



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

PO Box 712

TRENTON, NJ 08625-0712

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

SARAH ADELMAN
Commissioner

JENNIFER LANGER JACOBS
Assistant Commissioner

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

R.M.,	:	
	:	
PETITIONER,	:	ADMINISTRATIVE ACTION
	:	
v.	:	FINAL AGENCY DECISION
	:	
DIVISION OF MEDICAL ASSISTANCE	:	OAL DKT. NO. HMA 00199-2023
	:	
AND HEALTH SERVICES AND	:	(ON REMAND HMA 10486-2020)
	:	
MONMOUTH COUNTY DIVISION	:	
	:	
OF SOCIAL SERVICES,	:	
	:	
RESPONDENTS.	:	

As Assistant Commissioner for the Division of Medical Assistance and Health Services (DMAHS), I have reviewed the record in this case, including the Initial Decision and the Office of Administrative Law (OAL) case file. No exceptions were filed in this matter. Procedurally, the time period for the Agency Head to file a Final Agency Decision is May 23, 2023, in accordance with N.J.S.A. 52:14B-10, which requires an Agency Head to adopt, reject, or modify the Initial Decision within 45 days of receipt. The Initial Decision was received on April 6, 2023.

This matter arises from the imposition of a transfer penalty on Petitioner's receipt of Medicaid benefits. By letter dated October 5, 2020, the Monmouth County Division of Social

Services (MCDSS) granted Petitioner's March 31, 2020 Medicaid application with eligibility as of September 1, 2020. However, a penalty of 849 days was assessed resulting from the transfer of assets, totaling \$303,820.96, for less than fair market value during the five-year look-back period. The transfer of assets stem from gifts to family members, totaling \$18,730.12,¹ and the transfer of Petitioner's home to her son, P.M., for \$285,090.84 less than the home's fair market value.

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.

Limited exemptions to the transfer penalty rules exist. For example, the caregiver exemption provides that an individual will not be subject to a penalty when the individual transfers the "equity interest in a home which serves (or served immediately prior to entry into institutional care) as the individual's principal place of residence" and when "title to the home" is transferred to a son or daughter under certain circumstances. N.J.A.C. 10:71-4.10(d). The son or daughter must have "resid[ed] in the individual's home for a period of at

¹ Petitioner is not contesting the penalty imposed as a result of the gifts in this matter. She is only contesting the imposition of the penalty related the transfer of her home to her son, P.M.

least two years immediately before the date the individual becomes an institutionalized individual” and “provided care to such individual which permitted the individual to reside at home rather than in an institution or facility.” N.J.A.C. 10:71-4.10(d)4. This exemption mirrors the federal Medicaid statute. 42 U.S.C.A. § 1396p(c)(2)(A)(iv).

The federal statute calls for an explicit exemption from the transfer rules and is meant to compensate the child for caring for the parent. The New Jersey regulations regarding this transfer exemption are based on the federal statute. See 42 U.S.C. § 1396p(c)(2)(A)(iv) 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 to a parent while “residing in such [parent’s] home” that prevented institutionalization for at least two years, the transfer is exempt from penalty. 42 U.S.C. § 1396p(c)(2)(A)(iv). 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.” N.J.A.C. 10:71-4.10(d).

In reviewing the caregiver exemption, the Appellate Division noted that the “receipt of Medicaid benefits is not automatic. Understanding the State’s need to conserve limited financial resources to assure monies are paid to those who meet the circumscribed eligibility requirements, we will not merely assume the criteria as satisfied. Rather, proof must be forthcoming specifically establishing each requirement of the exception to obtain its application.” M.K. v. DMAHS and Burlington County Board of Social Services, Docket No. A-0790-14T3, decided May 13, 2016, slip op. at 17.

In the present matter, Petitioner’s son, P.M., resided with Petitioner for more than fifty years in a home that was owned by Petitioner. In December 2019, Petitioner was admitted into a nursing facility and since that time, has no longer resided at her former home. P.M. and Petitioner’s daughter, R.K., petitioned for legal guardianship of Petitioner after she was admitted into the nursing facility.² On May 7, 2020, P.M. and R.K. transferred title of

² It appears that the guardianship filing was filed with the Superior Court of New Jersey,

