



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
 DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
 PO Box 712
 TRENTON, NJ 08625-0712

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

CAROLE JOHNSON
Commissioner

JENNIFER LANGER JACOBS
Assistant Commissioner

**STATE OF NEW JERSEY
 DEPARTMENT OF HUMAN SERVICES
 DIVISION OF MEDICAL ASSISTANCE
 AND HEALTH SERVICES**

C.T.,	:	
	:	
PETITIONER,	:	ADMINISTRATIVE ACTION
	:	
v.	:	ORDER OF REMAND
	:	
ATLANTIC COUNTY DEPARTMENT	:	OAL DKT. NO. HMA 06883-22
OF FAMILY AND COMMUNITY	:	
DEVELOPMENT	:	
	:	
RESPONDENTS.	:	

As Assistant Commissioner for 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. Neither party filed exceptions in this matter. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is March 1, 2023 in accordance with an Order of Extension. The Initial Decision was received on December 1, 2022.

This matter arises from the Atlantic Department of Family and Community Development’s (Atlantic County) June 24, 2022 determination that Petitioner transferred \$57,740.11 during the look-back period and was therefore subject to a 154 day transfer penalty. 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). It is Petitioner’s burden to overcome the presumption that the transfer was done – even in part – to establish Medicaid eligibility.

On March 30, 2022, Petitioner, through his attorney, filed an application for Medicaid benefits with Atlantic County. On June 24, 2022, Petitioner was found eligible effective March 1, 2022 but with a penalty of 154 days due to the transfer of \$57,740.11 to his long-term girlfriend, R.S. Specifically, Atlantic County found that Petitioner was directly paying down credit card balances solely owned by R.S. The ALJ found that Petitioner transferred this money to R.S. exclusively for a purpose other than to qualify for Medicaid benefits. For the following reasons, I disagree.

To begin, Petitioner and R.S. are not married. They are long term companions. They lived together prior to Petitioner’s institutionalization. When Petitioner applied for Medicaid, he correctly noted that he was single and was evaluated as a single individual. Consequently, none of R.S.’ assets were attributable to Petitioner when determining his financial eligibility for Medicaid. In the same vein, Petitioner, as a single individual, cannot avail himself of N.J.A.C. 10:71-4.10(e), which allows spouses to freely transfer assets back and forth. If these transfers are exempt from penalty, their legitimacy must extend beyond the fact that Petitioner and his companion shared a residence. There must be some evidence of an agreement.

The record here, contains no evidence of any such agreement. Neither Petitioner nor R.T. offered testimony at the hearing. Testifying instead were Petitioner’s sons, A.T. and D.T., “neither of whom expressed an awareness of their father’s financial circumstances until

it became clear that he could no longer live with R.S.” ID at 3. With admittedly no personal knowledge of their father’s finances until he required nursing home level of care, A.T. and D.T.’s testimony shines little to no light on Petitioner and R.S.’ living and financial arrangements during the look-back period, let alone the prior twenty-six years. ID at 8. No one with first-hand knowledge of the Petitioner’s and R.S.’ financial arrangements appeared to testify at the hearing. There is no evidence in the record that the Petitioner and R.S. had any type of agreement regarding rent or household expenses at any point during their relationship.

Moreover, the argument that Petitioner transferred these expenses solely for a purpose other than to qualify for Medicaid is not supported by the record. First, Petitioner was diagnosed with Parkinson’s Disease approximately ten years ago. ID at 2. In 2017, he underwent Deep Brain Stimulation surgery to reduce his symptoms. The surgery was unsuccessful. Petitioner became a fall risk; started to lose his ability to speak and had difficulty swallowing. ID at 3. Moreover, it was after the surgery that Petitioner’s son started supplementing his income because could no longer work. ID at 3. It was reasonable for Petitioner to anticipate the need for Medicaid benefits given the facts and circumstances surrounding Petitioner’s diagnosis and surgery.

Additionally, Petitioner’s sons cannot simultaneously claim that they had little to no knowledge of their father’s financial circumstances, but state with certainty that he could no longer afford to maintain his lifestyle. Even if we assume that the monthly transfers of \$2,000 were payments made for love and affection, the reason for the transfer is not relevant. Once the money was transferred to Petitioner, the money became his. Petitioner chose to use his money to pay R.S.’ credit card bills. R.S. is not Petitioner’s spouse, and the charges to her account varied from grocery stores to amazon to restaurants with new charges every month ranging from \$650 to \$3,117. Petitioner’s sons now assert that these payments were his fair share of household expenses pursuant to the couple’s agreement.

If Petitioner, having chosen not to pay his share of the household expenses with his own credit card, now claims that these were his fair share of the household expenses, it is his burden to demonstrate the total expenses and how they were divided. N.J.A.C. 10:71-4.10(j). Petitioner could accomplish this by demonstrating fair market value for the transfers in question. However, with no agreement on record and no parties to the agreement available to testify, there is nothing to establish that Petitioner received fair market value for the transfers. There is nothing on the record to show that R.S. owned the house in question or that she was primarily responsible for rent or mortgage payments. There is also no evidence of the agreed upon monthly household expenses. Furthermore, it is difficult to discern Petitioner's "fair share" when, in addition to R.S.'s credit card bills, he also paid the HOA fees, the cable bill, the water bill, the gas bill, the electric bill, the car insurance and four other credit cards.

THEREFORE, I am REMANDING this matter to the court for testimony and documentary evidence with regard to the fair market value of the transfers made by Petitioner. First, Petitioner has asserted that these payments were his fair share of household expenses. However, the overall cost of living and monthly household expenses needs to be established. The documents provided show, at least in part, what expenses were covered by Petitioner. There is no evidence, however, with regard to those expenses for which R.S. was eligible and in fact, paid for, nor is there any explanation for the varying amount of monthly expenses. Second, to the extent Petitioner is paying his fair share of expenses, it is puzzling why he would not have paid these on any one of his four credit cards rather than on a credit card that belongs exclusively to his girlfriend. Typically, applicants will reimburse individuals for their share of expenses, not through direct credit card payments which cover a range of expenses. Testimony explaining this decision in addition to Petitioner's own credit card statements would help to establish that the expenses on the Citi Costco card were shared household expenses.

Based upon my review of the record I hereby REVERSE the ALJ's determination that Petitioner met his burden of proof to establish that he paid R.S.' credit card bills for a purpose other than to qualify for Medicaid and REMAND for additional testimony and documentary evidence.

THEREFORE, it is on this 1st day of MARCH 2023,

ORDERED:

That the Initial Decision is hereby REVERSED with regard to the finding that the transfer of \$55,040.11 was made solely for a purpose other than to qualify for Medicaid; and

That the Initial Decision is hereby REMANDED for additional testimony and documentary evidence of the overall cost of living and monthly household expenses; a breakdown of the expenses covered by Petitioner and R.S. respectively; proof of payment for those expense paid by R.S.; Petitioner's credit card bills; and an explanation for use and direct payment of R.S.'s bills for household expenses rather than Petitioner's; and

That the Initial Decision is hereby ADOPTED with regard to the finding that the remaining transfers totaling \$2,700 were appropriate.



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