

the sale of Petitioner's home for \$110,000.00, less than the fair market value of \$131,919.52 (assessed value \$121,300/.9195 assessment ratio). R-C.

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.

Additionally, pursuant to N.J.A.C. 10:71-4.1(d), the value of a resource is defined as "the price that the resource can reasonably be expected to sell for on the open market

in the particular geographic area minus any encumbrances (that is, equity value).” Pursuant to N.J.A.C. 10:71-4.1(d)(1)(iv), “the equity value of real property is the tax assessed value of the property multiplied by the reciprocal of the assessment ratio as recorded in the most recently issued State Table of Equalized Valuations, less encumbrance, if any.” However, the tax assessed value does not necessarily reflect the fair market value of real property. R.M. v. DMAHS and Ocean Cnty. Bd. Soc. Servs., HMA 2677-01, Dir., adopted DMAHS (May 3, 2002) <http://njlaw.rutgers.edu/collections/oal/>; C.D. v. DMAHS and Warren Cnty. Bd. Of Soc. Servs., HMA 5564-11, Initial Decision (September 26, 2011), adopted, Dir. (December 23, 2011), <http://njlaw.rutgers.edu/collections/oal/> (adopting valuation of transferred home for fair market value at less than the tax assessed value).

As previously stated, the County determined that Petitioner sold their home for less than fair market value, and assessed a penalty period of 56 days. The County, relying on N.J.A.C. 10:71-4.1(d)(1)(iv), determined the tax assessed value to be \$131,919.52. During the fair hearing, Petitioner’s son and power of attorney, Jo.T. testified that after his mother broke her hip he had to quickly sell her home and find her a nursing home. ID at 4. The facility required a specific amount of money for his mother to remain. Ibid. His goal was to sell the house quickly and get as much money as possible. Ibid. As the house needed work, he contacted “We Buy Ugly Homes” to try and sell the home and to avoid paying the 6 percent realtor fee, among other reasons. ID at 5. Jo.T. spoke with three to four potential buyers and received offers, ultimately agreeing to the highest offer of \$110,000. Ibid. Jo.T. testified that he did not know any of the bidders, anyone from “We Buy Ugly Homes” or the buyer. Ibid. Petitioner had a licensed real estate broker testify during the fair hearing. The broker had worked as a real estate agent/broker for twenty years in the applicable county and had experience in the specific community where

the house was located. ID at 6. He testified that he had no reason to dispute the \$115,000 appraisal amount and that he came to this amount by pulling his own comparable sales from the same period of time as the sale of the house occurred. Ibid. On cross-examination the broker confirmed that he had never been to the property and that he had no personal knowledge of the condition of the home at the time of sale. Ibid. Petitioner also had a certified real estate appraiser testify that he conducted a retroactive appraisal, and as to how he arrived at the \$115,000 fair market value of the house. Ibid. The appraiser outlined the deteriorated physical condition he believed the house to be in, looked at comparable sales, drove by the home after it had been renovated and sold, and he reviewed Google “street views” of the property from 2018/2019. ID at 7. The appraiser acknowledged that he received his information regarding the deteriorated physical condition of the property from Jo.T., did not see the property at the time of the sale, and he had no personal knowledge of the alleged deficiencies. Ibid.

When presented with a case where the County has determined there was a transfer of assets within the look-back period, there is a two-step analysis. First, the court looks at whether or not the asset was transferred for fair market value. See N.J.A.C. 10:71-4.10(c). If it is determined that the asset was transferred for less than fair market value, the Court then analyzes whether Petitioner has overcome the burden to establish that the transfer was exclusively for some purpose other than to qualify for Medicaid. See N.J.A.C. 10:71-4.10(j).

WAS THE TRANSFER FOR FAIR MARKET VALUE

In this matter, the County determined that the fair market value of the home was \$131,919.52, based on the tax assessed value. Petitioner argued that the tax assessed value was not an accurate indicator of the home’s fair market value because the home was in poor condition, and the price the home was sold for, \$110,000, was for fair market

value. Additionally, Petitioner relied on an appraisal that was conducted approximately four years after the sale of the home. When analyzing how to determine fair market value for this particular set of circumstances, the Administrative Law Judge recited the facts of two previous decisions, D.H. v. Camden Co. and J.W. v. Camden Co.

