



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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

Estate of I.F.,	:	
	:	
PETITIONER,	:	ADMINISTRATIVE ACTION
	:	
v.	:	FINAL AGENCY DECISION
	:	
DIVISION OF MEDICAL ASSISTANCE	:	OAL DKT. NO. HMA 11170-2020
	:	
AND HEALTH SERVICES,	:	On Remand from HMA 2637-2020
	:	
RESPONDENTS.	:	

As Assistant Commissioner of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision, the OAL case file and the documents filed below. Both parties filed exceptions in this matter. Procedurally, the time period for the Agency Head to file a Final Decision is November 18, 2021 in accordance with an Order of Extension.

This matter concerns the lien placed on Petitioner's estate to reimburse the State of New Jersey for \$202,545.90 in correctly paid benefits paid on his behalf from May 2014 until his death in July 2019. N.J.S.A. 30:4D-7.2a. Petitioner's daughter, who owned real property

with her father, requested a waiver of the lien due to undue hardship. N.J.A.C. 10:49-14.1(h). In making the request, the daughter alleged that the home was purchased using Section 8 Homeownership Program; that she was already a Medicaid recipient; and that she was a registered caregiver and used the property to provide caregiving services. The request for an undue hardship waiver was denied by letter dated December 18, 2019. This appeal followed.

The prior proceeding had been decided on a motion for summary decision. Upon review, it was determined that the certifications relied on to grant summary decision contained facts that were not based on personal knowledge of the affiant as well as subjective statements. The matter was remanded for additional proceedings.

Both Federal and State Medicaid statutes require DMAHS to recover against an individual's estate for the cost of medical assistance correctly paid under a State Plan. 42 U.S.C. § 1396p(b); N.J.S.A. 30:4D-7(j). To accomplish this, N.J.S.A. 30:4D-7.2 authorizes DMAHS to place a statutory lien against the estate of a Medicaid beneficiary based on his receipt of correctly paid benefits.

By regulation, estate liens are imposed where the deceased recipient leaves no surviving spouse, children under the age of twenty-one, or children who are blind or permanently and totally disabled. N.J.A.C. 10:49-14.1(a). Each of these requirements is satisfied here. There is no dispute that Petitioner left no surviving spouse; his children were older than twenty-one; and they were not blind or permanently and totally disabled. Accordingly, DMAHS's lien was properly imposed against Petitioner's Estate.

Currently Petitioner's estate consists of his portion of ownership in the real property he owned with his daughter. The original deed listed Petitioner and his daughter as husband and wife. A corrected deed was filed in 2005 listing both as unmarried but indicating they held as tenants by the entirety. P-1. This is impossible as tenancy by the entirety only occurs between a husband and a wife. See *Capital Fin. Co. of Del. Valley, Inc. v. Asterbadi*, 389

N.J. Super. 219, 227 (Super. Ct. 2006) “A tenancy by the entirety is available only to husband and wife and is essentially a joint tenancy modified by the common law theory that a husband and wife are one person. Survivorship is the predominant and distinguishing feature of both a joint tenancy and a tenancy by the entirety.” (Citation omitted). To that end, New Jersey law presumes tenancy in common unless the deed specifically states otherwise and Petitioner’s share of the home passes to his estate as Petitioner’s daughter has no survivorship right as the co-tenant. N.J.S.A. 46:3-17. The record is silent as to how the property would pass and whether other heirs are impacted either under Petitioner’s will or through intestacy.

DMAHS may waive or compromise an estate lien where reimbursement of the lien would constitute undue hardship. N.J.A.C. 10:49-14.1(h). The regulation explains that “[u]ndue hardship can be demonstrated only if the estate subject to recovery is or would become the sole income-producing asset of the survivors, and pursuit of recovery is likely to result in one or more of those survivors becoming eligible for public assistance and/or Medicaid benefits.” N.J.A.C. 10:49-14.1(h)(1) (emphasis added). Both prongs of the requirement must be established to demonstrate undue hardship.

The Initial Decision determined that Petitioner’s daughter failed to meet the burden of demonstrating that she was entitled to an undue hardship and I concur. In requesting the hardship, Petitioner’s daughter argued that she operates a childcare center out of the home that is her sole source of income. On remand, she alleged that she receives rental income from two boarders at the home. No evidence was produced to support this statement nor is the rental income reflected on the tax returns she provided. I FIND that the estate at issue here owns 50% of the property and is not the daughter’s sole source of income as she retains her own share of the property which generates income. Indeed her 2019 tax returns claim that less than 50% of the property is used exclusively for day care. P-6.

Turning to the second prong for a hardship waiver, the daughter claimed that she will lose the property if she is not able to refinance. While she already received Medicaid benefits, the loss of the home will cause her to seek additional public assistance benefits. As the ALJ noted, the denial letters she provided regarding refinancing are based on the daughter's credit score and not caused by the lien on Petitioner's share of the property. ID at 10. Moreover, because the estate asset consists of a home, the pursuit of recovery is deferred by the provisions of N.J.A.C. 10:49-14.1(g). The lien will not be pursued against Petitioner's share of the property and the daughter's use of the property would continue until the property is sold or she vacates the property. When reading the estate recovery regulations in toto, Petitioner's claim for hardship fails.

In exceptions, Petitioner reasserts the arguments presented in her post-hearing brief and does not specify any portion of the Initial Decision or set forth reasons for which exception is taken. Respondent's exceptions address the finding that the lien is not enforceable until Petitioner's daughter sells the property or passes away. The forbearance of the lien only applies to the home. Should the estate discover or acquire other assets, those assets would not be bound by N.J.A.C. 10:49-14.1(g). I hereby modify the Initial Decision to reflect that any subsequently discovered assets would be subject to recovery.

THEREFORE, it is on this ^{18th} day of NOVEMBER 2021,

ORDERED:

That the Initial Decision is ADOPTED in part and MODIFIED in part as set forth
above.



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