

owns another property that is an available asset. Petitioner applied for Medicaid on November 24, 2015. At the time she had been in a nursing home since August 2015.

In the prior matter docketed at HMA 15346-2016, the case was remanded for further development of the record. Specifically the remand sought the status of Petitioner's other property which is not covered by a caregiver exemption as well as specific findings regarding Petitioner's diagnosis and the care provided in the two years prior to August 2015 and the amount and type of services provided by outside agencies in 2015. The remand also noted several discrepancies in the evidence and requested Petitioner provide more definitive proof of her condition from August 2013 through August 2015.

By way of background, 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 look-back period before the individual becomes institutionalized or applies for Medicaid as an institutionalized individual, are penalized for making the transfer. 42 U.S.C.A. § 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. For example, the caregiver exemption provides that an individual will not be subject to a penalty when the individual transfers the "equity interest in a home which serves (or served immediately prior to entry into institutional care) as the individual's principal place of residence" and when "title to the home" is transferred to a son or daughter under certain circumstances. N.J.A.C. 10:71-4.10(d). The 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).

The federal statute calls for an explicit exemption from the transfer rules and is meant to compensate the child for caring for the parent. The New Jersey regulations regarding this transfer exemption are based on the federal statute. Compare 42 U.S.C. § 1396p(c)(2)(A)(iv) and N.J.A.C. 10:71-4.10(d). The statute provides that if the "equity interest in a home" is transferred by title to a son or daughter who provided such care that prevented institutionalization for at least two years, the transfer is exempt from penalty. 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." N.J.A.C. 10:71-4.10(d). It is Petitioner's burden to prove that she is entitled to the exemption. N.J.A.C. 10:71-4.10(j).

The evidence and testimony in the present matter fails to set any time frames and details or diagnoses that would show Petitioner's need for nursing home level of care. As mentioned in the prior decision, Petitioner's doctor's initial letter in April 2016 generally states Petitioner "would not been [sic] able to live safely at home on her own without a caregiver." HMA 15346-2016 at P-3. There is no disease, affliction or condition mentioned in his letter. At the hearing in November 2016, he testified that she suffered from diabetes, "very severe arthritis, weakness in the thoracic area, and significant pain in the knee and hip joints." HMA 15346-2016 ID at 3. Despite noting that these conditions were not mentioned in the April 2016 letter nor was a date given for the onset of these conditions, Petitioner failed, on remand, to provide a timeline or specify her physical or mental deficiencies that were such as to "require special attention and care" during the critical two year period. N.J.A.C. 10:71-4.10(d).

It is clear from the plan of care that was put in place after returning from rehabilitation that Petitioner met the caregiver's exception after February 2015. However, for the time frame from August 2013 forward the ALJ noted that there was "absence of physical documentation regarding [Petitioner's] level of disability." ID at 7. While the health agency plan of care lists Petitioner's health issues and limitations as of February 2015, "there is little beyond that to set precise dates for her state of health at various times." ID at 7.

In exceptions, Petitioner summarizes the Initial Decision from the first proceeding which the Order of Remand previously noted contained discrepancies and sought clarification regarding her health during the full two years prior to August 2015. Petitioner failed on remand to provide "physical documentation regarding [her] level of disability in 2013 and 2014." ID at 7. Her physicians' testimony, as described in

Petitioner's exceptions, is conclusory that she needed care for the full two years. However, the Order of Remand requested more definitive documentation and clarification about inconsistencies about Petitioner's needs.


I FIND that the testimony and the documents are inconsistent and fail to address Petitioner's medical condition and her activities of daily living (ADL) needs during the two years required for a caregiver exemption. As noted by Respondent in exceptions, Petitioner spent upwards of six hours home alone without any need for assistance. Indeed, the testimony, absent any time frame, waived from Petitioner being unable to "ambulate well" and a significant risk for falls according to her doctor to her daughter's recounting that she "was mobile enough at that time to be able to get milk from the refrigerator for her cereal or get sandwich items for lunch." Compare ID at 4 and P-2. Her daughter's original statement averred that Petitioner "could also get to the bathroom with the use of her walker . . . [and with a raised seat] was able to use it on her own." P-2. But the Initial Decision states that Petitioner could not "transfer to a commode without assistance." P-7.

The evidence to address these inconsistencies was not provided in the subsequent hearing and, absent the home health plan of care in February of 2015, "the record is too anecdotal to precisely establish the level of" Petitioner's disability during critical time period. ID at 7. Thus, I FIND that the record does not support the finding that Petitioner met the caregiver exemption and hereby ADOPT the Initial Decision.

THEREFORE, it is on this ^{25th} day of SEPTEMBER 2017,

ORDERED:

That the Initial Decision is hereby ADOPTED.



Meghan Davey, Director
Division of Medical Assistance
and Health Services