



imposed a 499-day penalty resulting from the transfer of property owned by Petitioner for less than fair market value during the five-year look-back period. J-1. BCBOSS initially valued the life estate interest at \$102,327.95; however, during the course of the present appeal, the parties agreed that this amount was incorrect and BCBOSS amended the assessment to \$98,386.52.<sup>2</sup> J-2. Thus, the total transfer amount penalized by BCBOSS in this matter is \$179,863.78 and not \$187,069.24.

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

---

<sup>2</sup> This amount was calculated by using the fair market value of \$278,250.30 for the property and multiplying that by .35359, which is the life estate value for Petitioner’s age, pursuant to the guidelines set forth in N.J.A.C. 10:71-4.10(6)(iii).

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.

The Administrative Law Judge (ALJ) found that Petitioner failed to demonstrate that the transfer was exclusively for another purpose than to qualify for Medicaid, and determined the transfer penalty imposed by BCBOSS was appropriate. I concur with this conclusion, but will return the matter to the BCBOSS for calculation of the correct amount of penalty days imposed as a result of the transfer for less than fair market value.<sup>3</sup> On June 17, 2020, Petitioner and her spouse executed and recorded a deed that transferred one hundred percent of Petitioner's interest in the Vincentown, New Jersey property to her spouse. J-1. At the time of the transfer, Petitioner was 85 years-old. Subsequently, within the same year during the five year look-back period, Petitioner's spouse executed a will that devised a life estate to Petitioner and named their son as beneficiary to the remaining interest. Ibid. By design, Petitioner could not rent or utilize the property to generate income. Ibid. Based upon Petitioner's age at the time of these transfers, it is not unreasonable to surmise that Medicaid planning had been contemplated. Without evidence showing another purpose for the transfers, Petitioner has failed to meet her burden in showing that the transfers at issue were not done for the purposes of qualify for Medicaid benefits.

---

<sup>3</sup> The 499-day transfer penalty is based on \$187,069.24 as the uncompensated value. This amount was adjusted to \$179,863.78 which would modify the amount of days Petitioner would be subjected to a penalty.

Petitioner, in her exceptions to the Initial Decision contests the penalty assessed by Burlington County, and alleges the ALJ's analysis was flawed. Petitioner alleges the ALJ: 1) incorrectly treated the transfer between spouses as being subjected to a rebuttable presumption; 2) applied law more restrictive than federal law; 3) failed to consider a transfer of assets by will differently than *inter vivos* transfers;<sup>4</sup> 4) failed to consider that Petitioner had no control over the disposition of the Vincentown property once it was transferred to her spouse and 5) failed to consider whether Petitioner had a right to an elective share pursuant to N.J.S.A. 3B:8-1. These allegations are without merit.

It is well established that all Medicaid applicants must disclose financial information to determine eligibility. If a transfer penalty is assessed, that applicant may seek to rebut the transfer penalty imposed. N.J.A.C. 10:71-4.10(j). There are some instances when a transfer of assets during the look-back period may qualify as an exemption from the imposition of a transfer penalty. One exemption consistent with federal law, provides a transfer penalty shall not apply when assets are transferred to an individual's spouse or to another for the sole benefit of the individual's spouse. N.J.A.C. 10:71-4.10 (e) (2); 42 U.S. Code § 1369p (c)(2)(B)(i). This exemption is not absolute as the transfer of assets must pass the "sole benefit" test per regulation.<sup>5</sup> To satisfy this requirement, there must

---

<sup>4</sup> Petitioner cites I.G. v. DMHAS, [3]86 N.J. Super 282 (App. Div. 2006) as authority for the premise that as it relates to a spousal elective share the, "Medicaid transfer rules cease to apply upon death and state law governs the rights of all beneficiaries." Petitioner's reliance here, is misplaced. An elective share option afforded to an eligible Medicaid recipient would not negate review of disposal of "assets at less than fair market value at any time during or after [the so-called look back period]. Id. at 291, citing N.J.A.C. 10:71-4.10(a).

<sup>5</sup> The ALJ failed to consider whether the sole benefit test had been satisfied pursuant to N.J.A.C. 10:71-4.10 (b)(8) and N.J.A.C. 10:71-4.10 (f). This analysis is required to determine if this exemption would apply to transfers between spouses.

be a written document “which legally binds the parties to a specific course of action,” identifies who will benefit from the transfer and names the State of New Jersey (State) as the first remaining beneficiary. N.J.A.C. 10:71-4.10 (f). Any transfer made without such written designation to the State as the first remaining beneficiary shall not be considered to have been made for the sole benefit of the spouse. Ibid. Here, Petitioner’s son rather than the State, was named as the first beneficiary for the remaining interest in the Vincentown property. Therefore, Petitioner would not be entitled to this exemption based on these set of facts.

Petitioner alleges the ALJ failed to conduct an analysis to determine if Petitioner had a right to choose an elective share pursuant to N.J.S.A. 3B:8-1. Petitioner also alleges that she had no right to an elective share because her assets exceeded one third of the augmented estate and that she should not be penalized for the testamentary transfer made to her son for which she had no control. The purpose of the elective share statute is to provide a method by which [a] surviving spouse’s interest in a life estate or trust is to be valued in an action for an elective share. However, the elective share statute applies to “transfers [made] by the decedent not the surviving spouse.” Estate of DeMartino v. Division of Medical Assistance and Health Services, 373 N.J. Super 210, 221 (App. Div. 2004); N.J.S.A. 3B:8-1. In this case, Petitioner transferred her share of the interest in the Vincentown property to her spouse, thus the transfer does not fit within the ambit of this statute. Ibid.

For the aforementioned reasons, I hereby ADOPT the Initial Decision’s findings that the transfer penalty is appropriate and RETURN the matter to BCBOSS to determine the appropriate penalty based on the modified uncompensated value of \$179,863.78, as

the 499-day transfer penalty was assessed utilizing \$187,069.24 as the uncompensated value.

THEREFORE, it is on this 25<sup>th</sup> day of SEPTEMBER 2023,

ORDERED:

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

Carol A Grant  
OBO Jennifer  
Langer Jacobs

Digitally signed by Carol A  
Grant OBO Jennifer Langer  
Jacobs  
Date: 2023.09.25 14:35:53  
-04'00'

---

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