

This matter arises from the imposition of a transfer penalty on Petitioner's receipt of Medicaid benefits. By letter dated September 29, 2022, the Atlantic County Department of Family & Community Development (Agency) granted Petitioner's August 7, 2022 application with eligibility as of July 3, 2023. A penalty of 367 days was assessed resulting from the transfer of assets totaling \$137,664.87¹ for less than fair market value during the five-year look-back period.

The matter was transmitted to the Office of Administrative Law (OAL) on October 19, 2022. The hearings were held on December 21, 2022, and January 24, 2023. The issue at the fair hearing was whether the transfers were subject to penalty. To that end, Petitioner's challenge of that decision would require that Petitioner provide competent information to substantiate his claim that the funds were spent for his benefit and not for the purpose of qualifying for Medicaid. The Initial Decision had determined that Petitioner had failed to rebut the presumption that the transfers were done to qualify for Medicaid benefits. The Administrative Law Judge (ALJ) Adopted the imposition of the transfer penalty.

In determining Medicaid eligibility for someone seeking institutionalized benefits, the counties must review five years of financial history. 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. N.J.A.C. 10:71-4.10 (c). "A transfer penalty is the delay

¹ Originally, a penalty of 383 days was assessed totaling \$143,752.58.

in Medicaid eligibility triggered by the disposal of financial resources at less than fair market value during the look-back period. E.S. v. Div. of Med Assist. & Health Servs., 412 N.J. Super. 340,344(App. Div.2010). "Transfers of assets or income are closely scrutinized to determine if they were made for the sole purpose of Medicaid qualification." Ibid. Congress's imposition of a penalty for the disposal of assets for less than fair market value during or after the look-back period is "intended to maximize the resources for Medicaid for those truly in need." Ibid.

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.

Here, Petitioner applied for Medicaid benefits through their daughter S.C.-T., who is Petitioner's power of attorney (POA) on August 7, 2022. S.C.-T. transferred a total of \$137,664.87 from Petitioner's bank from November 4, 2019, through May 8, 2020. The transferred assets at issue were the following: an unaccounted-for cash withdrawal for \$1,467.54; a check for \$3,000 payable to M.I. (Petitioner's grandson) dated November 4, 2019; a wire transfer for \$43,000 payable to S.C.-T. on November 4, 2029; and a check for \$90,000 payable to S.C.-T.

At the hearing, S.C.-T. testified that the funds at issue were used to pay Petitioner's expenses. For the \$1,467,54 withdrawal, S.C.-T. testified that she used the money to repair Petitioner's home. The Agency received some invoices but those did not equal

\$1,467.54. S.C.-T. had been able to show that some of the transfers were spent on Petitioner's expenses². However, S.C.-T. did not provide sufficient evidence to account for the entire \$1,467.54 withdrawal and thus did not rebut the presumption that the funds were transferred for solely for some other purpose than to qualify for Medicaid.

During the hearing, M.I., Petitioner's grandson and S.C.-T's son, testified that he loaned Petitioner \$3,000 to pay a community fee³. However, the Florida facility did not show a \$3,000 payment made to it. (P-1 at 19-20; R-1 at 16.) S.C.-T. paid the Florida facility's community fee with five orders for \$500 each, totaling \$2,500. S.C.-T. did not prove that the \$3,000 was used solely for some other purpose than to qualify for Medicaid.

For the \$43,173.33 withdrawal, S.C.-T. told the Agency that the wire transfer was reimbursement for home repairs in order to sell Petitioner's home and payments made to the Florida facility. However, S.C.-T. did not provide the Agency with a written agreement indicating that she would be reimbursed for \$43,173.33 and S.C.-T. provided the Agency with documentation for repairs and replacement of Petitioner's roof. S.C.-T. did not provide the Agency with documentation that she made payments to the Florida facility. Additionally, there were no documents showing that Petitioner's home needed to be repaired before the house was sold. "In regard to transfers intended to compensate a friend and relative for care or services provided in the past, care and services provided for free at the time they were delivered shall be presumed to have been intended to be delivered without compensation." N.J.A.C.10:71-4.10(6)(ii). Consequently, Petitioner did not rebut the presumption that the funds were transferred for solely other purpose than to qualify for Medicaid.

² S.C.-T. sold Petitioner's Florida home on November 1, 2019. Petitioner currently resides in a NJ assisted living and memory care facility.

³ Petitioner was placed in a long-term care facility in Florida in 2019. As a part of a contract, Petitioner had to pay a community fee. Since Petitioner and S.C.-T. did not have money to pay, they borrowed from M.I. \$3,000 in cash.

As for the \$90,000 withdrawal, S.C.-T. advised the Agency that she used the money for Petitioner's expenses (P-1 at 61-99). It is not clear why S.C.-T. opened the new Fairwinds account when the Florida facility did not have any issue withdrawing the monthly fee from Petitioner's McCoy account. The Florida facility had been withdrawing Petitioner's monthly fees and expenses from his McCoy account from December 2019 through June 2020. S.C.-T. did not present any document indicating a problem paying Petitioner's monthly fee and expenses directly from the McCoy account. Petitioner did not provide sufficient evidence to rebut the presumption that the \$90,000 check was transferred to establish Medicaid eligibility.

As noted above, the ALJ adopted the Agency's imposition of the transfer penalty. In Exceptions, Petitioner's counsel argues that Petitioner should be given partial credit upon receipts presented. The Initial Decision correctly finds that the partial reduction of Petitioner's penalty is not permitted under federal law. See 42 U.S.C. § 1396 p (c) (2)(C). Any reduction of the penalty imposed for 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 the 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." Therefore, partial returns are not permitted to modify the penalty period and, absent a return of all the assets, the penalty continues uninterrupted.

It is not the county welfare agency's (CWA) burden to lump together assets so that they might be considered a legitimate transfer for fair market value. Shifting the burden to the CWA to piece together assets not accounted for to assume funds were not transferred to qualify for Medicaid could result in an uneven and arbitrary application of

the Medicaid program rules and regulations. It is Petitioner's burden to show that the transfer of assets was solely for a purpose other than to qualify for Medicaid. N.J.A.C. 10:71-4.10(j).

As set forth above, the explanation for the transfers is not supported by sufficient competent evidence. Petitioner failed to sufficiently explain how the funds at issue were spent and did not offer sufficient, credible evidence to dispute the imposed penalty.

Accordingly, and based on my review of the record, I hereby ADOPT the ALJ's recommended decision and FIND that Petitioner has failed to rebut the presumption that the transfers at issue in this matter were made to establish Medicaid eligibility, and, therefore, the penalty imposed was appropriate.

THEREFORE, it is on this 17th day of OCTOBER 2023,

ORDERED:

That the Initial Decision is hereby ADOPTED.

**Carol A Grant
OBO Jennifer
Langer Jacobs**

Digitally signed by Carol A
Grant OBO Jennifer Langer
Jacobs
Date: 2023.10.17 15:12:11
-04'00'

Jennifer Langer Jacobs, Assistant Commissioner
Division of Medical Assistance and Health Services