



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

PO Box 712

TRENTON, NJ 08625-0712

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

CAROLE JOHNSON
Commissioner

MEGHAN DAVEY
Director

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

Y.S.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

OCEAN COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

ORDER OF RETURN

OAL DKT. NO. HMA 5606-2018

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision, the OAL case file and the documents filed below. Neither party filed exceptions in this matter. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is October 4, 2018 in accordance with an Order of Extension.

The matter arises regarding Petitioner's January 2018 application for Medicaid benefits. Petitioner's husband died in January 2017. In seeking information about the assets of the couple during the lookback period, Petitioner's representative, Elder Life Management provided some of the documentation but asserts that it is unable to gather

information on the husband's estate due to document's Petitioner signed. The Initial Decision found that Petitioner should have been given additional time due to exceptional circumstances to compel the production of information. For the reasons that follow, I hereby MODIFY the Initial Decision as Petitioner's actions appear to be the cause of her inability to obtain documents and RETURN the matter to Ocean County to determine if eligibility can be established so as to start the penalty or to specifically identify the documents that Petitioner has failed to provide.

Petitioner's claim that she is unable to obtain documents from her husband's estate as she had relinquished that right is not supported by the record. She presented a will from her husband J.M., dated June 2009, that states Petitioner had "executed a waiver of her elective share of [his] estate." R-8.¹ The will then goes on to specifically bequeath 1/3 from the sale of his home to Petitioner. However, the document titled "Renunciation of Inheritance" is dated November 2012 some three years after her alleged waiver of the elective share. The 2012 document is not notarized nor does it define the property she claims is part of the estate as required by N.J.S.A. 3B:9-3. Additionally at the time she signed the renunciation of inheritance, there was neither an estate nor an inheritance it could attach to as Petitioner's husband was alive. To the extent that document had any legal authority; it only became effective at J.M.'s death and the filing of the will. See I.G. v. Department of Human Services, Div. of Medical Assistance and Health Services, 386 N.J. Super. 282 (App. Div. 2006). Thus, the transfers Petitioner seeks to make only became effective when she became the surviving spouse in 2017 and are to be considered a transfer of assets.

It is clear that Petitioner was able to provide information about the couple's assets to the extent she had possession of the statements or was joint owner on the account. R-4.

¹ The Initial Decision mistakenly states the will was executed October 2012. That date is the expiration date of the notary on the last page of the document. The will was signed in June 2009.

Those transfers identified by Ocean County would be subject to penalty as would the renunciation. Petitioner's claim that she is unable to obtain information about the financial statements or the estate stems from her own actions which would not permit an increase in the time period. The record shows her representative was aware of the problems prior to even filing the application. This also precludes a spousal waiver as Petitioner's actions, whether or not they are legally correct, created any difficulty she is encountering.

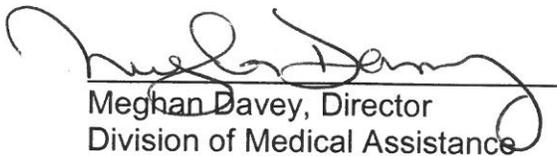
Based on my review of the record, there may be sufficient information for Ocean County to determine if Petitioner is eligible and to assess the penalty. If not, the outcome letter should reflect the failure to provide that specific information including the assessment of the elective share. Petitioner has provided some of the records including verification of stocks and two annuities so she has access to the couple's finances. Thus, I hereby RETURN the matter to Ocean County for completion of the application as set forth above.

THEREFORE, it is on this 4th day of OCTOBER 2018,

ORDERED:

That the Initial Decision is hereby MODIFIED; and

That the matter is RETURNED to Ocean County to finalize the application.


Meghan Davey, Director
Division of Medical Assistance
and Health Services