

Exceptions in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is October 4, 2023 in accordance with an Order of Extension.

This matter arises from the imposition of a transfer penalty on Petitioner's receipt of Medicaid benefits. By letter dated November 29, 2022, the Union County Board of Social Services (UCBSS) granted Petitioner's August 28, 2022 application with eligibility as of September 1, 2022.¹ However, a penalty of sixty-seven-days was assessed resulting from Petitioner's transferring \$24,000 cash assets to their disabled son, J.B., and his wife's joint account.

The contested case was transmitted to the Office of Administrative Law (OAL), where a hearing was scheduled for April 26, 2023. However, the parties agreed to stipulate to the facts and to submit cross-motions for Summary Decision. The dispute was over whether the transfer to Petitioner's son falls within the exemptions under N.J.A.C.10:71-4.10(e) and 42 U.S.C.A.§§ 1396p (c)(2) (B) (iii) when Petitioner transferred cash assets to their disabled son's joint account with his wife during the sixty-month look-back period.

On July 6, 2023, the Administrative Law Judge (ALJ) granted Petitioner's motion and denied the UCBSS's cross-motion. The ALJ determined that Petitioner's transfer to J.B. is allowed under N.J.A.C.10:71-4.10(e) and 42 U.S.C.§1396p (c)(2)(B)(iii), and therefore, Petitioner should not be penalized for that transfer. The ALJ also stated that the Medicaid laws do not prevent J.B. from depositing the check written directly to him into a joint bank account that he shares with his wife.

Medicaid is a federal program under Title XIX of the Social Security Act, 42 U.S.C.A. § 1396 to 1396w-5. The program is funded by the federal government and administered by the states, including New Jersey. New Jersey participates in Medicaid through the New Jersey Department of Medical Assistance and Health Services Act, N.J.S.A. 30:4D-1 to -19.5. Pursuant to that statute, DMAHS has promulgated regulations implementing New Jersey's

¹ The November 29, 2022 letter was erroneously dated November 29, 2020.

Medicaid Only program. N.J.A.C. 10:71-1.1 to -9.5. For eligibility, these rules include financial limits on resources, and penalties for certain types of transactions transferring assets to create Medicaid eligibility, if those events occur within what is known as the "look-back period," the five years prior to Medicaid application.

Under the Deficit Reduction Act (DRA) of 2005, if an applicant transfers assets for less than fair market value during the look-back period, then those assets are included as eligible resources available to the applicant, and a period of ineligibility is imposed, which is known as the transfer penalty. 42 U.S.C.A. § 1396p(c)(1); N.J.A.C. 10:71-4.10(a). Congress has, however, created specific exceptions to this penalty requirement. According to 42 U.S.C. § 1396p (c) (2) (B) (iii), a parent can legally transfer all of his or her assets to a child of any age who is disabled. New Jersey Medicaid regulations mirror the applicable federal statute. According to the New Jersey Medicaid regulations, a parent can transfer all or a portion of the assets to a child of any age as long as that child is either blind or permanently and totally disabled. N.J.A.C. 10:71-4.10 (e) (1) and (5).

Here, on August 28, 2022, Petitioner applied for the Managed Long Term Services and Supports Nursing Home program with the UCBSS. On the application, Petitioner disclosed three transfers to her son J.B. The first check, dated June 6, 2022, was written by Petitioner for \$5000; the second check, dated June 21, 2022, was written by Petitioner for \$24,000; the third check, dated June 28, 2022, was written by Petitioner for \$2000.² J.B. does not keep a separate bank account. J.B. has one account, a joint account with his wife into which Petitioner's \$24,000 check was deposited. Petitioner's son J.B. is permanently disabled as determined by the Social Security Administration.³ The parties also stipulated that the son, J.B., is disabled as that term is defined by the federal and state requirements of 42 U.S.C.A. § 1396p(c)(2)(B)(iii) and N.J.A.C. 10:71-3.10 and N.J.A.C. 10:71-3.12.

² The \$5000 and \$2000 transfers made to J.B. were not included in the penalty assessment.

³ Petitioner submitted J.B.'s award letter from the Social Security Administration.

Based upon the facts herein, I concur with the Initial Decision and find Petitioner's transfer of \$24,000 to J.B. is not subject to a transfer penalty.

THEREFORE, it is on this 4th day of OCTOBER 2023,

ORDERED:

That the Initial Decision is hereby ADOPTED.

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OBO Jennifer
Langer Jacobs

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Jacobs
Date: 2023.10.04 09:32:51
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Jennifer Langer Jacobs, Assistant Commissioner
Division of Medical Assistance
and Health Services