

This matter arises from the Union County Board of Social Services' (UCBSS) March 14, 2022 determination that Petitioner transferred \$96,075 during the look-back period and was therefore subject to a 265 day transfer penalty. Medicaid law contains a presumption that any transfer for less than fair market value during the look-back period was made for the purpose of establishing Medicaid eligibility. See E.S. v. Div. of Med. Assist. & Health Servs., 412 N.J. Super. 340 (App. Div. 2010); N.J.A.C. 10:71-4.10(i). 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). It is Petitioner's burden to overcome the presumption that the transfer was done – even in part – to establish Medicaid eligibility.

On February 26, 2020, Petitioner sold the family home for \$200,000. The net proceeds of the house totaled \$192,151.29. Although Petitioner's husband had passed away three decades earlier, the house remained in his name. Petitioner's husband left a will, and letters testamentary were issued to their son, J.F., as executor of the will. (R-3) The will stated that his estate was to be divided equally between Petitioner and their two sons, J.F. and V.F. (R-3). The will was silent with regard to contingent beneficiaries. In 2001, V.F. passed away before the estate could be distributed. V.F. passed without a will. He was unmarried and had no children.

I agree with the ALJ that pursuant to the laws of intestacy, Petitioner should have received all of her late son's share of his father's estate. N.J.S.A. 3B:5-2.a and N.J.S.A. 3B:5-4. Accordingly, Petitioner was entitled to two-thirds of the proceeds of the sale of the house. Her son, J.F., was entitled to one-third. Any amount transferred from Petitioner to J.F. in excess of that one-third would constitute the transfer penalty.

THEREFORE, it is on this 17th day of JANUARY 2023,

ORDERED:

That the Initial Decision is ADOPTED; and

That the matter is RETURNED to UCBSS to determine the transfer penalty based on Petitioner's entitlement to two-thirds of the estate.



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