

eligibility as of April 1, 2022; however, a penalty of fifty-seven days was assessed resulting from a transfer of assets totaling \$21,542.62 for less than fair market value during the five-year look-back period.

In determining Medicaid eligibility for someone seeking institutionalized benefits, 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 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). “[T]ransfers 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(i)2.

The Administrative Law Judge (ALJ) found that the imposed penalty was appropriate. I concur. The transfers at issue in this matter stem from several transfers made from Petitioner’s bank account to her daughter’s bank account. Petitioner’s daughter, L.W., alleges that the transferred funds were used for Petitioner’s care. ID at 2. Although

\$7,042.60 was transferred back into Petitioner's bank account, \$14,500 remained in L.W.'s bank account through the hearing in this matter. Ibid. No explanation was provided as to why Petitioner's funds were transferred to L.W.'s bank account or why the remaining funds remained in L.W.'s account instead of being transferred back into Petitioner's account. Moreover, no credible documentary evidence was provided showing that any of the funds at issue were used to pay for expenses related to Petitioner's care.

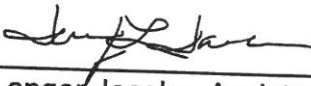
While Petitioner requests that the penalty be reduced by the \$7,042.60 returned to Petitioner, any reduction of the transferred funds is predicated on whether "[a] satisfactory showing is made to the state . . . that . . . (iii) all assets transferred for less than fair market value have been returned to the individual." 42 U.S.C. § 1396p(c)(2)(C) (emphasis added). See also N.J.A.C. 10:71-4.10(e)(6)(iii). Therefore, partial returns are not permitted to modify the penalty period and, absent a return of all of the assets to the individual, the penalty continues uninterrupted. See C.W. v. DMAHS and Union County Division of Social Services, A- 2352-13T2, decided August 31, 2015 (finding that arguments for the partial reduction of a ten year, four month, and thirteen day penalty "lacked any legal support"). L.W. failed to return all of the funds that were improperly transferred into her account, and therefore, a reduction in the penalty is not permitted.

Accordingly, and based upon my review of the record, I hereby ADOPT the ALJ's recommended decision and FIND that the fifty-seven day penalty imposed was appropriate.²

THEREFORE, it is on this 3rd day of JANUARY 2023,

ORDERED:

That the Initial Decision is hereby ADOPTED.



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

² I note that the Initial Decision states that it is affirming "the imposition of a forty-three-day penalty period applied to [P]etitioner's Medicaid eligibility." ID at 4. This appears to be a typographical error as the imposed penalty period in this matter is fifty-seven days.