



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**

C.S.,	:	
	:	
PETITIONER,	:	ADMINISTRATIVE ACTION
	:	
V.	:	FINAL AGENCY DECISION
	:	
DIVISION OF MEDICAL ASSISTANCE	:	OAL DKT. NO. HMA 5957-2014
AND HEALTH SERVICES &	:	
OCEAN 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. Neither party filed exceptions in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is December 22, 2014 in accordance with N.J.S.A. 52:14B-10 which requires an Agency Head to adopt, reject, or modify

the Initial Decision within 45 days of receipt. The Initial Decision in this matter was received on November 6, 2014.

This matter concerns the June 9, 2011 transfer of commercial property owned entirely by Petitioner to S. Properties, a Limited Liability Corporation (LLC) of which she was a 75% owner. She had a stroke at some point and applied for Medicaid benefits in November 2013.¹ Ocean County denied her application finding that she had excess resources. Petitioner argued that the commercial property assessed for tax purposes at \$865,300 was worthless as it was encumbered by nearly \$3 million in loans. The ALJ agreed with this argument but determined that Petitioner had transferred assets when the property was transferred to the LLC and remanded the matter to Ocean County.

For the reasons that follow I hereby REVERSE the Initial Decision and FIND that Petitioner has resources in excess of the \$2,000 standard, although the assets have not be precisely quantified due to Petitioner's failure to disclose information regarding the LLC's value. I concur that there is a transfer that would need to be addressed when and if Petitioner is found otherwise eligible.

Petitioner's transfer of the property in June 2011 was to a corporation in which she had 75% ownership. In essence she still owned 75% of the property as she also owns 75% of the corporation. The 25% of the property that is owned by her son and partner is a transfer of assets. However, it is her ownership in the S. Properties, LLC that exceeds the Medicaid resource standard.

Despite alleging she was a 75% owner of that LLC, Petitioner failed to provide any documentation, tax returns or financial statements regarding the present value of the company. However, Petitioner freely provided current

income statements for the HOP 33 LLC that operates the restaurant but in which she had no ownership interest. There is information in the record that shows the value of the LLC exceeds any encumbrances on the property.

The Initial Decision's analysis is flawed as it uses the \$865,300 tax assessed value of the property. In using the property tax value, which incidentally does not account for the equalization value², the Initial Decision did not calculate the value of the LLC that includes ownership of the property and a newly built and franchised restaurant. An appraisal of the market value of the property with a fully developed restaurant that was done in 2010 by a certified general appraiser for "mortgage finance purposes" estimated its value at \$3,000,000. Petitioner failed to provide a more recent appraisal and since it is Petitioner's burden to demonstrate that she is eligible, that amount is considered to be binding on Petitioner's case. As the loans total \$2,790,456.26, it appears that her share of S. Properties LLC is worth $\$3,000,000 - \$2,790,456.26 \times 75\% = \$157,157.85$. ID at 7.

The other documents show that S. Properties has intrinsic value as the owner and landlord for the property that generates \$88,343.85 in net income for the tenant. As a condition of the loans, S. Properties was required to have a 21 year lease with HOP 33 LLC that must set a rent that "shall never be less than [S. Properties'] full debt service on the project property, includes of both

¹ Petitioner failed to establish the date of her stroke despite a request from the ALJ.

² To that end, each county must calculate the difference between the assessed value and the market price in a table of equalization value and file it with the Division of Taxation. N.J.S.A. 54:3-17. The value can found online at <http://www.state.nj.us/treasury/taxation/lpt/lptvalue.shtml>. In 2013 the average ratio to true value for Hamilton Township was 62.28%; indicating that the assessed value on average was 62% below the market price of all properties sold. http://www.state.nj.us/treasury/taxation/pdf/lptval/2012TEV_mercer.pdf. For tax assessment purposes the property is worth \$1,389,370.50.

mortgage loans and any other permitted subordinate loan or credit line facility.” See March 19, 2012 letter from Jurecky Law Group to Ronald Garzio, Esq. According to the income statement for HOP 33 for twelve months ending April 2014, that company was paying annual rent of \$243,261.56. Petitioner claimed that the annual loan payments totaled \$225,882.84. Additionally HOP 33 is paying \$44,852.50 in property taxes that are set at \$39,033.68. See HOP 33 income statement. Thus, I FIND no support in the record that Petitioner’s ownership interest in S. Properties is worthless.

The Initial Decision questions whether the property may be excludable “on the grounds that the IHOP is essential to Petitioner’s self-support.” The federal statute excludes “other property which is so essential to the means of self-support of such individual (and such spouse) as to warrant its exclusion, as determined in accordance with and subject to limitations prescribed by the Commissioner of Social Security, except that the Commissioner of Social Security shall not establish a limitation on property (including the tools of a tradesperson and the machinery and livestock of a farmer) that is used in a trade or business or by such individual as an employee.” 42 U.S.C. § 1382(a)(3). Petitioner does not own the IHOP or the property; she is the owner of a company that owns the property and rents to another company that operates the IHOP. Ownership of a company is not what is considered necessary for self-support.

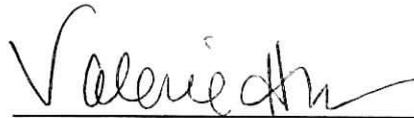
For the reasons set forth above, I FIND that Petitioner’s application was properly denied due to excess resources. Petitioner’s transfer of the commercial property to a corporation that she co-owns would need to be examined should she reapply.

THEREFORE, it is on this 19th day of DECEMBER 2014

ORDERED:

That the Initial Decision in this matter is hereby REVERSED;

That Petitioner's application is denied for excess resources.



Valerie Harr, Director
Division of Medical Assistance
and Health Services