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**State of New Jersey**  
**DEPARTMENT OF HUMAN SERVICES**  
Division of Medical Assistance and Health Services  
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JENNIFER LANGER JACOBS  
Assistant Commissioner

**STATE OF NEW JERSEY**  
**DEPARTMENT OF HUMAN SERVICES**  
**DIVISION OF MEDICAL ASSISTANCE**  
**AND HEALTH SERVICES**

R.L.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE :

AND HEALTH SERVICES, AND :

MONMOUTH COUNTY DIVISION :

OF SOCIAL SERVICES, :

RESPONDENTS. :

**ADMINISTRATIVE ACTION**

**FINAL AGENCY DECISION**

**OAL DKT. NO. HMA 04625-2023**

As Assistant Commissioner for the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision and the Office of Administrative Law (OAL) case file. Petitioner filed exceptions in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is October 26, 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 April 18, 2023, the Monmouth County Division of Social Services (MCDSS) notified Petitioner that her Medicaid application had been

approved, but assessed with a 42-day penalty on receipt of Medicaid benefits from a transfer of assets totaling \$16,346.27 during the five-year look-back period. R-2.<sup>1</sup>

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.

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). 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.

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<sup>1</sup> This was Petitioner’s second application for Medicaid benefits. The first application was never received by MCDSS as it was addressed to an incorrect address.

The Administrative Law Judge (ALJ) found that “use of the applicant’s funds was not demonstrated to be used exclusively for a purpose other than to establish Medicaid eligibility and a penalty was required to be imposed.” I concur. Only tangible compensation with intrinsic value shall be considered when determining whether an applicant transferred funds for fair market value. N.J.A.C. 10:71-4.10(b)6i. To that end, “love and affection” is not considered a transfer for fair market value. Ibid. Here, the assessed penalty of \$16,346.27 involves transfers made by Petitioner’s son, S.L. from the Fulton Bank account #3939 jointly owned with Petitioner. From January 2018 through April 2021, the following transfers were withdrawn from this account as follows: (1) a check for \$2,400 dated January 24, 2018 payable to S.L.; (2) a check for \$1,290 dated May 31, 2018 payable to S.L.; (3) a check for \$4,200 dated May 31, 2018 payable to S.L.; (4) seven checks dated September 2020 through April 2021 totaling \$8,500 payable to American Memorial Life Insurance Company (AML), a burial policy owned by S.L. and (5) a check for \$1,000 dated May 21, 2019 labeled as a gift. R-4.

In her exceptions, Petitioner’s Designated Authorized Representative (DAR), Elizabeth Buck argues that these withdrawals were made for Petitioner’s care, to make payments on Petitioner’s burial fund and to cover rent and utility payments.<sup>2</sup> To substantiate these assertions, Petitioner’s DAR provided two letters from AML,<sup>3</sup> copies of receipts for home renovations, two letters from contractors who performed work on the

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<sup>2</sup> The DAR also argues that Petitioner is being penalized for transactions made under the \$2,000 poverty level limit and that Petitioner’s eligibility date should be effective November 2022, when the initial application had been mailed. However, the only issue on appeal is the transfer penalty imposed and proposed effective date of Medicaid benefits.

<sup>3</sup> Both letters dated October 6, 2022 from AML list Petitioner as the insured for the burial policy. However, one letter provides NJ Department of Treasury with a revocable policy, and the other letter designates Bloomfield Cooper Jewish Chapels as beneficiary with an irrevocable policy.

home, copy of a receipt from UPS<sup>4</sup> signed by a UPS worker and a letter from the DAR explaining why the first Medicaid application was not received by MCDSS. None of these assertions are persuasive.

It is well established that the transfer of an asset jointly held with another person shall be considered transferred by the individual when action is taken. N.J.A.C. 10:71-4.10(o). Over a three-year period, S.L. made a series of withdrawals from the joint account he owned with Petitioner. Although S.L. did not testify at the OAL hearing, his wife B.L. testified that S.L. withdrew funds to renovate their home so that Petitioner could continue to reside with them. B.L. also testified that Petitioner transferred \$1,000 as a gift to her grandson and that she believes Petitioner was being charged \$750 for rent and utilities. According to N.J.A.C. 10:71-4.10(b)(6)(ii), transfers of assets to a friend or relative for care or services provided free in the past are care or services in the past are presumed to have been delivered without compensation. If payment is to be made there must be a preexisting written agreement to pay for such services at the relevant market rate. No such credible documentation was presented here so these transfers would not qualify under this exemption.

Moreover, Petitioner's burial policy does not qualify as an excludable resource because Bloomfield Cooper Jewish Chapels/Assurant Preneed Elder Trust, rather than the State, was provided with an irrevocable policy. N.J.S.A. 2A:102-20 provides, "any moneys remaining in an irrevocable funeral trust or irrevocably assigned newly issued funeral insurance policy shall be paid over to the State." (See Med.Com No. 18-08). Since the State's designation to the policy is revocable the policy would not qualify as an exception to the transfer penalty rules.

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<sup>4</sup> UPS stands for United Parcel Service.

Additionally, although Petitioner's DAR alleges Petitioner should not be penalized since the initial Medicaid application had been timely mailed but sent to the wrong address, MCDSS could not process an application it had not received. MCDSS is required to determine eligibility for Aged cases within 45 days and Blind and Disabled cases within 90 days. N.J.A.C. 10:71-2.3(a) and 42 CFR § 435.912. Here, the initial application was dropped off to UPS on November 27, 2022. A total of sixty days had elapsed before the DAR reached out to MCDSS for an update on Petitioner's application. MCDSS informed the DAR that Petitioner's application had not been received. Despite this fact, the DAR argues Petitioner's effective date should be effective November 2022. MCDSS's determination that since the initial application had not been received they would be unable to make an eligibility determination about the November application within the 45-day timeframe as required by regulation was appropriate.

Thus, based upon my review of the record, and for the reasons set forth herein, I hereby ADOPT the ALJ's recommended decision, as set forth above. Further, I FIND that the imposed penalty period of 42 days based upon transfers totaling \$16,346.27 was appropriate and that MCDSS correctly assessed the penalty.

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

ORDERED:

That the Initial Decision is hereby ADOPTED as set forth herein.

Carol A Grant OBO

Jennifer Langer

Jacobs

Digitally signed by Carol A Grant  
OBO Jennifer Langer Jacobs  
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Jennifer Langer Jacobs, Assistant Commissioner  
Division of Medical Assistance and Health Services