



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

F.M.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

GLOUCESTER COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 10215-2018

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. No exceptions were filed in this matter. Procedurally, the time period for the Agency Head to file a Final Decision is March 28, 2019 in accordance with an Order of Extension.

The matter arises regarding the denial of Petitioner's Medicaid benefits due to excess income. Gloucester County contends that Petitioner's income, which included

an annuity that pays her \$10,109.44 a month, exceeds the private pay rate for the facility. With total monthly income of \$12,345.43, Petitioner is seeking to have her income pay privately for her nursing home care while she is subject to a penalty due to the transfer of \$40,000. Petitioner's facility charges her \$400 a day for a semi-private room. She also incurs costs associated with her Medicare premium, Medicare supplemental plan and prescription drugs. These total expenses put her at a deficit each month.

Medicaid is a federally-created, state-implemented program designed, in broad terms, to ensure that qualified people who cannot afford necessary medical care are able to obtain it. See 42 U.S.C.A. § 1396, et seq., Title XIX of the Social Security Act ("Medicaid Statute"). The overarching purpose of the Medicaid program is to provide benefits to qualified persons "whose income and resources are insufficient to meet the cost of necessary medical services." 42 U.S.C.A. § 1396-1. It "is designed to provide medical assistance to persons whose income and resources are insufficient to meet the costs of necessary care and services." Atkins v. Rivera, 477 U.S.154, 156 (1986). In setting up the Qualified Income Trust (QIT) the federal courts described situations where individuals in nursing homes had incomes that were "too low to enable them to pay their own nursing home costs, but too high to qualify for Medicaid benefits." Miller v. Ibarra, 746 F.Supp. 19 (1990).

As explained by the New Jersey Supreme Court in L.M. v. DMAHS, 140 N.J. 480,488-489 (1995):

We note that as part of the Omnibus Budget Reconciliation Act of 1993 (OBRA '93), Pub.L. No. 103-66, Congress expressly provided for the creation of so-called "Miller Trusts," which permit "persons in income cap states whose fixed income places them over the income limit ... nevertheless [to] qualify for Medicaid nursing home benefits." Sanford J. Schlesinger & Barbara J. Scheiner, *OBRA '93 Makes Sweeping Changes in Medicaid Rules*, 21 *Est.*

Plan. 74, 80 (1994). (Those trusts are so named because a precursor to the current codified version, involving the judicial creation of trusts for incompetent persons, was initially accepted in *Miller, supra*, 746 F. Supp. 19, as a method of excluding income for eligibility purposes, thereby avoiding the income cap.) Presently, in a state such as New Jersey, which provides for nursing-home coverage under 42 U.S.C.A. § 1396a(a)(10)(A)(ii)(V) but does not provide such coverage under the medically needy program, a trust containing "pension, Social Security, and other income to the individual" can be established under federal law to exclude that income from a Medicaid eligibility determination. 42 U.S.C.A. § 1396p(d)(4)(B)(i). That trust, however, must provide that "the State will receive all amounts remaining in the trust upon the death of such individual up to an amount equal to the total medical assistance paid on behalf of the individual under a State plan." 42 U.S.C.A. § 1396p(d)(4)(B)(ii). Accordingly, those trusts provide a mechanism that prevents persons requiring long-term nursing-home care from becoming caught in the "Medicaid Gap," and also helps to preserve the financial integrity of the Medicaid program.

The court defined the Medicaid Gap as "a term used to describe a level of income that is 'just above the Medicaid cut-off yet too low to cover the cost of nursing home care.' Jill Quadagno et al., *Falling into the Medicaid Gap: The Hidden Long-Term Care Dilemma*, 31 *The Gerontologist* 521, 521 (1991)." *Ibid* at 480. Congress addressed the Medicaid Gap by requiring states to either cover nursing home services under Medically Needy or allowing QITs.

The type of financial planning used by Petitioner is called "half-a-loaf" where a Medicaid applicant gifts half of their assets while using the remaining half to pay for care during the transfer penalty. The Deficit Reduction Act of 2005 specifically sought to put an end to this planning by delaying the transfer penalty until the applicant was otherwise eligible for Medicaid. See *N.M. v. Div. of Med. Assist. & Health Servs.*, 405 N.J. Super. 353, 362-63 (App. Div.), cert. denied, 199 N.J. 517 (2009) (explaining the Congressional intent behind the enactment of the DRA). However, Medicaid annuities are now used to convert resources to an income stream to pay for nursing home care while subject to penalty.

Due to the unique facts associated with this case, I concur with the Initial Decision that Petitioner's total income is barely under the private pay costs associated with her nursing home care and other medical expenses. Her income of \$12,345.43 is not a barrier to Petitioner's eligibility determination. It is clear that if her only medical expense was her nursing home costs, she would have sufficient income to pay and would not be eligible. See A.D. vs. Camden County Board of Social Services and DMAHS, OAL Dkt. No HMA 2068-2016 (decided September 12, 2016).

However, the record raises other issues regarding Petitioner's eligibility. Namely, Petitioner's bank statement for May of 2018 shows a series of purchases and checks that dip her resources to \$1,994.30 in order to establish June 2018 eligibility. See Respondent's Brief, Exhibit B. A check dated May 29, 2018 for \$19.51 is made out to the nursing facility and is was presented for payment on May 30, 2018. Ibid. The memo line says it is for a "PNA acct." Personal Needs Allowance or PNA accounts are funds held by the nursing home for the resident's use. However, the funds are considered the resident's resource and count towards Medicaid eligibility. N.J.A.C. 8:85-1.16 (c). By writing a check to be deposited into Petitioner's PNA account, her total resources were not reduced. It is moving assets from one accessible account to another. Absent being spent from the PNA account within one day of deposit, when added to the \$1,994.30 balance, Petitioner's resources are at \$2,013.81, making her ineligible as of June 1, 2018. If there are additional funds in the PNA account, Petitioner's resources may be even more in excess of the \$2,000 limit. As such, the matter is hereby RETURNED to Gloucester County to further analyze Petitioner's resources including the PNA account. As the penalty cannot begin until Petitioner is otherwise eligible for Medicaid, resources in excess of \$2,000 would preclude eligibility from being established.

THEREFORE, it is on this 26th day of MARCH 2019,

ORDERED:

That the Initial Decision is hereby ADOPTED with regard to Petitioner's income; and

That the matter is hereby RETURNED to Gloucester County for further action on Petitioner's application.


Meghan Davey, Director
Division of Medical Assistance
and Health Services