Petitioner's home to P.M. for consideration of \$1.00. Ibid. MCDSS estimated the value of Petitioner's home to be \$285,090.84. Ibid. Petitioner does not dispute this valuation. Ibid. Petitioner, however, argues that the transfer of the home to P.M. should be exempt from the imposition of a penalty on Petitioner's receipt of Medicaid benefits as a result of P.M. being Petitioner's caregiver for the two-year period prior to Petitioner being admitted into the nursing facility, pursuant to N.J.A.C. 10:71-4.10(d). Petitioner, through P.M., appealed the transfer penalty in relation to the transfer of Petitioner's home and at the initial hearing in this matter, Petitioner's treating physician, John Swidrick, Sr., M.D., testified regarding Petitioner's medical history. Petitioner also supplied a January 30, 2020 letter/certification by Dr. Angelo A. Chinnici, M.D., P.A., that was used in support of P.M. and R.K.'s petition for legal guardianship of Petitioner. P-2. A subsequent letter by Dr. Chinnici, dated February 22, 2022, was also submitted by Petitioner.³ P-3. In that letter, Dr. Chinnici stated that Petitioner suffers from severe dementia and was asked at Petitioner's attorney's request to evaluate a brain computerized tomography (CT) scan from the date of November 29, 2019. Ibid. A copy of the November 29, 2019 CT scan was attached the report. Ibid. Lastly, a December 20, 2019 letter/certification from Dr. Mark David Pass, M.D. that was used in support of P.M. and R.K.'s petition for legal guardianship of Petitioner was presented by Petitioner, indicating that Petitioner suffers from dementia. P-4.

P.M. testified at the initial hearing that he provided regular care to Petitioner, including managing her medications, doing all of her shopping, making her meals, doing her laundry, assisting her in toileting, regularly changing her clothes including incontinence underwear when soiled, changing bed sheets when soiled, and assisting her with showering, which

Chancery Division, Probate Part on or about February 10, 2020. P-4.

³ It is unclear from the record whether this letter was in relation to Petitioner's annual guardianship filing or if this letter was requested for the purposes of the present matter.

included undressing Petitioner, holding her up in the shower, drying her off, and re-dressing her. ID at 5.

An Initial Decision was issued that found that Petitioner had proven that P.M. provided care to Petitioner beyond normal support and that Petitioner required an institutional level of care for the two years immediately preceding institutionalization. However, by Order dated December 29, 2022, the undersigned reversed the Initial Decision and remanded the matter for additional proceedings. The Order of Remand found that the documentation previously submitted by Petitioner was insufficient to determine Petitioner's care needs for the entire two-year period immediately preceding institutionalization, i.e. December 2017 through December 2019. Petitioner was directed to provide additional documentation that demonstrated Petitioner's care needs during that period.

On remand, Petitioner submitted an additional certification from Dr. Swidryk, dated January 23, 2023, to supplement his previous testimony at the initial hearing in this matter, as well as a compact disc (CD) that contained Petitioner's computerized tomography (CT) scan, chest x-rays, and various additional x-rays. Dr. Swidryk certified that he was Petitioner's treating physician for thirty years between the early 1990s and the date of her admission to a nursing facility in 2019. P-7. He further stated that he reviewed Petitioner's CT scan that was performed in November 2019, which indicates that Petitioner suffered from an acute tentorial subdural hemorrhage. Ibid. Additionally present were bilateral hemispheric subdural hygromas, with the right hygroma demonstrating a thin membrane, which likely resulted from a "long-term and chronic use of anti-coagulation medications and frequent historic falls." Ibid. He stated that the scan showed that there was "widespread parenchyma loss accentuated sulci, all of which is consistent with age-related dementia that has been present for at least five years prior to the CT scan." Ibid. Dr. Swidryk certified that "[t]he most salient feature of [Petitioner's] brain CT scan would indicate long term progression pre-existing five to ten years prior based upon the amount of cerebral atrophy, old blood

presence, and accentuated sulci.” Ibid. He stated that a review of Petitioner’s chest x-rays from the last ten years shows emphysema consistent with obstructive pulmonary disease. Ibid. Petitioner has a history of macular degeneration and frequent falls, resulting in aged fractures of the fourth through ninth ribs, tibia, and fibula. Ibid. Dr. Swidryk concluded that Petitioner suffered from severe senile dementia for more than two years prior to December 2019 and that she required assistance in all of her activities of daily living. Ibid.

The Initial Decision found that based upon the additional documentation presented in response to the December 29, 2022 Order of Remand, Petitioner has shown that she is entitled to the caregiver exemption, as set forth in N.J.A.C. 10:71-4.10(d), and therefore, the imposed penalty should be reduced. I agree. Petitioner has shown through credible documentary evidence that the care P.M. provided, and that Petitioner needed, for the two years prior to institutionalization exceeded normal personal support activities and Petitioner’s physical or mental condition “required special attention and care” as required by the regulations in order to qualify for the exemption.

Thus, based on the record before me and for the reasons enumerated above, I hereby ADOPT the Initial Decision and FIND that the transfer penalty in this matter be reduced by \$285,090.84, the value of Petitioner’s property that was transferred to P.M., as Petitioner has shown that she qualifies for the caregiver exemption related to this transfer, pursuant to N.J.A.C. 10:71-4.10(d).

THEREFORE, it is on this 15th day of MAY 2023

ORDERED:

That the Initial Decision is hereby ADOPTED.

Gregory Woods

OBO JLJ

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