



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**

M.P.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

OCEAN COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 6216-2017

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this matter, consisting of the Initial Decision, the documents in evidence and the contents of the OAL case file. No exceptions were filed. Procedurally, the time period for the Agency Head to file a Final Decision is March 21, 2019 in accordance with an Order of Extension.

This matter concerns the April 2017 termination of Petitioner's Medicaid benefits due to excess income. Petitioner's redetermination application was sent to her address on

record. It was forwarded to Petitioner's residence in Essex County where she had moved in September 2016. She provided Ocean County with a copy of her lease that set her monthly rent at \$1,350. R-2. Her monthly Social Security benefit is \$985. When questioned she provided a letter from her brother dated October 12, 2016 that he was helping her with \$350 to \$400 per month until further notice. R-3. Ocean County added these funds to her income and determined that she was no longer eligible for Medicaid. The matter was transmitted to OAL in May 2017.

The Initial Decision found that Petitioner had demonstrated that the money given to her by her brother were a loan that she was obligated to repay. Under N.J.A.C. 10:71-5.3(a)(6):

All loans which are actually repayable shall be excluded.

- i. Regular contributions to an individual by his or her family, which are made over an extended period of time and which would be impossible to repay given the individual's current and/or future financial status, shall not be considered loans. Contributions of this nature shall be treated as income in accordance with N.J.A.C. 10:71-5.2.

The Initial Decision found that Petitioner "had the intention and a specific plan to repay her brother." ID at 10. The plan was to move in with her aunt in October 2017 to reduce her rent. However, her health scuttled that plan and her nephew moved in with her in July 2017 and helped pay the rent. This enabled her to repay her brother. The Initial Decision found that the testimony and evidence established that when her brother began to give Petitioner money, she intended change her living arrangements by moving in with her aunt in October 2017 and begin to pay her brother back so as to create a valid loan agreement. ID at 11. As such the funds from her brother would not be considered income.

Based on the reasons that follow, I hereby REVERSE the Initial Decision. The fact-finder's assessment of the credibility of witnesses is entitled to deference by the reviewing agency head. Clowes v. Terminix, 109 N.J. 577 (1988). However, N.J.A.C. 1:1-15.5(b), the residuum rule, requires "some legally competent evidence" to exist "to an extent

sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness." No such evidence was presented in this matter. Indeed her brother did not testify at the hearing so as to ascertain his understanding at the time he began to give Petitioner funds.¹ Rather the document he prepared in October 2016, a month after the lease began, makes no mention of a loan and states he intends to pay Petitioner \$350 to \$400 per month for her rent "until further notice." R-3. It is only after Ocean County took steps to terminate her benefits that Petitioner sought to have the arrangement considered a valid loan.

Petitioner produced five documents to support the requirement that she was able to repay the loan based on her current or future financial status. The loan was not reduced to writing at the time the payments began nor does the October 2016 letter from her brother reflect any agreement that these payments would cease based on a change in Petitioner's financial status. The documents produced after the hearing commenced are at odds with each other. On July 20, 2017, Petitioner and her brother wrote separate letters to the ALJ about the funds. Petitioner wrote "[n]ow that my aunt is moving into a senior community . . . I plan to move in with her in October 2017 and will be paying \$550 a month." (emphasis added). P-3. She will then repay her brother \$100 to \$150 a month. Petitioner offered to "provide a copy of the lease" to her new housing arrangement but it is not in the record.² Petitioner's brother wrote a letter the same day stating that this arrangement was always a loan and Petitioner would pay "\$100 per month or more when she moves into an adult community." P-5. Both letters state that she will pay more if she returns to work.

There is nothing in the record to show that in August 2016 Petitioner planned to move in with her aunt in October 2017. Her shelter costs of \$1,350 exceeded her monthly income and it does not appear that any change in residence was contemplated as her

¹ Petitioner requested an additional hearing date in September 28, 2018 to permit her brother to testify. On September 27, 2018, Petitioner notified the court that "she would not be able to produce her brother." ID at 2.

² Petitioner's current lease was set to end on August 30, 2017. R-2. She provided no explanation where she would live for the intervening month before moving in with her aunt in October 2017.

brother stated he was giving her monthly payments until further notice. The language of the July 20th letter seems to indicate that the move into the senior community was a more recent development for her aunt and nothing demonstrates that this was the end plan when she signed the lease in August 2016.

Petitioner also produced a handwritten document titled “[r]epayment of loan to [N.P.] for me [sic] money to pay my rent to live.” P-8. That document purports to show her repayments of \$100. The first date of repayment is July 20, 2017- the same date of the letters in which Petitioner and her brother state the repayment would begin when Petitioner moved back to Ocean County in October 2017. There is no explanation why Petitioner and her brother failed to mention that the repayment of the loan began the same date of their letters to the ALJ and raises questions as to the validity of these out of court statements.

The handwritten repayment document is also troubling. The dates run from July 20, 2017 through August 3, 2017 [sic]. P-8. When the year changed, Petitioner continues to write 2017 instead of 2018 for eight months. While it is not uncommon to do this in January and maybe even February, it is unlikely that Petitioner continued to forget the correct year for six months into 2018. Petitioner provided no checks written to her brother and no running balance of the amount still due.

On October 12, 2017, Petitioner wrote to Ocean County about her new plan to remain in Essex County. She stated “[i]n July 2017, my nephew . . . moved in to help.” P-6. He shares the \$1,350 rent, “so I can now start paying my brother back the money he loaned me.” However, according Exhibit P-8, Petitioner had already made four payments of \$100 to her brother from July 20, 2017 through October 4, 2017 and failed to reflect this. Moreover, neither of the letters dated July 20, 2017 make mention of Petitioner’s nephew moving in with her that same month.

The evidence surrounding the loan does not demonstrate that Petitioner had a feasible plan to repay the loan. See Supplemental Security Income (SSI) Program Operations Manual System (POMS) SI 01120.220. Rather it appears that the repayment plan was created after Petitioner received the funds and other factors such as her aunt moving into a new residence occurred. See POMS SI 01120.220 ("The loan agreement must be in effect at the time that the lender provides the cash to the borrower. Money given to an individual with no contemporaneous obligation to repay cannot become a loan at a later date.") Her brother's original letter shows that he was going to give her a monthly allowance until further notice.

For the reasons set forth above, I FIND that from September 2016 through June 2017 Petitioner was ineligible for Medicaid benefits due to excess income. However, as Petitioner is no longer receiving payments from her brother to pay her rent, Petitioner's eligibility can be reinstated of July 1, 2017.

THEREFORE, it is on this 21st day of MARCH 2019,

ORDERED:

That the Initial Decision is hereby REVERSED.


Meghan Davey, Director
Division of Medical Assistance
and Health Services