



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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Governor

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Lt. Governor

SARAH ADELMAN
Acting Commissioner

JENNIFER LANGER JACOBS
Assistant Commissioner

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

D.S.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

HUDSON COUNTY DIVISION

OF SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

ORDER OF RETURN

OAL DKT. NO. HMA 1375-2021

As Assistant Commissioner for the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision and the Office of Administrative Law (OAL) case file. Neither party filed exceptions in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is July 12, 2021 in accordance with an Order of Extension.

This matter arises regarding the denial of Petitioner's application for benefits. She is seeking benefits under Long Term Services and Supports (LTSS). R-1. 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. Hudson County had requested past statements from Petitioner's Direct Express account which were not provided and the application was denied.

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 determined that Petitioner provided sufficient verifications based on a single Direct Express document she provided from March 2021 and reversed the denial. I disagree. Here Petitioner's disability determination occurred in 2018, within the five year look back period. She disclosed her only other financial account had been closed since 2013. R-1. The Direct Express account would have received any lump sum payments representing any retroactive Social Security benefits. See generally https://www.ssa.gov/OP_Home/handbook/handbook.15/handbook-1513.html. As such, Petitioner's Direct Express account at the time of the disability award is germane to the eligibility determination and must be produced.

Thus for the reasons set forth above, I FIND that Hudson County properly inquired as to funds in the Direct Express account in order to comply with the sixty-month lookback review. During the hearing Petitioner was given the opportunity to produce the statements

which only resulted in the production of the current month's statement. The record is silent as to what steps she took to obtain this information or why past statements were not requested. In reversing this matter, I FIND that the case should be returned to Hudson County to allow for a targeted production of certain statements that would show the receipt of any retroactive or lump sum payments and how those funds were spent. Therefore, the Initial Decision is hereby REVERSED and the matter RETURNED to Hudson County to assist Petitioner in requesting targeted statements from the account.

THEREFORE, it is on this 9th day of JULY 2021,

ORDERED:

That the Initial Decision is hereby REVERSED; and

That the matter is RETURNED to Hudson County as set forth above.



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