

a 118-day penalty was assessed resulting from the transfer of assets for less than fair market value during the five-year look-back period. The transfer of assets stem from the transfer of Petitioner's home to her son, F.L., for less than the home's fair market value. The second issue in this matter relates to the Board's determination that the earliest possible eligibility date was November 1, 2022.

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.

Limited exemptions to the transfer penalty rules exist. For example, the caregiver exemption provides that an individual will not be subject to a penalty when the individual transfers the "equity interest in a home which serves (or served immediately prior to entry into institutional care) as the individual's principal place of residence" and when "title to the home" is transferred to a son or daughter under certain circumstances. N.J.A.C. 10:71-4.10(d). The son or daughter must have "resid[ed] in the individual's home for a period of at least two years immediately before the date the individual becomes an institutionalized individual" and "provided care to such individual which permitted the individual to reside at home rather than in an institution or facility." N.J.A.C. 10:71-4.10(d)4. This exemption

mirrors the federal Medicaid statute. 42 U.S.C.A. § 1396p(c)(2)(A)(iv).

The federal statute calls for an explicit exemption from the transfer rules and is meant to compensate the child for caring for the parent. The New Jersey regulations regarding this transfer exemption are based on the federal statute. See 42 U.S.C. § 1396p(c)(2)(A)(iv) and N.J.A.C. 10:71-4.10(d). The statute provides that if the “equity interest in a home” is transferred by title to a son or daughter who provided such care to a parent while “residing in such [parent’s] home” that prevented institutionalization for at least two years, the transfer is exempt from penalty. 42 U.S.C. § 1396p(c)(2)(A)(iv). The care provided must exceed normal personal support activities and Petitioner’s physical or mental condition must be such as to “require special attention and care.” N.J.A.C. 10:71-4.10(d).

In reviewing the caregiver exemption, the Appellate Division noted that the “receipt of Medicaid benefits is not automatic. Understanding the State’s need to conserve limited financial resources to assure monies are paid to those who meet the circumscribed eligibility requirements, we will not merely assume the criteria as satisfied. Rather, proof must be forthcoming specifically establishing each requirement of the exception to obtain its application.” M.K. v. DMAHS and Burlington County Board of Social Services, Docket No. A-0790-14T3, decided May 13, 2016, slip op. at 17. In another Appellate Division case, A.M. v. Monmouth Co. Board of Social Services, 466 N.J. Super. 557 (App. Div. 2021), the court held that it was acceptable for the child caregiver to be employed outside of the home and still qualify for the child caregiver exemption. Additionally, the court went on to say that the child caregiver is not required to fund all of the care provided to the parent. It is acceptable for the child caregiver to arrange for aides to assist the parent while the child is at work, and for the parent to incur the expense. Ibid. at 570.

In the present matter, Petitioner’s son, F.L., resided with Petitioner for approximately 5 years and 8 months before Petitioner was admitted into a nursing facility on March 28, 2023. On September 30, 2019, M.L. transferred title of her home to F.L. for consideration of

\$1.00. (P-13, R-7). OCBSS estimated the value of Petitioner's home at the time of the transfer to be \$136,922.00 and the balance of the mortgage was \$92,488.26, leaving \$44,433.74 of home equity transferred to F.L. for less than fair market value. (R-5). Petitioner, however, argues that the transfer of the home to F.L. should be exempt from the imposition of a penalty on Petitioner's receipt of Medicaid benefits as a result of F.L. being Petitioner's caregiver for the two-year period prior to Petitioner being admitted into the nursing facility, pursuant to N.J.A.C. 10:71-4.10(d).

Petitioner, through F.L. appealed the transfer penalty in relation to the transfer of Petitioner's home and at the initial hearing in this matter, testified that he provided regular care to Petitioner, including managing her medications, doing all of her shopping, making her meals, doing her laundry, regularly changing her clothes including her diaper, assisting her with showering, feeding her meals, putting her on the Regency Memory Center bus six mornings a week and getting her off the bus every afternoon, along with managing her finances.

The Initial Decision found that F.L. had met his burden to prove that the asset transfer penalty exemption applied because he was a child caregiver residing with Petitioner in her home for at least two years prior to M.L.'s entry into the nursing home and he provided M.L. with care essential to her health and safety. The Initial Decision did not specifically state that Petitioner's physical or mental condition was one that required "special attention and care" pursuant to N.J.A.C. 10:71-4.10(d), but the Administrative Law Judge listed all of the activities of daily living (ADLs) that F.L. assisted with and did specifically state that for all of the years F.L. lived with Petitioner, the medical history proved that M.L. was suffering from advanced dementia, a gait abnormality, chronic obstructive pulmonary disease, osteoarthritis and macular degeneration. I agree with the Initial Decision that Petitioner met the burden. Petitioner has shown through credible evidence that the care F.L. provided, and that Petitioner needed, for the two years prior to institutionalization, exceeded normal personal

support activities and Petitioner's physical or mental condition "required special attention and care" as required by the regulations in order to qualify for the exemption.

The Initial Decision also found that the Board properly determined that November 1, 2022, was the earliest possible eligibility date because Petitioner's clinical eligibility was not determined until November 2022. I agree with the Initial Decision. It is well established that eligibility cannot be determined until an applicant is found to be both financially eligible and medically eligible. N.J.A.C. 10:71-3.15.

Thus, based on the record before me and for the reasons enumerated above, I hereby ADOPT the Initial Decision and FIND that the transfer penalty in this matter be reduced by \$44,433.74, the value of the equity in Petitioner's property that was transferred to F.L., and that November 1, 2022, is the appropriate eligibility date.

THEREFORE, it is on this 12th day of SEPTEMBER 2023

ORDERED:

That the Initial Decision is hereby ADOPTED.

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Jennifer Langer
Jacobs

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