



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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

H.N.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

PASSAIC COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

ORDER OF REMAND

OAL DKT. NO. HMA 16193-2016

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the OAL case file and the Initial Decision approving the Settlement Agreement reached by the parties. Procedurally, the time period for the Agency Head to file a Final Decision is November 20, 2017 in accordance with an Order of Extension.

This matter arises from the Passaic County Board of Social Services' imposition of a transfer penalty. The prior settlement was remanded as there was no documentation to support a reduction in the penalty. On remand, the parties again entered into a settlement on the record whereby the parties agreed Petitioner's transfer penalty would be reduced. The reduction is premised on Petitioner receiving fair market value for caregiver services provided by her daughter. I again FIND that the Settlement Agreement is unsupported by the law and the record and I hereby REJECT the Settlement Agreement for the reasons that follow.

For some reason the Settlement Agreement set forth the applicable law in citations to Massachusetts regulations. Those citations do not apply to New Jersey Medicaid. Second, the Settlement Agreement is at odds with the caregiver agreement. The Settlement Agreement states that Petitioner's daughter provided personal assistance with dressing, bathing, toileting, hair care, eating, laundering . . . , personal shopping and incidental services. The caregiver agreement omits bathing and toileting as services to be provided. As such, the 2017 Settlement Agreement cannot amend the tasks Petitioner contracted for in 2014 so as to align the care with those that are performed by a home health aide.

Thirdly, even if the tasks were aligned, there is no basis for Petitioner to pay her daughter commensurate with the rate paid to a home health agency. See E.A. v. DMAHS and Hunterdon County Board of Social Services, A-2669-13T3, decided July 20, 2015, upholding the finding that a care agreement could not use the fee schedule for "trained/bonded/licensed caregivers." The Settlement Agreement's statement that the level of care "was closely comparable to that of an Adult Home Health Aide" does not permit Petitioner to use licensed, professional rates to justify transfers that did not

correspond to the scope and breadth of services provided under those rates. There is no evidence that Petitioner's daughter holds any licenses or certificates as a home health aide. Additionally, even if she did, Petitioner has provided no evidence that the rate paid to an agency is the amount the employee receives.

"The mere existence of a pre-existing care agreement for services does not automatically establish that the services were rendered for fair market value. See E.S. v. Div. of Med. Assistance & Health Servs., 412 N.J. Super. 340, 352-53 (App. Div. 2010)." E.A. v. DMAHS and Hunterdon County Board of Social Services, *supra*. The court went on to find that "[n]otwithstanding a care agreement, the applicant still bears the burden to establish the types of care or services provided, the type and terms of compensation, the fair market value of the compensation, and that the amount of compensation or the fair market value of the transferred asset is not greater than the prevailing rates for similar care or services in the community. N.J.A.C. 10:71-4.10(b)(6)(ii) and (j)." *Id.* Petitioner has provided no evidence that the \$3,500 monthly rate she contracted for or the \$20 an hour rate she is now claiming was for fair market value and was based on the prevailing rate for an uncertified and unlicensed individual.¹

As this Agreement is legally incorrect and factually flawed in the assumption that Petitioner received fair market value to pay her daughter a rate commensurate with an amount paid to a licensed agency, the case must again be REJECTED and RETURNED to OAL.


¹ The transfer amount is summarily reduced by \$25,631. There is no evidence how this was determined. Using the \$20 an hour rate, Petitioner would have received 1,281.55 hours. Petitioner failed to demonstrate that she received this precise number of hours.

THEREFORE, it is on this 17th day of NOVEMBER 2017,

ORDERED:

That the Initial Decision approving the terms of the Settlement Agreement in this matter is hereby REJECTED; and

That the matter is hereby REMANDED to the Office of Administrative Law for further proceedings on the transfer penalty.


Meghan Davey, Director
Division of Medical Assistance
and Health Services
O.B.O.