

period and was therefore subject to a 24 day transfer penalty. Subsequent to the determination, Petitioner provided proof of expenses that caused MCBSS to reduce the amount of the transfer penalty to \$5,404.86, resulting in an effective date of July 15, 2021. This is the amount of transfer penalty currently in dispute.

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.

Before moving to New Jersey to live with her son (W.H.) and daughter-in-law (L.H.) in May 2020, Petitioner lived in North Carolina. The home she resided in was owned equally by herself, W.H. and L.H. At some point after her move to New Jersey, Petitioner, W.H. and L.H. decided to list the North Carolina property. While the property was being repaired for sale, Petitioner signed a lease with W.H. and L.H. wherein she agreed to pay \$1,200 in monthly rent.¹ The July 2020 lease was silent with regard to care giving services or additional expenses. The unnotarized lease was signed and dated, but never enforced despite the fact that the Petitioner was financially able to make the payments.

The North Carolina property sold on November 9, 2020 for \$65,041.93. All proceeds were placed in W.H.'s account. Although Petitioner was entitled to one-third of the proceeds, no disbursements were made to her. There is no evidence in the record that W.H. held a power of attorney, or that Petitioner instructed him to retain her share of either the proceeds of the sale to pay her rent or to use “as needed.” Two months after the North Carolina

¹ It is unclear from the record if the lease was presented to MCBSS before the November 19, 2021 determination or during the OAL hearing.

property was sold and six months after signing the lease, Petitioner moved out of her son's home and in to an assisted living facility (ALF). On June 1, 2021, Petitioner filed a Medicaid application with MCBSS.

As of the November 19, 2021 determination letter, Petitioner had been assessed a penalty for the transfer of \$8,904.86 that was identified as "expenses from the sale of the home proceeds not documented with receipts or checks." There is no indication that this transfer was anything to do with rent pursuant to an existing lease agreement. In fact, Petitioner reduced this amount by providing receipts for expenses incurred in connection with the sale of the North Carolina property. Moreover, the response to the November 19, 2021 notice states, "All receipts were submitted numerous times. Unfair penalty." There is no mention of a lease agreement or past due rental payments. It is only at the hearing, that Petitioner asks us to now disregard the balance of the transfer penalty as it would have been covered by the rental agreement if W.H. had ever enforced it.

The Appellate Division has upheld oral lease agreements between family members. J.F. v. Division of Medical Assistance and Health Services, (N.J. Sup. Ct., App. Div. No. A-3856-19, June 15, 2022). However, in J.F. v. DMAHS, the oral lease agreement, which included care giving services, was supported by a series of withdrawals that occurred over a number of years. Here, there is no indication that any payments were made in accordance with the lease agreement, or that W.H. had any intention of enforcing the agreement. In fact, W.H. does not claim that the transfer of Petitioner's remaining share of the proceeds of the sale of the home was payment for rent. He asserts, after the fact, that the unenforced lease, if enforced, would have assumed the transferred value.² It was only after a transfer penalty was assessed and could not be further reduced by other means, that Petitioner invoked the lease agreement as a final attempt to dispose of assets in order to qualify for Medicaid.

It is Petitioner's burden to show that the transfer of assets was solely for a purpose

² Under the terms of the lease Petitioner would have owed six (\$7,200) or seven (\$8,400) month's rent. The record does not reflect the date on which Petitioner entered the ALF. It only states that she began to reside there in January 2021. Therefore, it is unclear if Petitioner would have owed rent for the month of January 2021.

other than to qualify for Medicaid. N.J.A.C. 10:71-4.10(j). It is not the county welfare agency's (CWA) burden to lump together assets so that they might be considered a legitimate transfer for fair market value. In fact, shifting the burden to the CWA to piece together assets not clearly accounted for so as to assume funds were not transferred to qualify for Medicaid could result in an uneven and arbitrary application of the Medicaid program rules and regulations. If we are to accept lease agreements (oral or written) between family members as legitimate financial transfers, there must be some evidence that the parties themselves honored the terms of the agreement.

Additionally, the within circumstances do not provide compelling evidence that the Petitioner intended to remain living with her son, or that Medicaid eligibility was not a consideration for Petitioner and her family. Rather, Petitioner moved to New Jersey in May 2020. She signed a lease in July 2020 and sold her North Carolina property in November 2020. Two months after the sale of the North Carolina property and less than a year after moving to New Jersey, Petitioner moved to an ALF. Shortly thereafter she applied for Medicaid. Given the timing of events and the fact that Petitioner would be resource ineligible if she retained her share of the value of the North Carolina home, it appears that Petitioner has transferred this money, at least partially, in order to qualify for Medicaid.

THEREFORE, it is on this 25th day of JANUARY 2023,

ORDERED:

That the Initial Decision is hereby REVERSED; and

That the transfer penalty is upheld.



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