



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

SARAH ADELMAN
Acting Commissioner

JENNIFER LANGER JACOBS
Assistant Commissioner

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

L.N.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

MERCER COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

ORDER OF RETURN

OAL DKT. NO. HMA 3836-2020

As Assistant Commissioner of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the OAL case file and the Initial Decision in this matter. Neither party filed exceptions in this matter. Procedurally, the time period for the Agency Head to file a Final Decision is March 1, 2021 in accordance with an Order of Extension.

The matter arises regarding Petitioner's application for Medicaid benefits. By notice dated September 25, 2019 Petitioner was denied Medicaid benefits due to excess resources. The matter was transmitted to OAL on March 13, 2020 based on that notice.

At the hearing Mercer County filed a letter brief stating that conceded the "issue of petitioner being over resourced and, as a result, that issue is now moot." ID at 4. Mercer County then argued that the hearing request was untimely.

The Initial Decision made findings with regard to the timing of the fair hearing request. However, as the transmitting agency, the determination that request would be considered timely had already been adjudicated by virtue of the transmission of the case as a contested matter. See N.J.S.A. 52:14B-2. Had there been an issue with the timing of the request, the request would have been denied as out of time pursuant to N.J.A.C. 10:49-10.3(b) with the right to seek judicial review in the Appellate Division. See *D.A. v. Div. of Med. Assistance & Health Servs.*, No. A-2570-17T1, 2020 N.J. Super. Unpub. LEXIS 3 (Super. Ct. App. Div. Jan. 2, 2020).

Based on my review of the record, I hereby ADOPT the Initial Decision in so far as the matter should be returned to Mercer County for further action. That action should include a determination if the two annuities she purchased in 2019 were actuarially sound. See State Medicaid Manual § 3258.9(b) "If the expected return on the annuity is commensurate with a reasonable estimate of the life expectancy of the beneficiary, the annuity can be deemed actuarially sound." It is unclear from the record if the annuities meet this requirement based on the life expectancy tables in that section.

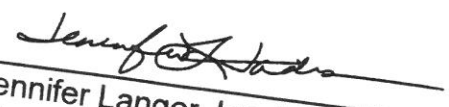
The other conclusions are MODIFIED to reflect that any issue of timeliness was resolved by transmission of this case to OAL.

THEREFORE, it is on this 23rd day of FEBRUARY 2021,

ORDERED:

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

That the matter is RETURNED to Mercer County for further action.



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