



the time period for the Agency Head to render a Final Agency Decision is December 28, 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.<sup>1</sup> By letter dated October 13, 2022, the Atlantic County Department of Family and Community Development (Atlantic County) advised Petitioner that a penalty of four hundred and seven (407) days was assessed on his receipt of Medicaid benefits resulting from transfers of assets, totaling \$152,649.90 for less than fair market value, during the five-year look-back period. R-1, P. 37-39.

The Initial Decision determined that Petitioner had failed to rebut the presumption that the transfers were done for the purposes of qualifying for Medicaid benefits. Based upon my review of the record, I hereby ADOPT the findings and conclusions of the Administrative Law Judge (ALJ).

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

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<sup>1</sup> Petitioner applied for Medicaid Only benefits on July 29, 2022. R-1, P 3-19. Petitioner previously applied for Medicaid benefits on May 26, 2022 which was denied for Failure to Provide Verifications. R-1, P. 20-36.

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.

Here, the ALJ found that the Petitioner failed to demonstrate that the transferred funds were exclusively for another purpose other than to qualify for Medicaid. I concur. Petitioner failed to satisfy the burden of showing, through credible documentary evidence, that the transfers at issue were done exclusively for some other purpose than to qualify for Medicaid.

Petitioner gifted money to various family members in varying amounts from July 2017 to December 2021 totaling \$34,100. <sup>2</sup> R-1, P. 38-47,53,57-58. Those payments are as follows: (1) December 8, 2021 check for \$1,200 to L.K.(d) for "Merry Christmas"; (2) September 9, 2021 check for \$1,900 to L.K.(d); (3) June 15, 2021 check for \$1,000 to L.K.(d) for "Baby Boy Cade"; (4) December 8, 2020 check for \$1,000 to L.K.(d) for "Xmas"; (5) March 25, 2020 check for \$15,000 to L.K.(d) for "Congratulations xo"; (6) February 5, 2020 check for \$1,000 to L.K. (s) for "Water Heater"<sup>3</sup>; (7) December 16, 2019 check for \$1,000 to L.K.(d) for "Xmas K.L.C."; (8) May 7, 2019 check for \$500 to M.K. for "Masters"; (9) April 28 check

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<sup>2</sup> Gifted family members include Petitioner's daughter, L.K.(d); Petitioner's sister, L.K.(s) and; Petitioner's son, M.K.

<sup>3</sup> The Purchase Order supporting this transfer demonstrates it was gift for a property not owned by Petitioner. R-1, P. 46.

for \$1,000 to L.K. (d) for "K."; (10) August 26, 2018 check for \$1,000 to L.K.(d) for "Heart u"; (11) July 4, 2018 check for \$1,00 to L.K. (d) for "Birthday"; 12) July 4, 2018 check to M.K. for "Birthday"; (13) January 3, 2018 check for \$500 to L.K. (d); (14) October 6, 2017 check for \$3,500 to M.K. for "\$1,800 loan"<sup>4</sup>; (15) December 16, 2017 Check for \$500 to L.K. for "Merry Christmas; and (16) July 18, 2017 check for \$3,000 to Rode's Catering on behalf of M.K. R-1, P.38-58.

Petitioner acknowledges that these payments were gifts but argues that they should not be subjected to a transfer penalty, as they were intended to assist the recipients with bills and were appropriate under the circumstances. Petitioner suffered a stroke in March 2017 at age 54, and subsequently initiated a Medical Malpractice lawsuit due to negligent medical care that Petitioner received following such stroke. R-1, P. 14, 67. Petitioner failed to detail how they planned to support themselves, including paying for medical and care needs, after the transfers were made. See N.J.A.C. 10:71-4.10(j)1iv. Based upon Petitioner's health at the time of all of aforementioned transfers, it is not unreasonable that Medicaid eligibility would be contemplated. Without documentation showing another purpose for the transfers, Petitioner has failed to meet his burden of showing that the transfers at issue were not done for the purposes of qualifying to Medicaid benefits. The Appellate Division of the Superior Court of New Jersey has upheld numerous Medicaid penalty cases that were either gifts or transfers for no fair market value. See V.S. vs. DMAHS and Gloucester County Board of Social Services, 2010 N.J. Super. Unpub. Lexis 868 (April 22, 2010); S.L. v. DMAHS and Essex County Board of Social Services, 2014 N.J. Super. Unpub. Lexis 2152 (September 2, 2014) and E.A. vs. DMAHS and Hunterdon County Board of Social Services, A-2669-13, Decided July 20, 2015. In upholding the transfer penalty, the Court recognized that the desire

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<sup>4</sup> Petitioner did not supply any documentary evidence supporting a loan or the repayment of same.

of a parent to leave or give something to a child cannot “be subsidized by public funds.” V.S. vs. DMAHS and Gloucester County Board of Social Services, 2010 N.J. Super. Unpub. Lexis 868 at 11 (April 22, 2010).

