

State of New Jersey

DEPARTMENT OF HUMAN SERVICES DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES PO Box 712 TRENTON, NJ 08625-0712

SARAH ADELMAN Acting Commissioner

JENNIFER LANGER JACOBS Assistant Commissioner

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

P.C.

PETITIONER.	: ADMINISTRATIVE ACTION
	: ADMINISTRATIVE ACTION
V.	FINAL AGENCY DECISION
BURLINGTON COUNTY BOARD OF	: OAL DKT. NO. HMA 07722-20
SOCIAL SERVICES,	
RESPONDENTS.	

:

As Assistant Commissioner of the Division of Medical Assistance and Health Services (DMAHS), I have reviewed the record in this case, including the OAL case file, the documents in evidence and the Initial Decision in this matter. No exceptions were filed in this matter. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is June 28, 2021, in accordance with an Order of Extension. The Initial Decision in this matter was received on March 30, 2021.

Petitioner applied for Medicaid benefits in February 2020. She completed a Pre-Admission Screening (PAS) in October 2019 after hospitalization. Petitioner requested a caregiver exemption whereby she could transfer her home to her daughter, Pe.C., without incurring a transfer penalty. Burlington County denied the request and Petitioner sought a fair hearing.

The New Jersey regulations regarding the caregiver exemption are based on the federal statute. Compare 42 <u>U.S.C.</u> § 1396p(c)(2)(A)(iv), <u>N.J.A.C.</u> 10:71-4.7(d) and <u>N.J.A.C</u>. 10:71-4.10(d). The statute provides that if the "equity interest in a home" is transferred by title to a son or daughter who provided such care that prevented institutionalization for at least two years, the transfer is exempt

PHILIP D. MURPHY Governor

SHEILA Y. OLIVER Lt. Governor from penalty. In its post-hearing letter brief Respondent accepted that the Petitioner was in need of institutionalized care since May 2017, and that Petitioner's daughter provided that care. Instead, Respondent raised another question with regard to the payment of sporadically provided medical services after hospitalization, but did not take a position one way or another.

Respondent's post-hearing brief does not specifically identify the amount of services or the provider of services to which it refers. Instead, it broadly asks the court to determine whether or not this case is distinguishable from <u>E.S. v Camden County Board of Social Services (CCBSS)</u>, OAL Dkt. No. HMA 16705-17, 2018 N.J. AGEN Lexis 926, which addressed the caregiver exemption issue in the context of payment for in-home care that occurred well after the Petitioner was classified as an institutionalized individual. I agree with the ALJ, that the case here is distinguishable from <u>E.S. v.</u> <u>CCBSS</u>. Furthermore, the evidence in the record below does not provide support for Respondent's last minute assertion as the focus of the hearing was whether or not Petitioner's daughter met the requirements of <u>N.J.A.C</u>. 10:71-4.7(d) and <u>N.J.A.C</u>. 10:71-4.10(d), and that issue has been conceded. Caregiver exemption cases are extremely fact sensitive. Based on the evidence in the record before me, Petitioner's daughter moved in with her mother after her father's death in 2006. In May 2017, she was admitted to the hospital. When Petitioner returned home from the hospital, she was mostly non-ambulatory and needed assistance in her activities of daily living for more than two years prior to becoming institutionalized in September 2019.

Based on my review of the record and the applicable law, I hereby ADOPT the Initial Decision finding that the specific facts in the record and circumstances of this case warrant an exemption from transfer penalty.

THEREFORE, it is on this <sup>1st</sup> day of JUNE 2021 ORDERED:

That the Initial Decision is hereby ADOPTED.

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