In D.H. v. Camden County Board of Social Services, HMA 18715-16, Initial Decision (March 16, 2017), adopted Dir. April 24, 2017 <<http://njlaw.rutgers.edu/collections/oal/>>, Petitioner argued that the home was sold for approximately \$75,000 less than the tax assessed value because the home was in deplorable condition and it had been occupied by hoarders. The realtor who listed the home on the open market testified that he made a thorough examination of the property prior to listing it and determined that the condition was deplorable. A certified real estate appraiser testified that he performed a retroactive appraisal based on a physical analysis of the property and improvements, a locational analysis of the neighborhood and city, and an economic analysis of the market for similar properties. Photographs of inside the home in the months preceding the sale were submitted as exhibits by Petitioner. The property was listed by a disinterested experienced realtor on the open market and the highest and best offer was accepted by Petitioner. The Initial Decision stated that the certified real estate appraisal and the other credible evidence established that the fair market value of the house was almost exactly what it sold for. Additionally, the Administrative Law Judge found that Petitioner rebutted the presumption that the house was transferred for less than fair market value to establish Medicaid eligibility. The Final Agency Decision adopted the Initial Decision and stated that Petitioner provided sufficient evidence to overcome the tax assessment and establish that Petitioner's property was sold for fair market value.

In J.W. v. Camden County Board of Social Services, HMA 00366-16, Initial Decision (November 4, 2016), adopted Dir. December 8, 2016 <<http://njlaw.rutgers.edu/collections/oal/>>, Petitioner argued that the home was sold for approximately \$52,000 less than the tax assessed value because the house was in deplorable condition and in need of extensive repairs. The house was placed on the open market but Petitioner was unable to sell it and eventually sold the home to a family member. During the fair hearing, Petitioner submitted photos and a video documenting the condition of the house when sold; receipts for extensive repairs that the new owner had done to the house; and comparable sales listings from www.realtor.com. Additionally, the new owner testified that he received a letter from the insurance company that stated if the roof was not replaced, he would not be able to obtain insurance coverage. A certified licensed appraiser testified that he performed a retroactive appraisal, approximately two years after the sale of the home, to determine the value of the property at the time of the sale. His evaluation included a physical inspection of the premises, a review of the photographs and videos, which he considered authentic, and an analysis of comparable sales. The County contended that they were bound to use the tax assessed value because the appraisal was produced approximately two years after the sale of the property. The Initial Decision stated that Petitioner rebutted the presumption that the transfer was made to establish Medicaid eligibility, and had provided sufficient evidence that the property was not transferred for less than fair market value. The Final Agency Decision adopted the Initial Decision and stated that while the tax assessed value is often the best indicator of the value of real property, instances where this is not the case must be supported by other competent evidence of the value the property would command on the open market.

In addition to D.H. and J.W., a third case bears mentioning. In J.S. and W.S. v. Camden County Board of Social Services, HMA 10521-13, Initial Decision (March 6, 2014), adopted Dir. May 21, 2014 <<http://njlaw.rutgers.edu/collections/oal/>>, Petitioners argued that the house was sold for approximately \$117,000 less than the tax assessed value because the property had termite and structural damage, and needed substantial renovations. Before the home could be listed on the open market through MLS, Petitioners' real estate agent found two interested cash investors, one of whom purchased the home for \$78,500. The purchaser, the owner of a company who purchases and renovates homes for resale, testified that he took photographs before, during and after the extensive renovations, which were admitted into evidence. He also testified that he spent \$40,000 repairing the property and sold it for \$150,350 approximately eleven months after purchasing it from Petitioners. Lastly, he stated that the tax assessed value of \$202,400 could not be accurate because he could not even sell the newly renovated home for his original listing price of \$170,000. A certified general appraiser with twenty years of experience testified that he did a retrospective appraisal of the property and concluded the value was \$77,000. He utilized photographs and available public information to appraise the property. The Initial Decision stated that the credible evidence established that the fair market value of Petitioners' residence at the time of the sale was approximately \$77,000, and therefore, was not transferred for less than fair market value. The Final Agency Decision adopted the Initial Decision in its entirety.

In the matter at hand, in the Initial Decision, the Administrative Law Judge appears to rely on D.H. and J.W. because, like in the present matter, they both had retroactive appraisals. A more nuanced look at those cases will identify an important difference between those cases and the present matter. In both D.H. and J.W., the property 1) was listed on the open market and 2) the petitioners presented photos and/or videos of the

