

transfer of assets totaling \$377,797.04 for less than fair market value during the five-year look-back period. MCDSS originally assessed a penalty of twenty-five days, resulting from transfers totaling \$9,275, and issued at letter to Petitioner, dated March 9, 2022. R-1. The original penalty resulted from payments made to a home health aide, as Petitioner was unable to provide a home health aide contract for the services provided. Petitioner does not contest the original twenty-five day penalty period associated with these transfers. Accordingly, the penalty period at issue in this matter totals 1,020 days and relates to payments made to the assisted living facility where Petitioner's husband resides, in order to pay for his care.

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.

However, a transfer penalty shall not apply when the assets were transferred to the 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. Moreover, 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.

The Administrative Law Judge (ALJ) found that the imposed penalty was appropriate. I disagree. The transfers at issue in this matter stem from payments made from a trust, established for Petitioner’s benefit, to the assisting living facility in which Petitioner’s spouse resides. The trust agreement provides that payments from the trust are to enable Petitioner “to live in the manner in which she lived prior to the creation of the trust, to defray the expenses of any illness or disability, to purchase a home, to tide her over any emergency to pay for her support in reasonable comfort.” R-5. MCDSS argues that because Petitioner’s spouse was not included as a beneficiary of the trust, the payments made for the spouse’s care were improper and therefore, subject to a transfer penalty, pursuant to N.J.A.C. 10:71-4.11(e)2iv, despite transfers between spouses being exempted from a penalty, pursuant to N.J.A.C. 10:71-4.10(e)2.

N.J.A.C. 10:71-4.11(e)2iv provides that “[p]ayments from income or from the corpus that are made, but not to or for the benefit of the individual, shall be treated as a transfer of assets for less than fair market value.” However, while N.J.A.C. 10:71-4.11 does not define “individual,” N.J.A.C. 10:71-4.10, relating to transfers of assets, defines “individual” to include not only the person who is applying for benefits, but also that person’s spouse. See N.J.A.C. 10:71-4.10(b)1. Accordingly, the payments made from the trust for the benefit of Petitioner’s spouse should not be considered payments “that are made, but not to or for the benefit of the individual.” The transfers at issue are, thus, still transfers between spouses, which are exempt from the imposition of transfer penalty, pursuant to N.J.A.C. 10:71-4.10(e)2.

Moreover, I note that no documentation was provided to show that Petitioner did not personally guarantee payment for her spouse's care at his assisted living facility, which would have resulted in a burden on Petitioner's finances, requiring her to use the trust funds to offset those expenses. Accordingly, the terms of the trust to "enable [Petitioner] to live in a manner in which she lived prior to the creation of the trust [and] to defray the expenses of any illness or disability" would have been met.

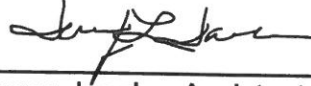
Additionally, even if the payments from the trust to her spouse's assisted living facility were improper transfers, subject to a penalty, Petitioner has shown that the transfers were made solely for another purpose other than to qualify for Medicaid, pursuant to N.J.A.C. 10:71-4.10(j). The parties agree that the transfers were payments made for the care of Petitioner's spouse at his assisted living facility. If not for these payments to the facility, Petitioner's spouse, who is now receiving Medicaid benefits in Bergen County, would have required Medicaid benefits sooner than January 2022, when both he and Petitioner applied for benefits. The transfers, thus, prolonged the couple's ability to pay for their own care needs without the necessity of receiving Medicaid, rather than accelerate the couple's eligibility for said benefits, and were exclusively used for the care of Petitioner's spouse during the time period before Medicaid benefits were contemplated or needed.

Accordingly, and based upon my review of the record and the unique facts and circumstances of this matter, I hereby REVERSE the ALJ's recommended decision and FIND that the originally imposed twenty-five day penalty period resulting from transfers totaling \$9,275 was appropriately assessed and that the remaining 1,020-day penalty period, relating to transfers from Petitioner's trust to her husband's assisted living facility, was inappropriately assessed.

THEREFORE, it is on this 3rd day of FEBRUARY 2023,

ORDERED:

That the Initial Decision is hereby REVERSED.



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