

eligibility as of August 1, 2021. However, a penalty of 322 days was assessed resulting from the transfer of assets, totaling \$116,613.06, for less than fair market value during the five-year look-back period. The transfer of assets stem from renovations made to Petitioner's daughter's home.

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.

Petitioner moved in with her daughter and power of attorney, L.M., on April 3, 2017. L.M. alleges that Petitioner lived in a room on the first floor of L.M.'s house that did not have a closet or doors for privacy, as all three existing bedrooms in the house were occupied. L.M.

additionally alleges that Petitioner used \$116,613.06 of her personal funds to remodel L.M.'s home in order to create a formal bedroom and expand a half-bathroom into a full bathroom on the first floor.

An Initial Decision was issued on July 1, 2022, finding that Petitioner had demonstrated that the transfer at assets at issue were used for Petitioner's benefit and that Petitioner received other valuable consideration in return for the transfers.¹ On September 28, 2022, the undersigned issued an Order of Remand, which adopted in part and reversed in part the Initial Decision. Specifically, the Order of Remand sought further documentation to demonstrate that the alleged renovations to L.M.'s home to create a living space for Petitioner did occur and occurred solely for Petitioner's benefit.² The Order of Remand directed the Petitioner to provide an itemized list of all expenses related to the renovation, including all contracts, invoices, receipts, canceled checks, renovation photographs, and any other documentation that shows that the transfers at issue were used to pay for renovations to L.M.'s property that were solely for Petitioner's benefit. The Order of Remand also noted that the architectural plans provided by Petitioner showed that large-scale additions to the existing structure of L.M.'s home were contemplated and may have occurred. Specifically, it was noted that in addition to the expansion of a half bathroom and pantry in the existing space, an entirely new bedroom, deck/porch, mudroom laundry room, and expansion of the existing kitchen were also contemplated and may have occurred. The Order of Remand sought clarification regarding what specific parts of the renovation were paid for by Petitioner.

¹ The July 1, 2022 Initial Decision additionally found that Petitioner's life estate interest in L.M.'s home was not properly accomplished because Petitioner failed to provide any compensation in exchange for the life estate interest.

² The Order of Remand also found that the life estate interest was not properly accomplished, as there was no showing that Petitioner paid the \$145,000 purchase price for the life estate to L.M. The Order of Remand additionally found that the life estate interest was created two years after the renovations occurred, and as such, there was no nexus between any payments related to the renovations and the purchase price of the life estate.

At the remand hearing, the Administrative Law Judge (ALJ) found that the amount paid to CnS Contracting, LLC³ for the renovations was \$94,719 and the remaining balance of the \$116,613.06 transfers at issue was paid to third party vendors including Red Bank Borough, Tiled Interiors, Wholesale Kitchen Cabinets, Morris Glass, and Gold Medal electrical services. ID at 4. The renovation included creating a private bedroom for Petitioner on the first floor of the home with a closet and full bathroom with wheelchair accessible doorways in both rooms. ibid. In addition, the pantry/laundry area was moved and enlarged, the mudroom was moved and enlarged, and the back porch was expanded. ibid. The kitchen was also expanded. The ALJ found that the transfers totaling \$116,613.06 were shown to be used for the renovations to L.M.'s home to accommodate Petitioner.

While I agree that the funds at issue were used for renovations to L.M.'s home, I cannot find that the entire cost of the renovations were used solely for Petitioner's benefit and therefore, should not be penalized as gifts. While I FIND that the funds used for the creation of the bedroom and expansion of the existing bathroom into a full bathroom were for Petitioner's benefit and should not have been included in the penalty assessed, any other renovation to L.M.'s home, including the new pantry, deck/porch, mudroom, laundry room, and expansion of the existing kitchen were not for Petitioner's sole use and are considered gifts to L.M., which increased the value of her property and were used for the household's benefit, rather than Petitioner's sole benefit. However, the total cost of the renovations exclusively related to the creation of the bedroom and expansion of the bathroom is unclear from the record. While Petitioner provided an itemized list of expenses seemingly created in contemplation of the present matter by L.M., no receipts or invoices were provided to verify the amount of the renovations and what part of the renovation was covered by any payments

³ Henrico Cimini, part owner and filed operator of CnS Contracting, LLC, testified at the remand hearing in this matter, and an unsigned contract was provided by Petitioner showing that the cost of the renovations would cost \$94,719. P-12.

made by Petitioner. Moreover, while L.M. testified that she and her husband paid for part of the renovations, the unsigned contract with CnS Contracting, LLC shows the total cost of the renovations as \$94,719, which appears to include all of the renovations contemplated on the architectural plans and not just the bedroom and bathroom renovations, while the remaining amount of the transfers at issue were used to pay for third party vendors to complete the wide-scale renovations to L.M.'s property. Accordingly, I am unable to make a determination related to what portion of the transfers at issue should be excluded from the imposed penalty. Therefore, I am REMANDING the matter for further development of the record to allow Petitioner an opportunity to show what the total cost of the renovations were for the creation of the bedroom and the expansion of the bathroom only. The cost of these specific renovations should then be deducted from the total imposed penalty at issue in this matter.

Based upon my review of the record and for the reasons set forth herein, I hereby REVERSE Initial Decision in this matter, as detailed herein, and REMAND the matter to allow Petitioner to provide the requested documentation and necessary clarifications, as detailed herein.

THEREFORE, it is on this 5th day of JUNE 2023

ORDERED:

That the Initial Decision is hereby REVERSED and REMANDED as set forth herein.



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