property during the time the home was sold. Here, Petitioner's son, Jo. T., saw a sign for "We Buy Ugly Homes" and decided to contact them instead of hiring a real estate agent to place the home on the open market through the MLS system, or at a minimum, placing the home on the open market himself. Only allowing a few buyers connected to "We Buy Ugly Homes" to make offers on the home is only exposing the home to a small sliver of the open market and therefore cannot be considered the open market for purposes of establishing fair market value of the home pursuant to N.J.A.C. 10:71-4.1(d). Additionally, based on the record before me, it does not appear that Petitioner provided the Court with any pictures or videos of the condition of the home prior to the sale. The only evidence presented of the deteriorated condition was testimony from Jo. T., an interested party. In the two cases relied on by the Administrative Law Judge, along with J.S. and W.S., the Judge heard testimony of disinterested parties who saw the deplorable conditions of the home prior to the sale of the home, reviewed pictures or videos of the deplorable conditions of the home prior to the sale of the home, or both¹. In a situation where the petitioner is arguing the fair market value of the home is less than the assessed value because of the deteriorated condition of the home, merely obtaining a retroactive certified appraisal that relies solely on self-serving statements of the petitioner, their power of attorney, etc. to provide a description of the deteriorated condition², as is the case in this matter, is not sufficient to establish the fair market value of the home.

There is nothing in the record that indicates Petitioner did not have any pictures, videos, or documents showing the condition of the property at the time of the sale. Petitioner will be provided the opportunity to provide pictures, videos, documents, and/or independent testimony to show the condition of the property at the time of the sale.

¹ See also V.B. v. Burlington County Board of Social Services, HMA 01071-2020, Initial Decision (March 30, 2021), adopted Dir. June 24, 2021 <<http://njlaw.rutgers.edu/collections/oal/>>.

² Page 3 of the appraisal (Exhibit P-2) states that the property "is being appraised with the extraordinary assumption the dwelling was in poor condition...".

DID PETITIONER OVERCOME THE BURDEN

As mentioned above, “[t]ransfers of assets or income are closely scrutinized to determine if they were made for the sole purpose of Medicaid qualification.” E.S. v. Div. of Med. Assist. & Health Servs., 412 N.J. Super. 340, 344 (App. Div. 2010). “[I]f 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. N.J.A.C. 10:71-4.10(k) further states:

- (k) The presence of one or more of the following factors, while not conclusive, may indicate that the assets were transferred exclusively for some purpose other than establishing Medicaid eligibility for long term care services:
 - 1. The occurrence after transfer of the asset of:
 - i. Traumatic onset of disability;
 - ii. Unexpected loss of other assets which would have precluded Medicaid eligibility;
 - or
 - iii. Unexpected loss of income which would have precluded Medicaid eligibility;
 - 2. Court-ordered transfer (when the court is not acting on behalf of, or at the direction of, the individual or the individual's spouse); or
 - 3. Evidence of good faith effort to transfer the asset at fair market value.

Jo. T. testified that in 2019 his mother was in good health but forgetful and on one occasion she got lost while driving to the dentist. ID at 4. He also testified that he had talked to her about moving into an assisted living facility. Ibid. In February 2019 she broke her hip and after the surgery she was unable to return home, prompting the sale of her house. Ibid. In the Initial Decision, the Administrative Law Judge found that the record supported that the reason the property was sold quickly in April 2019 using “We Buy Ugly Homes” was the sudden onset of Petitioner’s medical condition. ID at 12. Relying on this record, the Administrative Law Judge concluded that Petitioner rebutted the presumption that the property was transferred for less than fair market value to establish Medicaid

eligibility. ID at 13. It appears N.J.A.C. 10:71-4.10(k) was misstated in the Initial Decision. More specifically, on page 10 of the Initial Decision, subsection (k)(1)(i) is misquoted by stating that the presence of the traumatic onset of disability may indicate that the assets were transferred exclusively for some other purpose other than to establish Medicaid eligibility. This is the opposite of what subsection (k)(1)(i) states. If Petitioner had transferred the asset *before* the traumatic onset of a disability, that could help support Petitioner's argument that it was transferred exclusively for some other purpose. Here, Petitioner transferred the asset *immediately after* the traumatic onset of a disability. The facts presented cannot successfully overcome Petitioner's burden to prove the asset was transferred solely for some other purpose other than to qualify for Medicaid. Therefore, the findings made in the Initial Decision that Petitioner overcame the presumption that the transfer at issue was for the purposes of establishing Medicaid eligibility, is not supported by the record.³

Based upon my review of the record and for the reasons set forth herein, I hereby REVERSE the Initial Decision in this matter and REMAND the matter to clarify the record, as detailed herein.

THEREFORE, it is on this 29th day of JANUARY 2023,

ORDERED:

That the Initial Decision is hereby REVERSED and REMANDED, as set forth herein.



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

³ It should be noted that this matter is being remanded to allow Petitioner to provide evidence, if any, as to the deteriorated condition of the home at the time of sale to establish the fair market value of the home, not to provide additional testimony to overcome the burden as discussed in this section.