



**State of New Jersey**

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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VALERIE HARR  
*Director*

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

M.K.,	:	
	:	
PETITIONER,	:	<b>ADMINISTRATIVE ACTION</b>
	:	
v.	:	<b>FINAL AGENCY DECISION</b>
	:	
DIVISION OF MEDICAL ASSISTANCE	:	<b>OAL DKT. NO. HMA 8099-2013</b>
	:	
AND HEALTH SERVICES AND	:	<b>ON REMAND FROM</b>
	:	
BURLINGTON COUNTY BOARD OF	:	<b>OAL DKT. NO. HMA 5791-12</b>
	:	
SOCIAL SERVICES,	:	
	:	
RESPONDENTS.	:	

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision and the documents in evidence. Petitioner filed exceptions. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is August 28, 2014, in accordance with an Order of Extension.

This matter concerns Petitioner's January 2012 application for benefits that resulted in the imposition of a transfer penalty due a transfer of assets.

Burlington County assessed a transfer penalty from January 1, 2012 to February 2, 2014. On January 24, 2011, Petitioner transferred a remainder interest in her home to her daughter J.K. She retained a life estate in the home wherein she bore "the cost of all insurance, maintenance, fees, charges and expenses relating to the premises and she shall pay all taxes assessed or imposed with respect thereto, and all principal and interest on any mortgages thereon."

Petitioner claims that this transfer was made under the exemption for transfers to a child who provided care to such an extent that the individual avoided institutionalization. The New Jersey regulations regarding the transfer exemption are based word for word on the federal statute. Compare 42 U.S.C. § 1396p(c)(2)(A)(iv), N.J.A.C. 10:71-4.7(d) and N.J.A.C. 10:71-4.10(d). The federal law specifically requires a period of ineligibility be imposed if an applicant transfers assets for less than fair market value within five years of the date of application. However, the statute also provides that if the title of a home is transferred by title to a son or daughter "who was residing in the individual's home for a period of at least two years immediately before the date the individual becomes an institutionalized individual and who has provided care to such individual which permitted the individual to reside at home rather than in an institution or facility" that transfer is exempt. Ibid.

In the prior proceeding, the ALJ held that the circumstances of this case did meet the requirements for the exemption based on the October 2010 admission and was not subject to a penalty. Upon review, I determined that additional information was necessary to determine the date that Petitioner became an institutionalized individual, her need for nursing home services for the

two year period as well as to whether Petitioner's assets were used to pay for care during the two year period immediately preceding that date. Another hearing date was scheduled on April 3, 2014 and an Initial Decision was rendered.

As a result of the remanded proceedings, the Initial Decision found that Petitioner had not demonstrated that she became an institutionalized individual on October 2010 and instead found that the March 2011 date that must be used in analyzing the requirements of the caregiver exemption. As Petitioner had not resided with her daughter from October 2010 to March 2011 and was not residing with her in January 2011, when the home was transferred to the daughter, the Initial Decision determined that Petitioner did not meet the two year requirement and upheld the penalty. ID at 9.

In exceptions, Petitioner argues that the October 2010 date constituted her becoming an institutionalized individual but did not provide any legally competent evidence regarding her entry and departure. Petitioner also argued that Petitioner's doctor testified she "required an institutional level of care prior to September 2010 and was able to live at home as long as she did thanks to the care provided by" her daughter. However, on remand Petitioner did not provide information about Petitioner being left home alone for hours or the extent to which Petitioner paid for her own care that permitted her to live in the home.

Rather the Initial Decision found that while Petitioner needed assistance, the record below did not demonstrate that her daughter provided care to such a degree that permitted her to reside in the home rather than a nursing facility for

the two years prior to institutionalization.<sup>1</sup> When Petitioner lived with her daughter prior to October 2010, Petitioner was without her daughter's assistance "for approximately five hours a day". ID at 11. Rather Petitioner spent down her assets to pay for an aide to be with her for some of that time. ID at 7.<sup>2</sup> The purpose of the caregiver exemption is to compensate a child who kept the parent out of a nursing facility for at least two years. As stated in the prior Order of Remand, "it cannot be said that the daughter provided 'such care that prevented institutionalization for at least two years.' N.J.A.C. 10:71-4.10(d). Instead it was Petitioner's own actions and finances that permitted her to remain at home."

Moreover, being left for hours on end cannot support Petitioner's contention that she needed institutional level of care for the preceding two years. The remand also sought clarification regarding how long Petitioner was left alone. Specifically the prior Order of Remand noted:

The record addressed various medical conditions that occurred prior to 2007. The issue is Petitioner's need for nursing home level of care immediately prior to entering the Masonic Home. According to J.K.'s written statement, she awoke at 6 a.m. and left for work by 7:45 am. (P-2) In that hour and forty-five minutes, the daughter got herself and Petitioner ready. After J.K. left for work, an aide came in to help Petitioner for two hours and later for four hours. (P-2). No evidence such as timesheets or bills from the agency was produced to support this or that the aide was used to such an extent during the two years prior to institutionalization. The daughter returned at 5:30 pm which would mean Petitioner was left alone for approximately four to five hours at least five days a week. When she lived with her son and his wife, Petitioner was left home for the entire day when the couple worked. This is not indicative that Petitioner needed such special attention and care if she was stable enough to be left alone for hours on end.

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<sup>1</sup> On remand I sought clarification regarding the date instructed that the October 2010 stay at Masonic Home be explored through admission and discharge documentation and charting as to her becoming an institutionalized individual. The record contains no such documentation.

<sup>2</sup> The Initial Decision states that Petitioner paid for an aide while she live with her son. ID at 10.

Petitioner did not provide documentation regarding the care that Petitioner paid for herself. Nor did she clarify the circumstances of being left alone whether she was living with her daughter or with her son. The record is silent on the extent to which her son provided care during those five months. The Initial Decision found that Petitioner was left alone for "approximately five hours a day leading up to" September 2010 which belies the need for such extraordinary care. ID at 11. Thus, I concur that Petitioner did not meet her burden of proof that for the entire two years prior to March 2011 that she would have needed nursing home services or that her daughter provided such care during that entire period that was at the level to prevent institutionalization. I hereby ADOPT the Initial Decision.

THEREFORE, it is on this <sup>25<sup>th</sup></sup> day of AUGUST 2014

ORDERED:

That the Initial Decision is hereby ADOPTED.



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Valerie Harr, Director  
Division of Medical Assistance  
and Health Services