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DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
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Assistant Commissioner

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

M.K.,	:	
PETITIONER,	:	**ADMINISTRATIVE ACTION**
v.	:	**FINAL AGENCY DECISION**
DIVISION OF MEDICAL ASSISTANCE	:	**OAL DKT. NO. HMA 00418-2023**
AND HEALTH SERVICES AND,	:	**AND HMA 02172-2023**
MORRIS COUNTY OFFICE OF	:	**(CONSOLIDATED)**
TEMPORARY ASSISTANCE,	:	
RESPONDENTS.	:	

As Assistant Commissioner for the Division of Medical Assistance and Health Services (DMAHS, I have reviewed the record in this case, including the Initial Decision and the Office of Administrative Law (OAL) case file. Petitioner filed exceptions in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is September 7, 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 and the denial of Petitioner's request for a hardship exemption.[1] By letter

[1] This was Petitioner's third application for Medicaid benefits. His first two applications were denied due to his failure to provide documentation that necessary to determine eligibility. He did not contest those denials.

dated December 8, 2022, the Morris County Office of Temporary Assistance (CWA) notified Petitioner that his Medicaid application had been approved, but a penalty of 400 days was assessed on his receipt of Medicaid benefits resulting from a transfer of assets, totaling $150,000 for less than fair market value, during the five-year look-back period. R-7. The transfer of assets stems from (1) a transfer of $5,000 to XOOM.com on September 13, 2017; (2) a check for $60,000 dated November 2, 2020 payable to S.V, a family member of Petitioner, with the subject line of the check noting "Loan"; (3) a check for $45,000 dated December 26, 2020 payable to S.V., also with the subject line of the check noting "Loan"; and (4) two wire transfers made from TD Bank account #3291 to Charles Gruen, Esq. on June 15, 2022 for $18,000 and June 29, 2022 for $22,000. Petitioner does not contest the $5,000.00 transfer penalty to XOOM.com.

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.

In this matter, the Administrative Law Judge (ALJ) found that Petitioner failed to demonstrate that the transferred funds were exclusively for another purpose other than to qualify for Medicaid, and that the CWA was correct to deny Petitioner's application for an undue hardship exemption. I concur. With regard to the transfer of funds, Petitioner has failed to account for $150,000 of transfers made to family members, including S.V., and to attorney, Charles Gruen, Esq.

Petitioner's Designated Authorized Representative (DAR), Jacqueline Richardson, Esq., alleges that the $65,000 and $40,000 transfers to S.V. were made to reimburse Petitioner's family members for monies provided to Petitioner for medical treatment he received while in India and assist Petitioner's wife with related expenses. R-10. To substantiate this allegation, Petitioner's DAR provided a letter to the CWA from Petitioner's family members, which attempts to offer an explanation about the $60,000 and $45,000 transfers from Petitioner as reimbursement for these alleged payments made on his behalf. In essence, the letter states that the money Petitioner transferred was to reimburse payments that were made on his behalf for the healthcare treatments he received and related expenses while in India during 2017. The individuals that drafted this letter did not testify at the hearing in this matter, and as noted by the ALJ, the letter is considered unsubstantiated hearsay.

While hearsay evidence shall be admissible during contested cases before the OAL, some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness. N.J.A.C. 1:1-15.5(b). The finding of fact cannot be supported by hearsay alone.

Rather, it must be supported by a residuum of legal and competent evidence. Weston v. State, 60 N.J. 36, 51 (1972).

The letter fails to reflect any formal loan agreement or set forth specifics about how the alleged $60,000 and $45,000 advancements should be repaid if it was a bona fide loan that he was repaying. In fact, the letter merely requests "some of the money that had been provided." Specifically, the letter states, "I requested [Petitioner's] family [to] pay back some of the money we have spent for them." Ibid. This language seems more like an option to repay rather than an agreement where there was an expectation of repayment for the monetary expenditures provided to Petitioner. Moreover, no documentation was provided to support a finding that the there was a loan that was being repaid or the specific purpose of any of the transfers at issue in this matter. A letter for Petitioner's family members does not support a finding regarding the purpose of the transfers at issue, regardless of Petitioner's assertion in his exceptions to the Initial Decision to the contrary. No contracts, invoices, receipts, bills, or other evidence of expenditures on Petitioner's behalf have been provided to substantiate the claims of Petitioner's representatives that the transfers at issue were made for a specific purpose other than qualifying for Medicaid. Petitioner has additionally failed to provide any medical bills or other documentary evidence that shows that he had been hospitalized in India for 43 days, as alleged or that the alleged financial assistance received from family members were provided with the understanding that reimbursement would be required.

