



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

P.O. Box 712
Trenton, NJ 08625-0712

CHRIS CHRISTIE
Governor

ELIZABETH CONNOLLY
Acting Commissioner

KIM GUADAGNO
Lt. Governor

VALERIE HARR
Director

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

A.T.,
PETITIONER,
v.
DIVISION OF MEDICAL ASSISTANCE
& HEALTH SERVICES &
CAMDEN COUNTY BOARD OF
SOCIAL SERVICES,
RESPONDENTS.
ADMINISTRATIVE ACTION
FINAL AGENCY DECISION
OAL DKT. NO. HMA 6961-2014

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision, the OAL case file and the documents filed below. Petitioner filed exceptions in this matter. Procedurally, the time period for the Agency Head to file a Final Agency Decision is August 3, 2015, in accordance with an Order of Extension.

Based on an application filed in February 2012, Petitioner was found otherwise eligible as of December 1, 2011 but imposed a transfer penalty that would end January

25, 2013. Camden County assessed the penalty due to transfers of \$130,945.55. The penalty was upheld in the Initial Decision.

Under Medicaid law, a resource cannot be transferred or disposed of for less than fair market value during or after the start of the five-year look-back period before the individual becomes institutionalized or applies for Medicaid as an institutionalized individual. 42 U.S.C.A. 1396p(c)(1); N.J.A.C. 10:71-4.10(a). Medicaid law contains a presumption that any transfer for less than fair market value during the look-back period was made for the purpose of establishing Medicaid eligibility. See E.S. v. Div. of Med. Assist. & Health Servs., 412 N.J. Super. 340 (App. Div. 2010); N.J.A.C. 10:71-4.10(i). The applicant "may rebut the presumption that assets were transferred to establish Medicaid eligibility by presenting convincing evidence that the assets were transferred exclusively (that is, solely) for some other purpose." N.J.A.C. 10:71-4.10(j). The burden of proof in rebutting this presumption is on the applicant. Ibid. The regulations also provide that, "if the applicant had some other purpose for transferring the asset, but establishing Medicaid eligibility appears to have been a factor in his or her decision to transfer, the presumption shall not be considered successfully rebutted." N.J.A.C. 10:71-4.10(i)2.

Based on my review of the record I FIND that the well-reasoned analysis of the facts and law by the ALJ should be adopted. The ALJ found that Petitioner failed to show that the stated purpose of the transfers were exclusively for another reason. In this case the five year lookback period begins in February 2007. It is later that year, in October, that Petitioner sells her home and moves in with a family friend. According to that friend, Petitioner's "mental health began to deteriorate rapidly after about a year and a half." P-1. Petitioner further declined while living there and began "utilizing

home health care nurses and paying for with the proceeds from her house.” P-1. At some point in 2009 the friend requested that Petitioner move out of the house and she went to an assisted living facility. Petitioner eventually left the facility for financial reasons and her granddaughter admitted that she need to “keep an eye on” Petitioner when she moved nearby. ID at 4.

The argument that Petitioner’s transfers of assets occurred prior to a traumatic onset of disability is contradicted by the evidence. Rather the facts show that Petitioner had financial difficulties in 2007 when she sold her home and moved in with a friend and declined mentally thereafter. Her departure from the assisted living facility in 2009 was based on the cost. Yet Petitioner continued to gift funds to her granddaughter as her financial and medical situation deteriorated. While there may be a desire of a parent (or grandparent) to leave or give something to a child, the transfer of those assets cannot “be subsidized by public funds.” V.S. vs. DMAHS and Gloucester County Board of Social Services, 2010 N.J. Super. Unpub. Lexis 868 at 11 (April 22, 2010).

In exceptions Petitioner argues that she had demonstrated that she was supporting her granddaughter with the transfers and that she did not anticipate entering into a long-term care facility.¹ However, the facts presented at the hearing do not support Petitioner’s argument.

These transfers begin in November 2007 when Petitioner had sold her home because of financial difficulties and continue through her noticeable mental decline and her need for home health aides, until April 2012 two months after she applied for Medicaid. R-1 at 37-38. Petitioner bears the burden of proving by convincing evidence

¹ Petitioner also included documents not presented at the hearing with the exceptions. Such a submission is prohibited by N.J.A.C. 1:1-18.4(c) which states “[e]vidence not presented at the hearing shall not be submitted as part of an exception, nor shall it be incorporated or referenced within exceptions.” As a result those documents are not part of the record and not reviewed for this decision.

that the assets were transferred exclusively for some other purpose. N.J.A.C. 10:71-4.10(j) and (l)(1). This simply was not done in this case. Thus, I ADOPT the Initial Decision in its entirety.

THEREFORE, it is on this ^{30th} day of JULY 2015

ORDERED:

That the Initial Decision is hereby ADOPTED.



Valerie Harr, Director
Division of Medical Assistance
and Health Services