



was assessed on her receipt of Medicaid benefits resulting from a transfer of assets, totaling \$64,400 for less than fair market value, during the five-year look-back period. The transfers of assets stem from (1) three checks, dated January 28, 2018, written by Petitioner from a Chase Bank account ending in 9707<sup>1</sup> to three of her sons, F.F., P.I.F., and P.F., in the amount of \$4,500 each, for a total amount of \$13,500; (2) one check, dated November 16, 2018, from Chase Bank account ending in 9707 in the amount of \$600 to her son and power of attorney (POA), P.F.; (3) two transfers made on October 3, 2018 from Chase Bank account ending in 7541<sup>2</sup> to account ending in 3901<sup>3</sup> in the amount of \$5,000 and \$1,500; (4) one transfer made on October 4, 2018 from Chase Bank account ending in 7541 to account ending in 6965<sup>4</sup> in the amount of \$500; and (5) two transfers made on October 3, 2018 from Chase Bank account ending in 9638<sup>5</sup> to account ending in 3901 in the amounts of \$42,000 and \$1,300.

The Initial Decision determined that Petitioner had shown that a portion of the transfers were reimbursements for Petitioner's expenses and that the funds included in two bank accounts did not belong to Petitioner, and reduced the penalty imposed in relation to those transfers. Specifically, the Initial Decision found that the three January 28, 2018 transfers from Chase Bank account ending 9707 to three of Petitioner's sons, totaling \$13,500 were reimbursement for expenses related to Petitioner's home in Florida. The Initial Decision further found that the two transfers from Chase Bank account ending in 7541, in the amounts

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<sup>1</sup> Chase Account ending in 9707 was held in the name of Petitioner or Petitioner's son, P.F., or Petitioner's son, A.F.

<sup>2</sup> Chase Account ending 7541 was held in the names of Petitioner son, A.F., or Petitioner, or Petitioner's son, P.I.F.

<sup>3</sup> No statements were provided that show who owns this account. However, the Initial Decision provides that Petitioner does not own this account. ID at 3.

<sup>4</sup> No statements were provided to show who owns this account. However, the Initial Decision provides that Petitioner does not own this account. ID at 3.

<sup>5</sup> Chase Account ending in 9638 was held in the name of Petitioner's son, A.F., or Petitioner, or P.I.F.

of \$5,000 and \$1,500, and two transfers from Chase Bank account ending 9638, in the amounts of \$42,000 and \$1,300, contained funds solely belonging to Petitioner's now deceased son, A.F., and A.F.'s intent was to leave these funds to Petitioner's son, and other joint account holder, P.I.F. The Initial Decision, however, found that Petitioner had failed to rebut the presumption that the remaining transfers of \$600 to P.F. from Chase Bank account ending in 9707 and \$500 from Chase Bank account ending in 7541 were done for qualifying for Medicaid. Based upon my review of the record, I hereby ADOPT in part and REVERSE in part 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 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.

As it relates to the three \$4,500 checks issued to three of Petitioner’s sons from her Chase Bank account ending in 9707, P.F. alleges that the checks were reimbursements for expenses that P.F., F.F., P.I.F. paid on Petitioner’s behalf to maintain her property in Florida while Petitioner was residing with her other son, A.F., in New York. P.F. alleges that he and his two brothers deposited money into a separate bank TD Bank account ending in 6661 in order to pay for these expenses. P.F. testified that when Petitioner’s Florida home was sold, Petitioner issued the three checks in order to reimburse her sons for paying for the expenses related to the property. However, Petitioner has failed to provide any documentary evidence related to the alleged expenses paid by P.F., F.F., or P.I.F., aside from a spreadsheet created by P.F. for the purposes of the present matter. See P-1. While bank statements for other accounts at issue were provided at the hearing this matter, no bank statements related to the TD Bank account ending in 6661 were provided. Accordingly, there is no way of detailing whose funds were used to pay for the alleged expenses, the total amount of the expenses, and whether all of the payments made from that account were used for the purposes that were alleged. Moreover, no invoices, billing statements, legible copies of checks,<sup>6</sup> or other documentation was admitted into the record to show the expenses that were allegedly paid on Petitioner’s behalf. Lastly, no signed agreement regarding reimbursement for expenses paid through this account upon the sale of Petitioner’s home was provided. Without this documentation, a nexus between the alleged payments made on Petitioner’s behalf and the \$13,500 transferred to her sons cannot be established. Therefore, I FIND that Petitioner as not met her burden in showing that the transfers at issue were done for fair market value or

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<sup>6</sup> I note that while some copies of checks were included on the spreadsheet created by P.F., the check copies were printed so small, that it is impossible to ascertain the purpose of the checks or whether the amounts cover the entire \$13,500 transferred to Petitioner’s sons.

were done solely for another purpose than to qualify for Medicaid benefits, and I REVERSE the Initial Decision accordingly.

