



CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

**State of New Jersey**  
DEPARTMENT OF HUMAN SERVICES  
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES  
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JENNIFER VELEZ  
*Commissioner*

VALERIE HARR  
*Director*

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

A.D.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

UNION COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

**ADMINISTRATIVE ACTION**

**FINAL AGENCY DECISION**

**OAL DKT. NO. HMA 2670-2014**

As Director of the Division of Medical Assistance and Health Services, 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. Procedurally, the time period for the Agency Head to file a Final Agency Decision is August 18, 2014 in accordance with an Order of Extension.

This matter concerns the imposition of a transfer penalty. Petitioner had previously applied in December 2011. That application was denied on April 16, 2012 due to failure to provide information regarding various financial transactions, the disclaiming of \$675,000 under her husband's estate, as well as the sale of property in Italy. Union County noted that there was \$151,300 in transferred assets at that time. Petitioner appealed that decision but withdrew the case while it was pending at OAL. See OAL Dkt. No. HMA 07526-2012.

A second application was filed on June 21, 2013. After providing the missing information and updating her financials, Petitioner was found eligible as of September 1, 2013. A penalty of nineteen months and fifteen days was noted on the eligibility letter of January 28, 2014. Petitioner appealed that decision claiming that the penalty was calculated with transfers made outside the look back period.

The Initial Decision found that Union County had imposed the incorrect look back period when determining the penalty for Petitioner's second application. In 2006, the transfer penalty statute was amended by the Deficit Reduction Act of 2005 ("DRA"). See 42 U.S.C.A. § 1396p(c). Congress made the penalty for transfers harsher by extending the look back period from thirty-six to sixty months for asset transfers occurring after the date of enactment and making other changes to prevent those with assets from gaining eligibility.<sup>1</sup> In addition, Congress modified the statute so that the transfer penalty begins the later of the first day of the month during or after which assets have been transferred for less than fair market value, or the date on which the individual

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<sup>1</sup> See Opening Statement of Senator Chuck Grassley, Chairman, Senate Finance Committee, Budget Hearing with Secretary Michael Leavitt, February 9, 2005. "The DRA will ensure that ... elder law attorneys no longer exploit loopholes to get people with means onto Medicaid." <http://finance.senate.gov>. The DRA was enacted on February 8, 2006.

is eligible for medical assistance and would be receiving institutional level of services but for the penalty period. 42 U.S.C.A. § 1396p(c)(1)(D)(ii).

The Centers for Medicare and Medicaid Services (CMS), which is tasked with the federal administration of the Medicaid program, has stated that "[o]nce the penalty period is imposed, it will not be tolled (i.e. interrupted or temporarily suspended), it will continue to run even if the individual subsequently stops receiving institutional level of care." State Medicaid Letter, July 26, 2006. However, since Petitioner never established eligibility in her December 2011 application the transfer penalty identified in that application never commenced. As such, Petitioner's abandonment of that application led to a clean slate of a different five year look back period that omitted some of those earlier transfers.

Thus, I concluded that the transfer penalty identified in the Initial Decision was the appropriate one to apply to Petitioner based on the date of her second application. I hereby ADOPT the Initial Decision.

THEREFORE, it is on this 8<sup>th</sup> day of JULY 2014,

ORDERED:

That the Initial Decision is hereby ADOPTED.



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Valerie Harr, Director  
Division of Medical Assistance  
and Health Services