



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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Commissioner

VALERIE HARR
Director

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

B.S.,	:	
	:	
PETITIONER,	:	ADMINISTRATIVE ACTION
	:	
V.	:	FINAL AGENCY DECISION
	:	
DIVISION OF MEDICAL ASSISTANCE	:	OAL DKT. NO. HMA 9208-2012
	:	
AND HEALTH SERVICES &	:	
	:	
PASSAIC COUNTY BOARD OF	:	
	:	
SOCIAL SERVICES,	:	
	:	
RESPONDENTS.	:	

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this matter, consisting of the Initial Decision, the documents in evidence and the contents of the OAL case file. No exceptions were filed in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is October 23, 2014, in accordance with an Order of Extension.

This matter concerns the denial of Petitioner's application for Medicaid benefits. Petitioner's application was filed by David Goldberg of Capital Health Management in December 5, 2011. Petitioner owned a home and information was sought regarding the valuation of the property. In May 2012, Passaic County denied the application due to the failure to provide an appraisal.

In September 2012, an appraisal was done that estimated the fair market value of her home to be \$160,000. There was also a \$94,000 lien due the Revera/Hamilton Plaza nursing home from a December 2, 2011 default judgment as Petitioner failed to appear or answer the prior summons.¹ Despite requesting a fair hearing for Petitioner in July 2012, the facility then had Petitioner sign a \$25,000 Term Note dated November 14, 2012 in the facility's favor. On November 30, 2012, Justin Shearer, Esq., representing Rivera/Hamilton Plaza, disclosed there was an issue with Petitioner's competency. There is also a mortgage on the property arising from the 2003 purchase.

For the reasons that follow, I hereby uphold the Initial Decision's determination that Petitioner's home should not have been part of the eligibility determination. However, I REVERSE the Initial Decision's conclusions regarding the application of the look back period and that, because of her dementia, Petitioner was unable to sell the home prior to the appointment of a guardian. Moreover, I FIND there is no basis for equitable estoppel regarding the claim that the December 2011 application was invalid.

¹ The default judgment is based on an action taken by Revera/Hamilton Plaza Nursing Home, which claimed in this proceeding that the facility is Petitioner's representative. Regardless of the conflicts of interest that arise from such an arrangement, a guardian was appointed on June 4, 2013. Despite the appointment, Rivera Nursing Home was improperly permitted to continue to appear in this matter.

The look back period only applies to determining if Petitioner transferred assets for less than fair market value. There is no indication that Petitioner transferred assets absent the specious note where she gave Revera/Hamilton Plaza a \$25,000 interest in her home. Thus, there is no look back issue in this case and that conclusion is not germane to the facts.

With regard to Petitioner's alleged incompetence prior to the appointment of a guardian, it cannot be said that it prevented her from accessing the property since December 2011. The record is unclear if Petitioner's competency was questioned at the time of application. While Revera/Hamilton Plaza averred in a January 23, 2013 letter that the November 14, 2012 Term Mortgage was "pulled from recordation" due to an issue regarding Petitioner's competency, the nursing home raised no such issues when it sought a default judgment against Petitioner on December 2, 2011, three days prior to the Medicaid application. This judgment, prepared by a third law firm representing Revera/Hamilton Plaza, states that Petitioner is neither an infant nor "an incompetent person."² The Initial Decision's conclusion that Petitioner was incompetent throughout the entire Medicaid application process conflicts with the nursing home's proffer to the New Jersey Superior Court.

Notwithstanding the above, there are two theories that would exclude the home from the Medicaid eligibility process. Petitioner's son is disabled and receives Supplemental Security Income (SSI). The home could have been transferred to him without penalty. 42 U.S.C.A. § 1396p(c)(2)(A) and N.J.A.C.

² Had Revera/Hamilton Plaza moved to vacate the December 2, 2011 judgment based on its current argument that Petitioner was incompetent during the entire Medicaid process, this conclusion would be proper. However, as it stands, I FIND no basis to assail Petitioner's competency until sometime in November 2012.

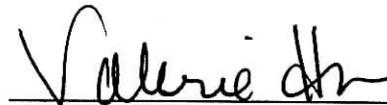
10:71-4.10. Moreover, as a dependent relative, the son could have remained in the home provided the home remained titled to Petitioner. Program Instruction No. 85-8-9. I am satisfied that due to the facts of this case, the home should have been excluded and not used in the eligibility determination.

Thus, while I ADOPT the Initial Decision that permits Petitioner's Medicaid eligibility to be established as of December 1, 2011, I hereby REVERSE the conclusions as enumerated above.

THEREFORE, it is on this 23rd day of OCTOBER 2014

ORDERED:

That the Initial Decision in this matter is hereby ADOPTED.



Valerie Harr, Director
Division of Medical Assistance
and Health Services