

The matter concerns the eligibility date for Petitioner pursuant to an application filed in May 2013. At the outset it must be mentioned that Petitioner had filed a prior application in September 2012 which was denied in November 2012 for failure to provide information. Petitioner claimed that neither she nor her guardian received that denial letter but made a conscious decision to not appeal that determination.

The Initial Decision concluded that since "petitioner and her guardian did not receive the November 7, 2012 denial letter . . . [Petitioner] should be granted eligibility to the date requested of the February 1, 2013." ID at 8. The problem is the November 7, 2012 denial letter was never appealed. Petitioner, through her guardian, made the deliberate decision to not appeal that denial during the second application. ID at 5. That November denial was not transmitted as a contested case. Moreover, there is no basis to grant eligibility due to a missing denial letter. The case cited in the Initial Decision, B.W. v. DMAHS and Cumberland County Welfare Agency, 95 N.J.A.R. 2nd (DMA) 2, decided September 27, 1994, is nearly 20 years old and more recent cases have explicitly declined to grant eligibility solely due to a missing letter. See L.J. v. DMAHS and Middlesex Board of Social Services, OAL DKT. NO. HMA 526-2013; A.H. v. DMAHS and Hudson County Board of Social Services, OAL DKT. NO. HMA 7644-05; A.H. v. DMAHS and Morris Count Board of Social Services, OAL DKT. NO. HMA 531-2013. Moreover, the testimony by the administrator of Aspen Hills Nursing Home that "he never received the November 7, 2012 denial notice" and that "all mail is opened by a receptionist and give directly to him" is troubling. (ID at 6). Every nursing home resident has the right "to receive and send mail in unopened envelopes." See http://www.nj.gov/ooie/pdf/resident_rights_doh_and_ooie.pdf. While Petitioner may have requested help with reading her mail, the testimony is characterized as an across-

the-board policy to open mail addressed to nursing home residents. Absent evidence that Petitioner or her guardian permitted the nursing facility to open her mail and give it to the facility administrator, his testimony is of no value as to whether Petitioner received a copy of the denial.

It must be emphasized that the matter that was transmitted to OAL concerns the outcome of the second application that was filed in May 2013. That application found that Petitioner was over resources for the three months prior to the application as well as for May 2013. Burlington County granted eligibility as of June 1, 2013 and awarded Petitioner Pre-Eligibility Medical Expenses (PEME) deductions for her non-reimbursable and necessary medical expenses for March, April and May 2013. In effect her income was used to pay the private rate for those three months rather than being applied to offset the Medicaid payment. Petitioner appealed this outcome letter and is seeking full Medicaid benefits as of February 1, 2013.

Petitioner argues that the guardianship order dated November 15, 2012, awarded fees that encumbered Petitioner's assets. N.J.A.C. 10:71-4.1(c)3(i)(2). Pursuant to that order Petitioner's estate was encumbered by fees that totaled \$11,877.75. The order states that Petitioner's liquid assets or her income be used to pay these fees or, "if there are no liquid assets presently", payment must be made within 30 days after the assets become available. P-7. It appears that Petitioner paid \$3,300 of the fees award in December 2012. However, the guardian did not make any further fee payment from Petitioner's income or resources until her home was sold for \$50,000.

While Petitioner can be found eligibility for February, March and April 2013 under the theory that her assets were encumbered by the November 2012 guardianship fee

award, she is not eligible for May 2013. By May 1, 2013, Petitioner had paid the amounts due and owing under the November 2012 guardianship order and her bank account was \$4,393. P-16. The supplemental fee application filed by her guardian was not entered until May 6, 2013. With no fee encumbrance as of May 1, 2013, Petitioner did not meet Medicaid resource eligibility that month.

In exceptions, Petitioner alters that argument and appears to argue for the first time argues that the resource standard should be \$4,000 under N.J.A.C. 10:72-4.5(b) and that the balances used by Burlington County for her assets included income she received as of the first of the month. N.J.A.C. 10:72-4.5(b) permits \$4,000 in assets for aged, blind and disabled individual that have an income limit of 100% of the poverty income guideline which was \$958 in 2013. See N.J.A.C. 10:72-4.1(a) and Medicaid Communication No. 13-01. Petitioner's income of \$1,103.00 was above that amount. Thus, Petitioner's resources had to be at or below \$2,000 in order to establish eligibility. To the extent that the countable resources included Petitioner's income as of the first of the month, I do agree that Petitioner's Social Security benefit posted on the first day of March 2013 and raised her account balance over \$4,000. However, as her assets are being considered encumbered for purposes of determining Petitioner's Medicaid eligibility, this argument does not change the outcome.

Respondent's exceptions argue that Petitioner failed to appeal the November 2012 denial. I concur with that argument and FIND that the Initial Decision is wrong to grant eligibility based on the theory that the letter was not received. I do agree with the exceptions that Petitioner has failed to establish eligibility as of May 1, 2013 as her assets of \$4,393 exceeded \$2,000. P-16.

Thus, I hereby ADOPT the Initial Decision to permit Medicaid eligibility for February, March and April 2013 but for the reasons stated above. I hereby REVERSE the Initial Decision that Petitioner was eligible for May 2013 as her assets were no longer encumbered and were over the resource maximum. Petitioner is no longer entitled to PEME for March, April or May 2013. As such Burlington County should reverse the PEME expenses on the PR-1. With regard to May 2013, Petitioner is not eligible for PEME as those expenses must be "pre-eligibility" and Petitioner was found eligible as of February 1, 2013. Petitioner is also not eligible for Medicaid benefits that month due to excess resources.

THEREFORE, it is on this 8th day of JULY 2014,

ORDERED:

That the Initial Decision is hereby ADOPTED regarding Petitioner's eligibility for February, March and April 2013;

That the Initial Decision is hereby REVERSED with regard to Petitioner's eligibility for May 2013; and

That Burlington County shall take action necessary to implement this Final Agency Decision.



Valerie Harr, Director
Division of Medical Assistance
and Health Services