Moreover, Petitioner failed to supply any documentation showing the purpose for the transfers made to Mr. Gruen. The only information in the record regarding these transfers is a statement provided by TD Bank that indicates that the $18,000 and $22,000 wire transfers were made to an attorney, Mr. Gruen, in June 2022. ID at 3. Without specific documentation regarding the purpose of these transfers, it cannot be ascertained what legal services were allegedly provided by Mr. Gruen and to whom.

Petitioner has, thus, failed to rebut the presumption that the transfers at issue in this matter were made solely for some other purpose than to qualify for Medicaid benefits. Accordingly, I ADOPT the Initial Decision's conclusions and FIND that the CWA properly imposed a transfer penalty on Petitioner's receipt of Medicaid benefits, as a result of transfers, totaling $150,000, during the look-back period.

On January 11, 2023, the CWA denied Petitioner's application for undue hardship of the assessed transfer penalty. R-11. Petitioner contends he was entitled to a waiver of the transfer penalty since he satisfied all of the requirements needed to establish an undue hardship claim. N.J.A.C. 10:71-4.10q (1) provides that a waiver of the transfer penalty may be granted when:

> i. The application of the transfer of assets provisions would deprive the applicant/beneficiary of medical care such that his or her health or his or her life would be endangered. Undue hardship may also exist when application of the transfer of assets provisions would deprive the individual of food, clothing, shelter, or other necessities of life; and
>
> ii. The applicant/beneficiary can irrefutably demonstrate the transferred assets are beyond his or her control and that the assets cannot be recovered. The applicant/beneficiary shall demonstrate that he or she made good faith efforts, including exhaustion of remedies available at law or in equity, to recover the assets transferred.

The ALJ concluded that Petitioner had not demonstrated that both prongs had been met for a waiver of the transfer penalty. Since the regulation requires that both conditions be met, failing to meet either is a sufficient basis to deny the waiver request. Based on my review of the record, I concur with this conclusion.

Petitioner's attempt to show that the penalty has put his health or life at risk is not based on fact or law. Petitioner is still entitled to ancillary services during the penalty period, meaning that Petitioner is not deprived of medical care. Moreover, and contrary to Petitioner's assertions, his witness, Mary Kalman, Executive Director of Petitioner's nursing facility, testified that despite owing the nursing facility a significant amount of money,

Petitioner would remain at the facility because it would not be safe to release him back into the community. These facts negates any claim made by Petitioner that his health or life is at risk since he is not in danger of being discharged from the facility despite maintaining a substantial balance.

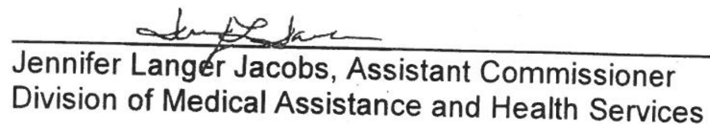
Additionally, although Petitioner argues in his exceptions that the funds were no longer in his control once the funds were transferred, Petitioner's arguments are unpersuasive. Petitioner was in control of the funds when they were transferred, and even though he no longer has access to the funds, he has failed to demonstrated that any effort to recover the transferred funds have taken place. The regulations are clear that Petitioner needs to show that the transferred funds are beyond his control AND that the assets cannot be recovered to meet this prong of the regulation. He has failed to meet that burden. Accordingly, I ADOPT the Initial Decision's findings that Petitioner has failed to meet the requirements to qualify for an undue hardship exemption to the imposed transfer penalty.

Thus, based upon my review of the record, and for the reasons set forth herein, I hereby ADOPT the ALJ's recommended decision, as set forth above. Further, I FIND that the imposed penalty period of 400 days based upon transfers totaling $150,000 was appropriate and that the CWA correctly denied Petitioner's undue hardship application.

THEREFORE, it is on this 7th day of SEPTEMBER 2023

ORDERED:

That the Initial Decision is hereby ADOPTED as set forth herein.



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