

The New Jersey regulations regarding the caregiver exemption are based on the federal statute. Compare 42 U.S.C. § 1396p(c)(2)(A)(iv), N.J.A.C. 10:71-4.7(d) 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 that prevented institutionalization for at least two years, the transfer is exempt from penalty. 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." Id. It is Petitioner's burden to prove that he is entitled to the exemption.

Petitioner was admitted to a nursing facility in September 2021. At the time, she was approximately 82 years old. It is undisputed that Petitioner's son lived with her for at least two years prior to her institutionalization. The remaining question is whether or not the Petitioner required and received care that exceeded normal personal support activities or whether Petitioner's physical or mental condition required special attention and care. In support of this proposition, Petitioner relies on a letter from her treating physician, Dr. Edward Mezic, and other medical records. While the letter from Dr. Mezic is unsupported hearsay with regard to the amount of assistance provided by Petitioner's son, it does speak clearly to Petitioner's medical condition in the years preceding her institutionalization. Petitioner suffers from Vascular Dementia. She has been bed bound since October 2019 and unable to ambulate independently for several years prior.

I agree with the ALJ that based on the evidence in the record, Petitioner's son has lived with and assisted her with her daily activities since he retired in 2011 and has provided her with a level of care that exceeded normal personal support activities for at least the two years prior to her institutionalization. Thus, delaying her admission to the nursing facility.

Caregiver exemption cases are extremely fact sensitive. Based on the evidence in the record before me and the applicable law, I hereby ADOPT the Initial Decision finding that the specific facts in the record and the circumstances of this case warrant an exemption from

the transfer penalty.

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

ORDERED:

That the Initial Decision is hereby ADOPTED.



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