



Term Services and Supports (LTSS) for nursing home coverage. Eligibility for this program requires the examination of transactions during the five years prior to the application to determine if any transfers of assets occurred. N.J.A.C. 10:71-4.10. To that end Ocean County Board of Social Services had requested information of various deposits and withdrawals from Petitioner's bank account. The three page document requested verifications to provide the source of deposits and provide verification of how the withdrawals were spent. Among the transactions Ocean County sought more information on two deposits from FDMS-OKB. R-10. Petitioner provided some verifications of the transactions, but alleged the vast majority were done by his daughter who was his Power of Attorney on the account. P-1. Ocean County denied the application for failure to provide verifications regarding the transactions.

By way of background, when an individual is seeking benefits which require meeting an institutional level of care, any transfers of resources are scrutinized. N.J.A.C. 10:71-4.10. Under the regulations, "[i]f an individual . . . (including any person acting with power of attorney or as a guardian for such individual) has sold, given away, or otherwise transferred any assets (including any interest in an asset or future rights to an asset) within the look-back period" a transfer penalty of ineligibility is assessed. N.J.A.C. 10:71-4.10 (c). Individuals who transfer or dispose of resources for less than fair market value during or after the start of the sixty-month lookback period before the individual becomes institutionalized or applies for Medicaid as an institutionalized individual, are penalized for making the transfer. 42 U.S.C.A. § 1396p(c)(1); N.J.A.C. 10:71-4.10(m)(1).

The Initial Decision REVERSED the denial finding that Ocean County failed to provide assistance pursuant to N.J.A.C. 10:71-4.2(b)3 and found Petitioner eligible as of August 1, 2020. While I agree that the denial should be reversed, I do not agree with the rationale or that eligibility can be established. For the reasons that follow I hereby MODIFY the Initial Decision and RETURN the matter to Ocean County.

The regulation cited in the Initial Decision concerns the existence or nonexistence of accounts in financial institutions. The County Welfare Agency's (CWA) responsibility is to assist in locating accounts; not to explain the circumstances of the transactions. N.J.A.C. 10:71-4.2(b)3. Here, the account was disclosed but the individual transactions were questioned so as to determine if assets were transferred or, as Ocean County testified, if there was another source of income. ID at 5. The CWA cannot call a bank to ask about various transactions. Rather it is the applicant who remains the primary source of information. See N.J.A.C. 10:71-5.2(b)4 "At the time of application, the applicant shall identify any income which he or she receives periodically (less frequently than once a month) or anticipates receiving prior to the time of redetermination."

Additionally, I FIND that the circumstances of Petitioner's second application were improperly included in this matter. That application is the subject of separate fair hearing under a separate OAL docket number. Petitioner's attorney did not seek to consolidate the matters and the circumstances of the second application cannot be used to buttress either party's case.

However, the exceptional circumstances of this case do warrant an extension of time for Petitioner to provide the information. The record contains emergency room records wherein the hospital recounted that Petitioner had been found by Adult Protective Services (APS) at his daughter's home locked in her basement in deplorable conditions. The transactions at issue here occurred prior to this hospitalization and Petitioner should have been given additional time to provide corroborating evidence.

The Initial Decision came to the same conclusion but continued by finding Petitioner eligible as of August 1, 2020. There is nothing in the record to support that finding since the case was denied for failure to provide verifications. To that end, the matter needs to be RETURNED to Ocean County resolution of Petitioner's eligibility date.

Thus for the reasons set forth above, the Initial Decision is hereby MODIFIED and the matter RETURNED to Ocean County.

THEREFORE, it is on this 3rd day of AUGUST 2021,

ORDERED:

That the Initial Decision is hereby MODIFIED as set forth above; and

That the matter is RETURNED to Ocean County to determine when Petitioner established eligibility.



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