



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
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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

M.M.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

CUMBERLAND COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 09251-14

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 April 23, 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 March 9, 2015.

This matter arises from Petitioner's application for Medicaid benefits filed September 12, 2013. Petitioner was 90 years old at the time. She had been hospitalized from November 11, 2012 until she was transferred to Voorhees Center in August 2013. Prior to that, she resided with her daughter and son-in-law. At issue are numerous transfers totaling \$127,751.71, from 2009 through 2012, the majority of which were transfers from the joint checking account Petitioner held with her son-in-law to her daughter's account. In January and February 2013, \$60,776 of the \$127,751.71 was returned to Petitioner. On February 13, 2014, Cumberland County Board of Social Services (CCBSS) imposed a transfer penalty from August 1, 2013 through December 13, 2014, for the full amount of the transfer.

In 2006, the 42 U.S.C.A. § 1396p transfer penalty statute was amended by the Deficit Reduction Act of 2005 ("DRA"). Congress made the penalty for transfers harsher by extending the look back period from thirty-six to sixty months for asset transfers occurring after the date of enactment and making other changes to prevent those with assets from gaining eligibility.<sup>1</sup> It is those rules that govern Petitioner's application and, for the reasons that follow, I hereby REVERSE the Initial Decision and reinstate the transfer penalty.

Petitioner seeks a reduction in the transfer penalty based on a partial return of transferred assets. However, the reduction of the penalty is in violation of 42 U.S.C. § 1396p(c)(2)(C) which was clarified in a Medicaid Communication. Any reduction of the

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<sup>1</sup> See Opening Statement of Senator Chuck Grassley, Chairman, Senate Finance Committee, Budget Hearing with Secretary Michael Leavitt, February 9, 2005. "The DRA will ensure that ... elder law attorneys no longer exploit loopholes to get people with means onto Medicaid." <http://finance.senate.gov>. The DRA was enacted on February 8, 2006.

transferred funds is predicated on whether “a satisfactory showing is made to the state (in accordance with regulations promulgated by the Secretary) that (i) the individual intended to dispose of the assets either at fair market value, or for other valuable consideration, (ii) the assets were transferred exclusively for a purpose other than to qualify for medical assistance, or (iii) all assets transferred for less than fair market value have been returned to the individual.” 42 U.S.C. §1396p(c)(2)(C) (emphasis added). Therefore, partial returns are not permitted to modify the penalty period and, absent a return of all the assets, the penalty continues uninterrupted. Medicaid Communications (Med-Comms) 10-02 and 10-06.

Those Med-Comms state that partial reductions would only be permitted “for Medicaid applications filed prior to May 26, 2010 where assets were partially returned prior to May 26, 2010” so as to permit applications pending at the time Med-Comm 10-02 was promulgated to proceed. Here Petitioner’s application was not filed until September 2013. There was no pending application for Petitioner as of May 26, 2010 and an application filed three years after the Med-Comm cannot be re-opened to adjust the penalty because the transfer took place in or before 2010. Both the application and the transfer had to occur prior to May 26, 2010 to adjust the penalty.

Petitioner transferred \$127,751.71 to her daughter over the course of several years. In order to reduce the transfer penalty, Petitioner must show that these transfers were for fair market value, made for a purpose other than to qualify for Medicaid or were fully returned to Petitioner. Petitioner presents no evidence that any portion of those monies was disposed of for fair market value or that those monies were transferred exclusively for a purpose other than to qualify for Medicaid. The transfers in question were mostly large, round figures deposited into her daughter’s account by way of check or electronic transfer from the account Petitioner jointly held with her son-in-law. It



wasn't until January 2013, when Petitioner was admitted to the nursing home, that approximately half of the transferred funds were returned to her. Immediately thereafter, from January 23, 2013 through July 10, 2013, Petitioner made \$53,360.92 worth of payments directly to various medical facilities and at the same time continued to transfer funds to her daughter's account. Petitioner had no plan to support herself after she transferred almost all of her assets to her daughter and left herself unable to pay her medical bills absent a refund of the money transferred. N.J.A.C. 10:71-4.7(i).

This case is distinguishable from the L.B. v. D.M.A.H.S. and Cumberland County Board of Social Services, OAL Docket No. HMA 00766-14 matter cited by Petitioner. In that case, there were two transfers. The full amount of the first transfer, \$46,000, was returned to Petitioner, and the transfer penalty adjusted accordingly. The second transfer, totaling some \$13,000, was only partially accounted for so that a penalty was assessed based on the undocumented balance thereof.

Here, it is clear that the entire \$127,751.71 was not returned to Petitioner. I FIND that a reduction of this amount based on a partial return of assets would be in violation of 42 U.S.C. § 1396p(c)(2)(C). Thus, I hereby REVERSE the Initial Decision with regard to the amount of the penalty and reinstate the \$127,751.71 transfer.

THEREFORE, it is on this 21<sup>st</sup> day of APRIL 2015,

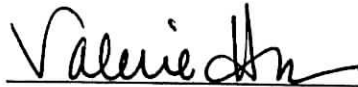
ORDERED:

That the Initial Decision is hereby ADOPTED in PART in that Petitioner did not rebut the presumption that \$74,390.79 was transferred for less than fair market value to qualify for Medicaid; and

That the Initial Decision is ADOPTED in PART in that Petitioner did not demonstrate a sudden onset of a disability; and

That the Initial Decision is REVERSED in PART in that Petitioner's transfer of \$127,751.51 was not completely returned to her pursuant to 42 U.S.C. §1396p(c)(2)(C) and therefore the penalty period cannot be reduced by a partial return, even if those funds were subsequently used for her personal benefit, so that the \$53,360.92 shall be included in the penalty; and

That Cumberland County shall reinstate a transfer penalty of \$127,751.71.

A handwritten signature in black ink, appearing to read "Valerie J. Harr", written over a horizontal line.

Valerie J. Harr, Director  
Division of Medical Assistance  
and Health Services