

Administrative Law Judge in their entirety and incorporate the same herein by reference. Summary disposition may be entered where there is no genuine issue as to any material fact and where the moving party is entitled to prevail as a matter of law. See Initial Decision at page 3, citing Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995).

Based upon my review of the record, I agree with the Administrative Law Judge (ALJ) that there are no genuine issues of material fact that would require a hearing in this matter. I also agree that DMAHS is entitled to prevail as a matter of law.

Administrative agencies have the discretion to determine whether a case is contested. N.J.S.A. 52:14f-7(a). The OAL acquires jurisdiction over a matter after it has been determined to be a contested case by an agency head. N.J.A.C. 1:1-3.2(a). A contested case is commenced in the State agency with appropriate subject matter jurisdiction. N.J.A.C. 1:1-3.1. DMAHS is the administrative agency within the Department of Human Services(DHS) that is charged with administering the Medicaid program. N.J.S.A. 30:4D-7. It is well settled that under federal and state law DMAHS must take "all necessary action to recover the cost of benefits correctly provided to a recipient from the estate of said recipient." Estate of DeMartino v. Division of Medical Assistance and Health Services, 373 N.J. Super. 210, 218 (App. Div. 2004), certif. denied, 182 N.J. 425 (2005). The law also requires DMAHS to have a procedure for the waiver of recovery of Medicaid benefits where recovery would work an "undue hardship." 42 U.S.C.A. §1396p(b)(3).

On May 23, 2018, DMAHS advised Petitioner of the basis of the lien and the procedure to request a waiver or compromise of the lien for undue hardship reasons. On April 30, 2018, Petitioner requested a waiver of the lien due to hardship. On July 5, 2018, DMAHS denied Petitioner's request for a hardship waiver and advised her of her right to a fair hearing on that issue. Accordingly, on August 24, 2018, DMAHS transmitted the matter to the OAL for a fair hearing on the sole issue of the denial of the hardship waiver. Any challenge to the validity of the lien or Petitioner's right to contribution as a co-tenant is under the jurisdiction of the superior court and not the OAL. N.J.S.A. 4D:7-8. I FIND that

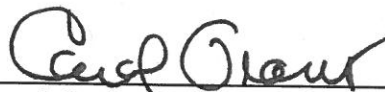
the ALJ correctly concluded that the OAL's jurisdiction in this matter was limited to the Petitioner's appeal of the denial of hardship waiver.

That said, it is undisputed that DMAHS provided Medicaid benefits to Petitioner from May 1, 2007 through November 19, 2017.¹ As a result, DMAHS holds a \$562,121.89 statutory lien claim against the property owned by Petitioner at the time of her death. N.J.S.A. 30:4D-7.2(a)(3). See also 42 U.S.C. § 1396p(b)(4)(b) and N.J.A.C. 10:49-14.1(1). As a result of DMAHS' claim, Petitioner requested a waiver of the lien due to hardship. N.J.A.C. 10:49-14.1(h). The criteria for finding that the lien creates a hardship requires that the estate is or would become the sole income-producing asset of the survivors and pursuit of the recovery would cause those survivors to become eligible for public assistance themselves. N.J.A.C. 10:49-14.1(h). Petitioner has asserted but presented no evidence that the estate is her sole income-producing asset nor is there any evidence that the imposition of a lien when the property is sold or vacated will result in her being eligible for public assistance.

THEREFORE, it is on this 18 day of July 2019,

ORDERED:

That the Initial Decision is hereby ADOPTED.



Carol Grant, Acting Director
Division of Medical Assistance
and Health Services

¹ In exceptions, Petitioner cites Sendar v. State of New Jersey DHS, 230 N.J. Super. 37 (App. Div. 1989) to support the assertion that she is entitled to an administrative hearing on the validity of the lien. However, that case dealt with a certificate of debt filed against a provider pursuant to N.J.S.A. 30:4D-17 which addresses situations where a person or provider receives medical assistance payments to which he or she is not entitled. Here, it is undisputed that DMAHS' lien is based on correctly paid benefits to Petitioner.