

2022.¹ Procedurally, the time period for the Agency Head to render a Final Agency Decision is October 20, 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. By letter dated September 17, 2022, the Morris County Office of Temporary Assistance (Morris County or Agency) granted Petitioner's July 20, 2022, Medicaid application with eligibility as of July 1, 2022, with retroactive benefits effective April 1, 2022. However, a penalty of 78 days was assessed resulting from the transfer of assets totaling \$29,451.59, for less than fair market value during the five-year look-back period. As a result of the hearing, while the record was still open, the Agency submitted a Revised Determination reducing the penalty to \$24,451.59, which converts to a 65-day penalty.

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' 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

¹ During the Fair Hearing, Petitioner withdrew his challenges to the denials of his first two applications which left only the issue related to the amount of the penalty. (ID at 2).

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 the present matter, the Agency conducted a review of Petitioner’s financial documents and identified seven individual transfers between March 28, 2019 and May 3, 2021, totaling \$21,651.59. The Agency also identified a flurry of transfers between May 27, 2022 and June 24, 2022, totaling \$2,800.00. All of the identified transfers, in chronological order, are:

- A debit withdraw on March 28, 2019, for \$6,051.59 (See PK 187)
- A check dated January 24, 2020, for \$2,000.00 (See PK 250)
- A cash withdraw on March 23, 2020, for \$2,000.00 (See PK 223)
- A second cash withdraw on March 23, 2020, for \$2,000.00 (See PK 118)
- Another cash withdraw, the next day, March 24, 2020, for \$4,000.00 (See PK 294)
- A check dated April 27, 2020, for \$3,000.00 (See PK 262)
- A check dated May 3, 2021, for \$2,800.00 (See PK 171)
- Multiple checks between May 27th and June 24, 2022, totaling \$2,600.00

The Administrative Law Judge (ALJ) reviewed the exhibits and listened to the testimony of the witnesses regarding the above transfers and found that Petitioner did not meet their burden. More specifically, the ALJ found that Petitioner did not offer any proof as to how the \$6,051.59 withdrawn on March 28, 2019 was spent. (ID at 6). For the January 24, 2020 check, the cash withdrawn on March 23, 2020, and the April 27, 2020 check, Petitioner testified that these expenses were related to moving expenses but the ALJ found that Petitioner did not provide sufficient proof. Ibid. Further, regarding the March 24, 2020 cash withdraw, Petitioner testified that it was for reimbursement for a storage facility. The ALJ pointed out that the storage unit was in the name of Petitioner’s son, not Petitioner. Ibid.

As to the May 3, 2021 check, Petitioner testified that these funds were provided to Petitioner's spouse for living expenses. The ALJ found that Petitioner failed to provide sufficient evidence as to the actual use of these funds. (ID at 7). Similarly, the six checks issued between May 27, 2022 and June 24, 2022, were also identified as living expenses for Petitioner's wife. Again, the ALJ found Petitioner did not meet his burden and found that these transfers were more indicative of transfers for the purpose of qualifying for Medicaid eligibility. Ibid. As such, the Initial Decision found that Petitioner failed to rebut the presumption that the transfers occurred in order to establish Medicaid eligibility. Based upon my review of the record, I agree.

Therefore, I FIND that Petitioner has not demonstrated that the transfers at issue were done solely for another purpose other than qualifying for Medicaid pursuant to N.J.A.C. 10:71-4.10(j) and that the penalty imposed was appropriate. I hereby ADOPT the Initial Decision accordingly.

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

ORDERED:

That the Initial Decision is hereby ADOPTED.

carol grant OBO
Jennifer Langer
Jacobs

Digitally signed by carol grant
OBO Jennifer Langer Jacobs
Date: 2023.09.12 08:37:36
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Jennifer Langer Jacobs, Assistant Commissioner
Division of Medical Assistance and Health Services