



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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Director

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES

A.M.,
PETITIONER,
v.
DIVISION OF MEDICAL ASSISTANCE
& HEALTH SERVICES and
ESSEX COUNTY BOARD OF SOCIAL
SERVICES,
RESPONDENTS.
ADMINISTRATIVE ACTION
FINAL AGENCY DECISION
OAL DKT. NO. HMA 8483-2014

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision, the OAL case file and the documents filed below. Petitioner filed exceptions in this matter. Procedurally, the time period for the Agency Head to file a Final Agency Decision is August 31, 2015, in accordance with N.J.S.A. 52:14B-10 which requires an Agency Head to adopt, reject, or modify the Initial Decision within 45 days of receipt. The Initial Decision in this matter was received on July 21, 2015.

Petitioner applied for Medicaid benefits in May 2014. He had been residing in Brookhaven Care Facility since March 2014. He died in September 1, 2014. At issue is the June 2014 deed of his multi-family home to the second floor tenant for \$1.00.<sup>1</sup> Essex County denied Petitioner's application due to this transfer.

Petitioner's son claims he was told by counsel that this transfer required the buyer to pay all the taxes in arrears and that his father would be permitted to live there for the rest of his life. As Petitioner had been institutionalized for nearly three months at the time of the transfer, it is unclear how he would be able to live in the home. As the ALJ pointed out, the deed filed in Essex County contains no provisions regarding the back taxes or that Petitioner retained a life estate. ID at 3. Rather the Initial Decision upheld the denial as the transfer was for less than fair market value.

I concur that Petitioner transferred the home for less than fair market value. Medicaid law contains a presumption that any transfer for less than fair market value during the look-back period was made for the purpose of establishing Medicaid eligibility. See E.S. v. Div. of Med. Assist. & Health Servs., 412 N.J. Super. 340 (App. Div. 2010); N.J.A.C. 10:71-4.10(i). 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

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<sup>1</sup> The deed was recorded on September 26, 2014.

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 he was already in a nursing home and had applied for Medicaid, it is unlikely that Petitioner could rebut the presumption that the transfer was made to qualify for Medicaid benefits. Petitioner's exceptions allege that a letter dated February 27, 2015 and written by the attorney who prepared the deed should have been considered at the hearing or that the attorney should have been called by Essex County during the application process. Rather the letter on its face demonstrates that that Petitioner's health problems were known at the time of the transfer of the property and that the grantee was in a relationship with Petitioner. P-1 and R-1. There is no evidence that Petitioner was in arrears or was in danger of losing the house. Thus, even if able to overcome the hearsay problem, the letter actually supports the presumption that the home was transferred so as to qualify for Medicaid.

However, the denial letter issued by Essex County does not properly resolve the transfer. A resource cannot be transferred or disposed of for less than fair market value during or after the start of the sixty month period (“look-back period”) before the individual becomes institutionalized or applies for Medicaid as an institutionalized individual. 42 U.S.C.A. § 1396p(c)(1). If such a transfer occurs, the applicant will be subject to a period of Medicaid ineligibility to be imposed once the person is otherwise eligible for Medicaid benefits. Id. The period of ineligibility resulting from a transfer for less than fair market value, determined in accordance with 42 U.S.C.A. § 1396p(c)(1)(E),



shall be the number of months equal to the total, cumulative uncompensated value of all assets transferred by the individual, on or after the look-back date, divided by the average monthly cost of nursing home services in the State of New Jersey

[N.J.A.C. 10:71-4.10(m)1].

While a penalty is a de facto denial of Medicaid, Essex failed to calculate the length of the penalty based on the fair market value of the home at the time of the transfer in June 2014. As the transfer penalty divisor was slightly less than \$10,000 and since Petitioner was in the nursing home for a little more than five months, unless the home was worth less than \$50,000, Petitioner would be under a transfer penalty during the time he is seeking benefits. However, I must I RETURN the matter to Essex County to calculate the penalty period and issue notice to Petitioner.

Thus, I hereby ADOPT the Initial Decision upholding the transfer penalty but RETURN the matter to Essex County to calculate the penalty period. Any further fair hearing on this issue may only encompass the valuation of the home and the calculation of the penalty as the finding that Petitioner's transfer is subject to penalty is a Final Agency Decision.

THEREFORE, it is on this 17<sup>th</sup> day of AUGUST 2015

ORDERED:

That the Initial Decision is hereby ADOPTED as to the findings that Petitioner transferred assets for less than fair market value; and

That the matter is RETURNED to Essex County to calculate the length of the penalty.



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Valerie Harr, Director  
Division of Medical Assistance  
and Health Services