



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.V.,
PETITIONER,
v.
DIVISION OF MEDICAL ASSISTANCE
& HEALTH SERVICES &
CAMDEN COUNTY BOARD OF
SOCIAL SERVICES,
RESPONDENTS.
ADMINISTRATIVE ACTION
FINAL AGENCY DECISION
OAL DKT. NO. HMA 15653-2014

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. No exceptions were filed in this matter. Procedurally, the time period for the Agency Head to file a Final Agency Decision is June 4, 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. The Initial Decision in this matter was received on April 20, 2015.

Based on an application filed in June 2014, Petitioner was found otherwise eligible as of February 1, 2014 but imposed a transfer penalty that would end November 30, 2014. However, Petitioner passed away on September 1, 2014. Camden County assessed the penalty due to transfers of \$78,000, each in the amount of \$13,000. Four of the transfers occurred in January 2012 and two more were made during January 2013. Petitioner claims these transfers were based on the amount that the Internal Revenue Service set as the annual exclusion for gift tax purposes and were made to pay for weddings and college expenses for her grandchildren.

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.

The ALJ found that Petitioner failed to show that the stated purpose of the transfers were exclusively for another reason. Her argument that the funds were transferred to pay for college and a wedding were not supported by any evidence. Rather the checks were made out to comply with IRS gifting rules when Petitioner was

in her late eighties. Petitioner provided no competent evidence that her health was as robust as alleged by her children.

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. Petitioner's transfers were gifts made to her children and grandchildren during the look-back period and are clearly the types of uncompensated transfers the transfer penalty is meant to penalize. See N.J.A.C. 10:71-4.10(b)(6)i. Indeed, transfers of assets for "love and affection" are not considered a transfer for fair market value. N.J.A.C. 10:71-4.10(b)(6)i.

There is 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. 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(l)2.

Petitioner bears the burden of proving by convincing evidence that the assets were transferred exclusively for some other purpose. N.J.A.C. 10:71-4.10(j) and (l)(1). The agency's determination regarding a transfer does "not include an evaluation of the merits of the applicant's stated purpose of transferring assets. The determination shall only deal with whether or not the applicant has proven that the transfer was solely for some purpose other than establishing Medicaid eligibility." N.J.A.C. 10:71-4.10(l)3.

This simply was not done in this case. Petitioner's explanation for the divestiture of assets was not supported by evidence that was sufficient to rebut the presumption.

Thus, I ADOPT the Initial Decision in its entirety.

THEREFORE, it is on this <sup>26<sup>th</sup></sup> day of MAY 2015

ORDERED:

That the Initial Decision is hereby ADOPTED.



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Valerie Harr, Director  
Division of Medical Assistance  
and Health Services