



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.

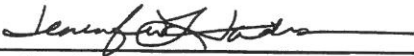
Respondent's post-hearing brief does not specifically identify the amount of services or the provider of services to which it refers. Instead, it broadly asks the court to determine whether or not this case is distinguishable from E.S. v Camden County Board of Social Services (CCBSS), OAL Dkt. No. HMA 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 E.S. v. CCBSS. 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 N.J.A.C. 10:71-4.7(d) and N.J.A.C. 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 1<sup>st</sup> day of JUNE 2021

ORDERED:

That the Initial Decision is hereby ADOPTED.

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