

Morris County Office of Temporary Assistance (Morris County) requested information regarding Petitioner's assets including a request in October and November 2019 for information regarding any investment account including any "IRAs, 401K, Retirement Plans, Stocks, Bonds, Annuities etc." R-2 and 3. Those letters were originally sent to the nursing home which had originally filed the application but forwarded to Petitioner's guardian on or around November 18, 2019. See ID at 6. Petitioner owned a 401K annuity worth over \$14,000. It was eventually liquidated and placed in a Special Needs Trust (SNT). At that point Morris County found Petitioner eligible as of May 1, 2020.

The matter below was decided on a motion for summary decision filed by Petitioner. However, my review of the record does not comport with the finding that there were no issues of material fact. See Lombardi v. Masso, 207 N.J. 517 (2011) (discussing the reversal of summary judgement). The New Jersey Supreme Court has reviewed summary judgments entered in the administrative process and have held that "an insufficient record" presented to the agency will warrant remand for an evidentiary hearing. L.A. v. Bd. of Educ. of City of Trenton, Mercer Cty., 221 N.J. 192, 205 (2015). See also N.J.S.A. 52:14B-10(c). To that end, I hereby REVERSE the Initial Decision and REMAND the matter to OAL for an evidentiary hearing.

Summary judgment may be granted when "there is no issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c). For a dispute to constitute a genuine issue of material fact, it must be "genuine, as well as substantial." That is, the dispute must be "true, solid, [or] real," rather than "imaginary, unreal, or apparent only." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 529 (1995). "[I]f the opposing party offers . . . only facts

which are immaterial or of an insubstantial nature,” summary judgment should be granted. Ibid. (quotation omitted). The court is to consider whether the competent evidence presented, when viewed in the light most favorable to the non-moving party, is sufficient to permit a rational fact finder to resolve the alleged disputed issues in favor of the non-moving party. Id. at 540.

At minimum, I note that the Initial Decision states that “[m]any of the facts contained herein are not disputed” which infers that there are facts in dispute. The decision continues to describe the dispute is “the interpretation of some of the correspondence from” Morris County. ID at 2. However, the record shows that the documents are inconsistent with the findings contained in the decision. Petitioner’s counsel in exceptions and in the brief cites to documents were not provided in the moving papers and not listed as an exhibit. For example, the letter brief cites to P-12, P-17, P-18 and P-23. The exceptions cite to Exhibits P-1 through P-24 as submitted with the motion yet the motion does not contains an affidavit or certification to identify those exhibits. The Initial Decision lists P-1 through P-8 as in evidence as well as R-1 through R-12 which were attached to Morris County’s opposition. Thus, I cannot find that there was competent evidence presented to support Petitioner’s motion.

Additionally, the finding that Petitioner is entitled to prevail as a matter of law does not comport with regulation or case law. See N.J.A.C. 1:1-12.5. The finding that Petitioner’s 401K “was not available and should not be counted against his eligibility” is incorrect. The 401k was a liquid resource and subject to the Medicaid determination. See *Mistrick v. Div. of Med. Assistance & Health Servs.*, 154 N.J. 158, (1998). A resource includes both liquid and non-liquid real or personal property that could be used by the applicant for his support and maintenance. N.J.A.C. 10:71-

4.1(b). Unless a type of resource is specifically excludable under N.J.A.C. 10:71-4.4, it “shall be considered a countable resource for the purpose of determining Medicaid . . . eligibility.” N.J.A.C. 10:71-4.2(a). To be considered in an eligibility determination, a resource must also be “available” to an applicant, which occurs, as relevant here, when the applicant “has the right, authority or power to liquidate real or personal property or his or her share of it.” N.J.A.C. 10:71-4.1(c)(1). See also 20 C.F.R. 416.1201 (b) (“Liquid resources. Liquid resources are cash or other property which can be converted to cash within 20 days, excluding certain nonwork days as explained in § 416.120(d). Examples of resources that are ordinarily liquid are stocks, bonds, mutual fund shares, promissory notes, mortgages, life insurance policies, financial institution accounts (including savings, checking, and time deposits, also known as certificates of deposit) and similar items. Liquid resources, other than cash, are evaluated according to the individual's equity in the resources.”).

The determination that the 401K was not available to Petitioner hinges on an unsupported finding that COVID-19 “caused a delay in processing the request to liquidate the 401K by Prudential.” Findings of Fact ¶¶ 13 and 19. Yet nothing in the record that shows the delay in liquidating the 401K was caused by the public health emergency. Instead the record shows that Morris County sought information regarding Petitioner’s investment accounts as far back as October 2019. In an email dated December 12, 2019, Petitioner’s guardian was aware of the 401K. R-4. There is no indication when he sought to liquidate the asset. Nor is there any mention of COVID-19 or office closings that delayed the liquidation.

Additionally, the finding that after Petitioner executed liquidation forms in March 2020, it was “beyond petitioner’s control [that] another month went by before

Prudential advised . . . that it could not release the funds” without a spousal waiver is belied by the documents. ID at 4. By letter dated February 20, 2020, Morris County provided language to Petitioner’s guardian about the need for a waiver from Petitioner’s spouse. R-6. Despite having this information, Petitioner did not comply until April 2020 at which time Prudential issued the check within 2 weeks. R-10.

Thus, for the reasons set forth above, I FIND that the motion filed by Petitioner and the documents identified in the Initial Decision raise issues of material facts that cannot be relied upon to support summary decision. This matter is remanded to the OAL for an evidentiary hearing and further proceedings.

THEREFORE, it is on this ^{8th} day of OCTOBER 2021,

ORDERED:

That the Initial Decision is hereby REVERSED; and

That the matter is REMANDED to OAL.



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