

exemption and assessed a transfer penalty of \$398,117.99 due to the December 2016 transfer of her home to her son, E.M. Hudson County found Petitioner was otherwise eligible as of January 1, 2017 and imposed a penalty through April 12, 2020. Petitioner initially appealed Hudson County's determination on June 18, 2018 and the matter was transmitted to the Office of Administrative Law (OAL) on July 29, 2018. On April 23, 2019, the Administrative Law Judge (ALJ) issued an Initial Decision granting the Petitioner's motion for summary decision and reversing Hudson County's decision denying the caregiver exemption. On July 18, 2019, the Division of Medicaid Assistance and Health Services (DMAHS) issued an Order reversing the Initial Decision and Remanding the matter for further findings including additional medical records and evidence to corroborate the living situation between Petitioner and her son for the period beginning July 2014 through July 2016. On January 17, 2023, the ALJ issued an Initial Decision again reversing Hudson County's denial of the caregiver exemption.

When an individual is seeking benefits which require meeting an institutional level of care, any transfers of resources are scrutinized. N.J.A.C. 10:71-4.10. 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). Individuals who transfer or dispose of resources for less than fair market value during or after the start of the sixty-month lookback period before the individual becomes institutionalized or applies for Medicaid as an institutionalized individual, are penalized for making the transfer. 42 U.S.C. § 1396p(c)(1); N.J.A.C. 10:71-4.10(m)(1). Such individuals are treated as though they still have the resources they transferred and are personally paying for their medical care as a private patient, rather than receiving services paid for by public funds. In other words, the transfer penalty is meant to penalize individuals by denying them Medicaid benefits during that period

when they should have been using the transferred resources for their medical care. See W.T. v. Div. of Med. Assistance & Health Servs., 391 N.J. Super. 25, 37 (App. Div. 2007).

Limited exemptions to the transfer penalty rules exist. The caregiver exemption permits the transfer without penalty of the applicant's home when an applicant needed institutional level care, and that the care rendered by a child was to such an extent that it permitted the applicant to avoid institutionalization. N.J.A.C. 10:71-4.10(d)4. 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." Id. The applicant's son or daughter must have "resid[ed] in the individual's home for a period of at 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) (emphasis added). This exemption mirrors the federal Medicaid statute. 42 U.S.C.A. § 1396p(c)(2)(A)(iv). It is Petitioner's burden to prove that she is entitled to the exemption due to the care provided by her son from July 2014 through July 2016.

The prior decision was remanded for several reasons, one of which was the lack of evidence to corroborate the living situation between Petitioner and her son for the period in question. As stated above, both state and federal care giver exemption requirements provide that a Medicaid applicant's child have been residing in the individual's home for a period of at least two years prior to the date the individual becomes an institutionalized individual. In response to the Order of Remand, Petitioner provided Exhibits 23 through 29. None of these documents speak to E.M.'s residence from July 2014 through July 2016.¹ Exhibits 1 through 22, identified as pre-remand exhibits, consist of Medical records, reports and doctor's letters. Consequently, it is unclear what the ALJ is referring to when he finds that "the evidence

¹ The post-remand exhibits are identified as: CV of Dr. Scarpa; medical records from Dr. Scarpa; affidavit of Dr. Scarpa; C.V. of Dr. Brown; medical records from JCMC; medical records of Dr. Clay Irving, and pharmacy records.

submitted, along with the testimony of E.M., established that he has resided with R.M. at her home in Jersey City, for most of his adult life, and specifically, for the period of at least two years immediately before the date Petitioner became an institutionalized individual..." ID at 17. If E.M. has resided with Petitioner for most of his adult life, this should not be an insurmountable hurdle. Yet, the record contains no proof of residency, i.e. driver's license, credit card bill, utility bill, voter registration etc.

Furthermore, the house in question was a two-family residence. It is unclear whether Petitioner and E.M. actually resided in the same unit. E.M. testified that they have a basement unit with a kitchen and a bedroom for his mother. T 106, 136. When asked to describe his mother's house from the point when he moved in, E.M. did not answer the question. T107-109. He further testified that at some point his mother slept in the basement and he would stay on the couch. E.M. was unable to answer, with any specificity, where he lived and where his mother lived during the two year period from July 2014 through July 2016.

The Appellate Division has reviewed the caregiver exemption and 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 M.K., the court had "no doubt [the daughter] extended love and care to her mother that added to M.K.'s comfort, welfare and happiness during those years when she was living in her own home, despite significant medical challenges". M.K., Slip op. at 17. However, during the two years prior to entering a nursing home, M.K. moved in with her son for a period of five months. The court found that as ""Medicaid is an intensely regulated program' H.K., supra, 184 N.J. at 380, and its

requirements are strictly enforced;" a five month break in "the mandated two-year time period for care" meant that the caregiver exemption had not been met. M.K., Slip op. at 15.

E.M. may have cared for his mother during those years when she was living in her own home, just as in M.K. However, Petitioner has failed to establish, even upon remand, that his mother's residence was in fact his own residence for the two years immediately preceding institutionalization. It is Petitioner's burden to prove that she has met each of the eligibility requirements and is entitled to the caregiver exemption. Straightforward documentation of E.M.'s residency is not part of the record, and therefore, Petitioner has not met her burden.

Based upon my review of the record and for the reasons set forth herein, I hereby REVERSE the Initial Decision and FIND that Hudson County appropriately denied Petitioner's request for the caregiver exemption in this matter.

THEREFORE, it is on this ^{14th} day of APRIL 2023,

ORDERED:

That the Initial Decision is hereby REVERSED.



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