Moreover, Petitioner made various payments for alleged renovations to a property not owned by Petitioner. Specifically, Petitioner made eight payments from May 10, 2018 to October 3, 2019 totaling \$54,207. R-1, P. 38-39, 48-55. Specifically, the payments are as follows: (1) October 3, 2019 check for \$10,750 to R.M., (2) August 15, 2019 check for \$8,000 to R.M.; (3) July 25, 2019 Check for \$10,000 to R.M.; (4) July 8, 2019 check for \$8,000 for R.M.; (5) May 10, 2018 check for \$3,020.89 to N.N.; (6) May 10, 2018 check for \$6,605 to N.N.; (7) May 10, 2018 check for \$4,717 to N.N.; and (8) May 10, 2018 check for \$3,113.70. R-1, P. 38-39, 48-55.

Petitioner contends that the improvements to the real property, owned by his father, were performed to ensure handicap accessibility and enable him to reside there from August 2019 to December 2021 avoiding institutionalization.<sup>5</sup> The Initial Decision found that in the absence of proofs, proposals, contracts regarding the improvements, or verifications as to the type of work performed to make the home handicap accessible, a transfer penalty was properly imposed. I agree. Petitioner has failed to demonstrate that any of the alleged renovations or expenses were completed solely for Petitioner’s benefit. While Petitioner provided a July 25, 2019 proposal for \$10,750 to add a bathroom in the basement, those plans do not show what renovations were actually completed to make the property handicap

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<sup>5</sup> Initially the property at issue was reported as owned by Petitioner’s sister and then later reported as owned by Petitioner’s father. However, pursuant to an October 9, 2000 Deed the property is recorded as owned by Petitioner. The property was not disclosed as a resource on Petitioner’s application and accordingly was not considered in calculating Petitioner’s Medicaid eligibility. R-1, P. 70-73, 86. Pursuant to the Initial Decision “[Atlantic County] has stipulated that the ...property was owned by R.K.’s father and not R.K., so it was not considered a resource to R.K.” ID, P.11.

accessible, or the cost of the specific renovations performed.<sup>6</sup> R-1, P.49. No invoices, receipts, contracts, canceled checks, or other documentation was provided by Petitioner to show that the transfers at issue were used to create a living space for Petitioner at his father's home. In the closing submissions Petitioner first provided seven photographs of the purported renovations all of which are undated and without explanation of the work performed. See H.D. v. Burlington Cnty. Bd. of Social Serv. and the Division of Med. Assistance and Health Serv., 2014 N.J. AGEN LEXIS 921 holding that amounts paid for renovations represented a transfer for less than fair market value where some of the costs were directly related to modifying the property for the applicant to live there, but insufficient information remained in the record as to whether the entire amount was for her benefit.

Further, Petitioner failed to submit proof that R.M. or N.N. were the owners of the construction companies allegedly contracted to make the renovations. Petitioner's spouse, C.K.,<sup>7</sup> submitted an Affidavit and testified that the improvements had to be made to the property as Petitioner was in a wheelchair. R-1, P. 67-68. However, C.K.'s testimony alone is not sufficient to overcome the presumption that the transfers were made for the purposes of qualifying for Medicaid. While hearsay evidence shall be admissible during contested cases before the OAL some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness. N.J.A.C. 1:1-15.5(b). The finding of fact cannot be supported by hearsay alone. Rather, it must be supported by a residuum of legal and competent evidence. Weston v. State, 60 N.J. 36, 51 (1972).

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<sup>6</sup> A second copy of the July 25, 2019 Proposal was also provided by Petitioner which contains a strikethrough of the Proposal Cost of "\$10,750" and replaces it with "\$18,000." No further explanation is provided.

<sup>7</sup> Petitioner and C.K. were married in 2006 and separated in 2014. Petitioner and C.K. have lived separately since 2014. R-1, P. 67.

Petitioner asserts that while awaiting the finalized renovations to their father's property, Petitioner transferred \$1,200 to property owner, N.T. on August 12, 2019 as a rent payment. R-1, P. 50. In the closing submissions, Petitioner first presented a lease agreement for one month, August 12, 2019 to September 10, 2019, signed by N.T., and Petitioner's power of attorney, C.K. The Lease agreement is not dated by C.K. No further confirmation or supporting documents that the payment was for Petitioner's rent were supplied. Accordingly, the ALJ concluded that the transfers were subject to a penalty. I concur and find that Petitioner failed to meet the burden of proof to overcome the presumption that the assets were transferred to establish Medicaid eligibility.