In relation to the \$600 check issued to P.F. from Petitioner's Chase Bank account ending in 9707, P.F. alleged that this was reimbursement for Christmas gifts. I concur with the Initial Decision's findings that insufficient evidence was provided to rebut the presumption that this transfer was done for the purposes of qualifying for Medicaid, and I ADOPT the Initial Decision accordingly.

Regarding the \$5,000 and \$1,500 transfers from Chase Bank account ending in 7541 and the \$42,000 and \$1,300 transfers from Chase Bank account ending in 9638, P.F. alleged that these two bank accounts belonged to his brother, A.F., who is now deceased. P.F. stated that Petitioner and P.F.'s other brother, P.I.F., were added to A.F.'s bank accounts after A.F. became ill, in order to help with his finances. P.F. testified that it was A.F.'s intention to leave the money in these accounts to P.I.F. The Initial Decision found that the bank statements provided show that the funds contained in these bank accounts solely belonged to A.F. I disagree. Only one bank statement was provided in relation to the account ending in 7541, showing the period between December 1, 2017 and December 29, 2017. P-5. Petitioner was listed as a joint account holder with A.F. and P.I.F. on that statement. Ibid. The transfers at issue from this account occurred on October 3, 2018. There is no showing that the only funds deposited into this account were A.F.'s funds nor that the account was solely used for A.F.'s benefit during the period of time between the statement provided and the actual transfers. Moreover, while the account ending in 9638 was owned solely by A.F. prior to December 30, 2016, and at some point between December 31, 2016 and January 31, 2017, Petitioner and P.I.F. were added as joint account owners, Petitioner failed to provide any bank statements for the period between January 31, 2017 and September 16, 2018 to show the source of the funds being deposited into the account and how the funds were being used.

N.J.A.C. 10:71-4.1(d)2 specifically provides that “[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 Petitioner was a joint owner of the accounts in question and that she had unrestricted access to the funds in the accounts. If Petitioner was able to show that the funds contained in the accounts were solely deposited by A.F. and used for his benefit, it would have been plausible that Petitioner was merely placed on the account as a convenience to help A.F. after his cancer diagnosis. However, I also note even if there was evidence showing that the funds contained in these accounts solely belonged to A.F. and were used for his benefit, Petitioner still did not provide any documentary evidence to show that the accounts these funds were transferred into belonged to P.I.F. nor that A.F.’s intent was to leave the funds in the accounts solely to P.I.F. after his death, even though Petitioner was listed as a joint account holder with P.I.F. and was entitled to the funds contained therein. Petitioner specifically did not provide a copy of A.F.’s will to show how A.F. intended his assets be distributed to his intended beneficiaries after his death. Accordingly, I FIND that Petitioner failed to show that the funds contained in Chase Accounts ending 7541 and 9368 did not belong to her, pursuant to N.J.A.C. 10:71-4.1(d)2, and additionally, Petitioner has not met her burden in showing that the transfers occurring from these accounts were solely done for some other purpose than to qualify for Medicaid benefits, and I REVERSE the Initial Decision accordingly.

Lastly, it is unclear why the Initial Decision found that the \$500 transfer from Chase Bank account ending in 7541 was appropriately penalized, after making a finding that this account solely contained funds belonging to A.F. However, as noted above, Petitioner has failed to adequately show that the funds contained in this account were solely A.F.’s funds and the account was solely used for his benefit. Petitioner also failed to provide documentary

evidence to show into whose account the \$500 was transferred and the purpose of the transfer. Accordingly, I ADOPT the Initial Decision's findings in relation to this transfer.

Thus, based upon my review of the record and for the reasons set forth herein, I hereby ADOPT in part and REVERSE in part the ALJ's recommended decision, as set forth above. 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 of 172 days based upon transfers totaling \$64,400 was appropriate.

THEREFORE, it is on this 14th day of FEBRUARY 2023

ORDERED:

That the Initial Decision is hereby ADOPTED in part and REVERSED in part, as set forth herein.



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