



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

E.F.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

BERGEN COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 04264-15

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. Neither Party filed exceptions. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is August 31, 2015 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. This Initial Decision in this matter was received on July 16, 2015.

This matter arises from the imposition of a seventeen month, two day transfer penalty in connection with Petitioner's November 12, 2014 Medicaid application. On November 12, 2014 Petitioner submitted an application for Medicaid benefits. On February 12, 2015, the Bergen County Division of Social Services (BCBSS) denied the application due to the transfer of \$160,585 in the form of checks made out to cash, endorsed by Petitioner's daughter and Power of Attorney (POA), B.W. Petitioner appealed the denial and the matter was transferred to the Office of Administrative Law. Based upon my review of the record, I hereby ADOPT the Initial Decision in its entirety and incorporate the same herein by reference.

In determining Medicaid eligibility for someone seeking institutionalized benefits, the counties must review five years of financial history. During that time period, a resource cannot be transferred or disposed of for less than fair market value. 42 U.S.C.A. § 1396p(c)(1); see also N.J.A.C. 10:71-4.10(a). Under the regulations, "[i]f an individual . . . (including any person acting with power of attorney or as a guardian for such individual) has sold, given away, or otherwise transferred any assets (including any interest in an asset or future rights to an asset) within the look-back period" a transfer penalty of ineligibility is assessed.¹ N.J.A.C. 10:71-4.10 (c). The presumption that the transfer of assets was done to qualify for Medicaid benefits may be rebutted "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). It is Petitioner's burden to

¹ Congress understands that applicants and their families contemplate positioning assets to achieve Medicaid benefits long before ever applying. To that end, Congress extended the look back period from three years to five years. Deficit Reduction Act of 2005, P.L. 109-171, § 6011 (Feb. 8, 2006).

overcome the presumption that the transfer was done – even in part – to establish Medicaid.

Petitioner's POA did not request the hearing or appear to testify on Petitioner's behalf. Instead, Petitioner's other daughter, S.K., holding herself out as POA, requested the hearing and testified on Petitioner's behalf. S.K. testified that she believed her sister, B.W., breached her fiduciary duty to Petitioner and used the money for her personal benefit. However, S.K. was unable to provide any documentation regarding the nature of the transfers. As a result, the ALJ concluded that Petitioner was unable to rebut the presumption that the transfers were made for the purpose of qualifying for Medicaid and upheld the transfer penalty imposed by BCBSS.

In the alternative, Petitioner asserts the undue hardship exception should be granted. N.J.A.C. 10:71-4.10q(1)(i) provides that undue hardship exists when a transfer penalty "would deprive the applicant/beneficiary of medical care such that his or her health or his or her life would be endangered" and when "the transferred assets are beyond his or her control and that the assets cannot be recovered. The applicant/beneficiary shall demonstrate that he or she made good faith efforts, including exhaustion of remedies available at law or in equity, to recover the assets transferred." My review of the record does not show that Petitioner has met the requirements.

Petitioner has not demonstrated that the transferred assets are beyond her control and cannot be recovered. Petitioner's POA was not present at the hearing and was not subpoenaed to appear at the hearing. Furthermore, there is no evidence in the record that Petitioner or her representative reported a theft of funds to the police or made any attempt to recover the assets. Finally, no evidence was presented that Petitioner's health or life will be endangered if the undue hardship waiver is denied.

Accordingly, the ALJ concluded that the Petitioner did not meet the requirements for the undue Hardship exception.

THEREFORE, it is on this ^{26th} day of AUGUST 2015

ORDERED:

That the Initial Decision is hereby ADOPTED.



Valerie Harr, Director
Division of Medical Assistance
and Health Services