Additionally, Petitioner made various payments to alleged employees of his landscaping business, Bella Green Lawns and Landscaping, from May 2017 to May 2019. The payments are as follows: (1) May 8, 2019 check for \$1,500 to B.D.; (2) March 20, 2019 check for \$2,000 to B.D.; (3) January 23, 2019 check for \$1,835 to B.D.; (4) November 19, 2019 check for \$820 to B.D.; (5) October 14, 2018 check for \$500 to V.D.; (6) October 24, 2018 check for \$500 to V.D.; (7) October 7, 2018 check for \$500 to V.D., (8) June 3, 2018 check for \$804.70 to V.S./D.; (9) April 15, 2018 check for \$780.90 to V.S.; (10) October 29, 2017 check for \$780.90 to V.S./D.; (11) October 15, 2017 check for \$780.90 to V.S./D.; (12) October 1, 2017 check for \$780.90 to V.S./D.; (13) September 17, 2017 check for \$780.90 to V.S./D.; (14) August 7, 2017 check to \$1,000 to A.; (15) July 23, 2017 check for \$780.90 to V.S./D.; (16) June 25, 2017 check for \$780.90 to V.S./D.; (17) June 11, 2017 check for \$780.90 to V.S./D.; (18) May 30, 2017 check for \$829.16 to V.S./D.; (19) May 14, 2017 check for \$829.16 to V.S./D.

Petitioner contends that the payments were made to help them operate their landscaping business after their 2017 stroke. R-1, P 67. Without specifying, C.K. also alleges that some of the money was used to pay for home health aide work for Petitioner.

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The Initial Decision found no evidence that V.S./D. or B.D. were employees or independent contractors of Bella Green Lawns and Landscaping. Notably, in their Affidavit, C.K. states that V.S./D. was Petitioner's girlfriend. R-1, P. 67. Petitioner bears the burden to demonstrate through credible documentary evidence that an agreement establishing the services and compensation existed prior to the services being rendered. In addition, the Petitioner must demonstrate the types of services provided and the terms of compensation, including a demonstration that the compensation for the rendered services was equal to the prevailing rates for similar services. N.J.A.C. 10:71-7.10(b)6ii. Further, in accordance with N.J.A.C. 10:71-4.10(b)6.ii, care and services provided for free in the past are presumed to have been intended to be delivered without compensation.

Based on the failure to present credible documentary evidence establishing the individuals were compensated at fair market value of the transferred assets, including a demonstration that the compensation for the rendered services was equal to the prevailing rates for similar services, the ALJ concluded that Petitioner has failed to satisfy his burden. I concur with the ALJ's determination based on the absence of substantial and verifiable evidence in support of Petitioner's contentions.

Moreover, Petitioner's spouse, C.K., maintained a joint account with her ex-spouse, J.L. The Initial Decision concluded that without sufficient justification the following were deemed penalized transfers: 1) October 7, 2020 transfer for \$40,000 to account number 1039; (2) August 9, 2020 transfer for \$3,018.12 to account number 9208; (3) May 30, 2017 transfer for \$1,986.14 for a total of \$45,004.26. R-1, P. 60- 65. Specifically, the May 20, 2017 check was penalized because a copy of the check was not provided. Additionally, the transfers made on October 7, 2020 and August 9, 2020 went into an account that did not belong to Petitioner or his spouse. C.K. contends that the account was only utilized by J.L. and that she had no knowledge of the account until sometime in 2022. According to N.J.A.C. New Jersey Is An Equal Opportunity Employer • Printed on Recycled Paper and Recyclable



10:71-4.1(d)2 “[w]hen a savings or checking account is held by the eligible individual with other parties, all funds in the account are resources to the individual, so long as he or she had unrestricted access to the funds (that is, an “or” account) regardless of their source.” In this case, there is no question that C.K. was a joint owner of the account in question and had unrestricted access to the funds in the account. Petitioner has failed to adequately demonstrate that the funds contained in this account were solely J.L.’s funds and the account was solely used for J.L.’s benefit.

Furthermore, Petitioner made various additional transfers for less than fair market value as follows: (1) June 22, 2018 check for \$600 to R.J. for “Broken Sliderglass”; (2) May 19, 2018 check for \$673.83 to .J.S. for “Skylights”; (3) August 2, 2017 check for \$1,000 to A. for “Lawnmower pick up +Repair.” While Petitioner alleges that the transfers were payments to business vendors for work performed, supporting documentation to verify these transactions was not provided.

Thus, based upon my review of the record and for the reasons set forth herein, I hereby ADOPT the ALJ’s recommended decision. Further, I FIND that Petitioner has failed to rebut the presumption that the transfers at issue in this matter were made in order to establish Medicaid eligibility, and, therefore, the imposed penalty period is appropriate.

THEREFORE, it is on this 28th day of DECEMBER 2023

ORDERED:

That the Initial Decision is hereby ADOPTED.

**Carol A Grant** Digitally signed by  
**OBO Jennifer** Carol A Grant OBO  
**Langer Jacobs** Jennifer Langer Jacobs  
Date: 2023.12.20  
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Jennifer Langer Jacobs, Assistant Commissioner  
Division of Medical Assistance and Health Services