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

JENNIFER LANGER JACOBS
Assistant Commissioner

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

H.H., PETITIONER, v. DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES AND MONMOUTH COUNTY BOARD OF SOCIAL SERVICES, RESPONDENTS.	**ADMINISTRATIVE ACTION** **FINAL AGENCY DECISION** **OAL DKT. NO. HMA 14843-2019** **REMAND FROM HMA 11312-2018** **and** **HMA 3024-2019** **CONSOLIDATED**

As Assistant Commissioner for the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision, the OAL case file, the documents and briefs filed below. Petitioner filed exceptions in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is August 19, 2020 in accordance with an Order of Extension.

The matter arises regarding the denial of Petitioner's Medicaid June 2018 application due to excess income which was consolidated with the appeal of the outcome of Petitioner's

November 2018 which found her eligible but for a penalty of 191 days. Petitioner is seeking to use an annuity she purchased in May 2018 to pay for her assisted living bill while she awaits the penalty imposed due to her transfer of $66,000 to her daughter. Petitioner does not appear to contest the calculation of the 191 day penalty – only when the penalty should commence. When she applied in June 2019, her monthly income amounted to $8,575.29. When she applied in November 2018, the annuity had ceased paying in October 2018 and her income was $1,734. ID at 3.

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).

The type of financial planning used by Petitioner is called "half-a-loaf" where a Medicaid applicant gifts around half of their assets while using the remaining assets 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.), certif. denied, 199 N.J. 517 (2009) (explaining the Congressional intent behind the enactment of the DRA). To that end, the penalty commences only when individual

becomes Medicaid eligible and would be receiving institutional level of services covered by Medicaid but for the penalty period. See 42 U.S.C.A. 1396p(c)(1)(d)(i).

In the prior decision it was determined that "the regulations require examination of whether the petitioner's total income exceeded her total medical costs, including the 'private pay costs associated with her nursing home care and other medical expenses." HMA 11312-2018 ID at 15. With that in mind, the matter was remanded for further evidence as the documents provided did not address those costs.

On remand Petitioner presented some documentation regarding the bills from the facility. Assisted living facilities are considered community placements and are available to Medicaid eligible individuals under a federal waiver that permits the expansion of services. Unlike nursing homes, individuals in an assisted living facility are responsible to pay their room and board costs. See New Jersey FamilyCare Comprehensive Waiver. https://www.state.nj.us/humanservices/dmahs/home/NJFC_1115_Amendment_Approval_Package.pdf and www.nj.gov › humanservices › doas › forms › PR-2_inst.

While I agree with the Initial Decision's conclusion that Petitioner failed to provide the proofs requested by the remand, the documents produced in this current matter when combined with the prior hearing's documents create a patchwork of proofs that show the costs. Petitioner's exceptions argue that the issue to be determined is "is income in in a QIT countable for Medicaid eligibility purposes in New Jersey?" But Petitioner is not seeking to have Medicaid benefits cover her expenses during the penalty period. Rather she is seeking to have the penalty begin and run co-currently with the annuity payments which uses resources to artificially increase her income to pay her costs in full.

I do note that the facility's documents show that Petitioner costs were covered in June 2018 despite the representative from the facility testifying that Petitioner had a balance remaining each month starting in June 2018. HMA 11312-2018 ID at 6. It seems that there are two sets of invoices, both produced at the hearing long after the billing cycle, with the

same number and issue date but showing different status of Petitioner's account. For example, the May 31, 2018 invoice showed that there was no prior balance and billed Petitioner for June 2018. J-1. The facility provided two different copies of the next monthly invoice #1017-1806-1051 dated June 30, 2018. Despite three checks presented in June 2018 for the amount of that invoice, one invoice showed a balance of $17,364.00 for June and July charges and no record of the three checks. P-6(b). Yet RR-1 and Exhibit A of J-1 shows the copy of the same invoice by number and date but showing the June payments posted and a balance due of $8,844 or the amount for the 31 days in July 2018 plus $40 for a hair salon service.

In a footnote describing oral argument, the ALJ noted Petitioner conceded the costs were not all medical and that Respondent's argument there was no medical costs in the daily rate was not supported by the record. It seems as if neither side presented a persuasive argument. However, after a careful review of the voluminous record, including documents presented on remand and in the prior matter, there is a preponderance of evidence that Petitioner's income is insufficient to cover her medical expenses. While she may have not provided the full extent of those expenses, the record shows that they were imbedded in the daily rate. When combined with those expenses that were fully enumerated, Petitioner could establish Medicaid eligibility as of June 2018 so as to start the 191 day penalty period.

THEREFORE, it is on this 18th day of AUGUST 2020,

ORDERED:

That the Initial Decision is hereby REVERSED; and

That Monmouth County shall establish Petitioner's penalty as set forth above.

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