Review (PASRR) program to prevent inappropriate admission and retention of people with mental disabilities in nursing facilities. 42 U.S.C.A. § 1396r(b)(3)(F). PASRR requires that all applicants to Medicaid-certified nursing homes be assessed to identify individuals whose needs require that they receive additional services for their intellectual disability or serious mental illness. Those individuals who "test positive" at Level I are then evaluated in depth to confirm the determination of MI/ID for PASRR purposes, and the "Level II" assessment produces a set of recommendations for necessary services that are meant to form the individual's plan of care. See 42 C.F.R. § 483.100 et seq. and N.J.A.C.8:85-1.8.

Petitioner was determined to be in need of nursing home level services. However, Petitioner did test positive at the Level I PASRR. As a result she was screened for a Level II PASRR which is required to determine the need for specialized services. 42 C.F.R. § 483.100 et seq.

That assessment determined that Petitioner would benefit from specialized services, such as individual supports, respite and a day program. R-D. Those services cannot be provided in a nursing facility. As such, Petitioner is not permitted to reside in a nursing facility. Petitioner challenged that finding and the matter was transmitted to the Office of Administrative Law.

The Initial Decision reverses the PASRR determination by finding that the testimony from Petitioner's doctor diagnosed her with organic dementia. At the time

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<sup>1</sup> Inappropriate placement in a nursing home causes residents "to become dependent on that facility, experiencing

the PASRR was conducted in May 2016, the medical notes indicated that it was "unable to confirm" dementia. R-G. A diagnosis of dementia would negate the need for a Level II PASRR.

It appears that the facts in this case demonstrate a confirmed medical diagnosis of dementia which was not evident when the PASRR was done in February 2016. Based on the totality of unique facts and circumstances in this case, I FIND that Petitioner meets the criteria to be exempted from the Level II PASRR and her residency in the nursing home is an appropriate placement.

THEREFORE, it is on this 20<sup>th</sup> day of DECEMBER 2016,

ORDERED:

That the Initial Decision is hereby ADOPTED.



Meghan Davey, Director  
Division of Medical Assistance  
and Health Services