



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

M.P.,
PETITIONER,
v.
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES AND
SUSSEX COUNTY BOARD OF
SOCIAL SERVICES,
RESPONDENTS.
ADMINISTRATIVE ACTION
ORDER OF REMAND
OAL DKT. NO. HMA 17935-2018

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 August 5, 2019 in accordance with an Order of Extension.

The matter arises regarding the penalty imposed on Petitioner's transfer of her home to her daughter in November of 2017.1 When Petitioner applied for benefits in April 2018,

1 Petitioner's daughter put the home up for sale in November 2017, the same month as the transfer, and it was sold in

her daughter sought an exemption from the transfer penalty under the caregiver exemption which provides that an individual will not be subject to a penalty when the individual transfers the “equity interest in a home which serves (or served immediately prior to entry into institutional care) as the individual’s principal place of residence” and when “title to the home” is transferred to a son or daughter under certain circumstances. N.J.A.C. 10:71-4.10(d). The son or daughter must have “resid[ed] in the individual’s home for a period of at least two years immediately before the date the individual becomes an institutionalized individual” and “provided care to such individual which permitted the individual to reside at home rather than in an institution or facility.” N.J.A.C. 10:71-4.10(d)(4) (emphasis added). This exemption mirrors the federal Medicaid statute. 42 U.S.C.A. § 1396p(c)(2)(A)(iv).

The Initial Decision found that Petitioner had provided sufficient evidence to support granting a caregiver exemption. For the reasons that follow, I disagree and remand the matter to OAL for further proceedings.

The medical records presented do not show contemporaneous documentation of Petitioner’s condition to the extent described by her doctor’s certification. The time period during which Petitioner’s daughter would have to provide care at a level that prevented institutionalization is August 2016 through August 2018. Petitioner’s doctor stated “during the period I have treated her, [Petitioner] has developed worsening memory/dementia.” While the 2015 hospital report mentions dementia, it also noted Petitioner was “oriented x 3”. In fact, the first time memory impairment is mentioned in her primary care physician records is during an April 2017 visit. At her next visit in October 2017 memory impairment is again charted with the note “aging process most likely but will obtain CT head.” It appears the first time a dementia cognitive assessment was done was in February 2018. The notes do not contain any indication that Petitioner was unable or dependent on her daughter to perform activities of daily living (ADLs) as was alleged in her certification.

Additionally the daughter certified that Petitioner received services through the Jersey Assistance for Community Caregiving (JACC) Program. P-2. This state-funded program provides “a broad array of in-home services and supports that enable an individual at risk of placement in a nursing facility to remain in his/her community home . . . and “is intended to supplement and strengthen the capacity of caregivers, as well as to delay or prevent placement in a nursing facility.” Medicaid Communication #00-10. A review of the services and plan of care implemented under JACC might provide an assessment of Petitioner’s condition and her need for assistance with her ADLs.

The daughter’s certification does not align with the Initial Decision’s recount of her testimony at the hearing or the medical records. The Initial Decision states that after the fall in October 2015, Petitioner’s daughter filed her retirement papers and moved in with Petitioner. ID at 3. The certification states that she had been living with Petitioner since 1991. P-2. Nothing in the medical records supports the statement that in 2015 she was told Petitioner would be in a nursing facility unless she had “around-the-clock care at her home.” It is unclear if the home care and equipment mentioned by Petitioner’s doctor in his certification is related to Petitioner’s acute injuries she suffered in October 2015 or related to other conditions not identified in the medical records.

Petitioner’s daughter testified that the dementia started getting worse in 2013 and 2014 but the first mention of it in her primary physician’s notes is in April 2017. In the medical records both before and after this, clinicians found Petitioner to be oriented and her judgment to be intact in many of the encounters. At an appointment in May 2018, she was found “oriented x 4” by another doctor in the practice.

I note that Petitioner’s signature is on the November 2017 deed transferring the property to her daughter. That signature was witnessed and notarized, which would imply that Petitioner’s mental state was not an issue for either the attorney or the notary. Petitioner also signed the Designation of Authorized Representative (DAR) form and the

Medicaid application which would presume that she did not need her daughter, as her Power of Attorney, to act on her behalf. As this would be halfway through the two year period, additional information is needed as to her condition during the entire two year period. On remand there should be findings on these discrepancies in both the medical and legal records.

Petitioner claims that her fall on October 2015 caused her daughter to immediately retire from her state job effective November 1, 2015 as set forth in the approval letter from the Division of Pensions and Benefits dated November 4, 2015. R-3. On remand, Petitioner's daughter should be able to show proof that her retirement application was finalized and placed before the Board of Trustees in less than 4 weeks. The guidance describes a much longer process with documentation and verifications. See <https://www.state.nj.us/treasury/pensions/documents/guidebooks/persbook.pdf>. However, the date her daughter applied for retirement should be easily demonstrated on remand as the guidebook states that she should have an email and letter indicating her retirement application was received. *Id.* ("When your application is submitted to the NJDPB, you will receive an email confirmation of its receipt. You will also be sent a letter acknowledging receipt of your retirement application.")

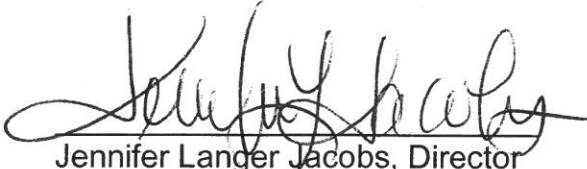
Based on the record before me and the reasons set forth above and in the Initial Decision, I hereby REVERSE the Initial Decision finding that Petitioner is entitled to a caregiver exemptions and REMAND the matter to OAL for further testimony and documentation regarding Petitioner's condition as set forth above.

THEREFORE, it is on this ^{5th} day of AUGUST 2019,

ORDERED:

That the Initial Decision is hereby REVERSED; and

That the matter is REMANDED to OAL.



Jennifer Langer Jacobs, Director
Division of Medical Assistance
and Health Services