



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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CAROLE JOHNSON  
Commissioner

JENNIFER LANGER JACOBS  
Assistant Commissioner

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

W.D.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

HUNTERDON COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 4911-2019

As Assistant Commissioner 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 to the Initial Decision were filed. Procedurally, the time period for the Agency Head to render a Final Agency Decision is October 24, 2019 in accordance with an Order of Extension.

Petitioner was found eligible for Medicaid benefits as of April 1, 2019. However, he was found to have transferred funds totaling \$694,407 which resulted in over a 67 month penalty ending October 9, 2024. The transferred funds were done through a Power of Attorney (POA) Petitioner executed in favor of his son in 2015. Using that POA, his son

transferred residential property, bank accounts and a commercial property that housed Petitioner's automotive business. ID at 3. However, the circumstances surrounding the POA and transfers caused Petitioner to request a waiver of the penalty due to undue hardship. N.J.A.C. 10:71-4.10(q).

N.J.A.C. 10:71-4.10q(1)(i) sets for a two-prong test on when undue hardship exists; (1) when a transfer penalty "would deprive the applicant/beneficiary of medical care such that his or her health or his or her life would be endangered;" and (2) when "the transferred assets are beyond his or her control and that the assets cannot be recovered. The applicant/beneficiary shall demonstrate that he or she made good faith efforts, including exhaustion of remedies available at law or in equity, to recover the assets transferred."

I have reviewed the record and the facts of this case and FIND that due to the unique circumstances presented by Petitioner that a waiver of the transfer penalty is warranted. From 2013 to 2015 Petitioner had been residing in a nursing home when, after his wife's death, his son removed him from the facility and had him execute the POA. ID at 3. The medical records show he had a diagnosis of dementia since 2010 which calls into question his ability to sign the document. Moreover, the application for Medicaid began when Adult Protective Services (APS) was notified that Petitioner was living in substandard accommodations and observed in fecal stained clothing. ID at 3. That investigation revealed that Petitioner had been living in a trailer on the property his son now owned with no running water. He was hospitalized in November 2018 suffering from dehydration and malnutrition.

As result of the APS investigation it was determined that Petitioner had been neglected and financially exploited. A guardian was appointed and a Medicaid application was submitted. In reviewing Petitioner's assets, Hunterdon County discovered that Petitioner had transferred cash and property worth \$694,407.21 to his son. On March 29,

2019, Petitioner was found eligible as of April 1, 2019 but subject to a penalty of 2,019 days.

Petitioner sought a hardship waiver due to the circumstances of the case. At the time of the notice from Hunterdon County, Petitioner had not fulfilled the second prong or the test of proving undue hardship regarding seeking legal recourse to recover the transferred assets. See R.P. v. DMAHS and Bergen County Board of Social Services, A-06148-11 (App. Div. Oct. 22, 2013). In May 2019, a lawsuit was filed on Petitioner's behalf to recover the funds. The rule requires exhaustion of the remedies at law or equity in order for a waiver to be granted. However, the lawsuit seeks to satisfy the second prong. Thus, due to the unique circumstances of this case, I ADOPT the Initial Decision's finding that Petitioner warrants a waiver of the transfer penalty. Petitioner's guardian shall provide updates on the pending litigation to recover the funds as the outcome may impact Petitioner's eligibility.

THEREFORE, it is on this <sup>30<sup>th</sup></sup> day of September 2019,

ORDERED:

That the Initial Decision is hereby ADOPTED as set for the above.



Jennifer Langer Jacobs, Assistant Commissioner  
Division of Medical Assistance  
and Health Services