



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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Governor

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KIM GUADAGNO
Lt. Governor

VALERIE HARR
Director

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

J.A.,
PETITIONER,
v.
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES AND
MIDDLESEX COUNTY BOARD
OF SOCIAL SERVICES,
RESPONDENTS.
ADMINISTRATIVE ACTION
FINAL AGENCY DECISION
OAL DKT. NO. HMA 12161-15

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this matter, consisting of the Initial Decision, the documents in evidence and the entire contents of the OAL case file. No exceptions to the Initial Decision were filed. Procedurally, the time period for the Agency Head to render a Final Agency Decision is November 16, 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 the agency's receipt. The

Initial Decision was received on October 1, 2015. After reviewing the record, I concur with the ALJ's findings in the Initial Decision and hereby ADOPT them in their entirety.

I note that any transfer for less than fair market value during the look-back period is presumed to have been made for the purpose of establishing Medicaid eligibility. E.S. v. Division of Medical Assistance & Health Services, 412 N.J. Super. 340, 353 (App. Div. 2010); N.J.A.C. 10:71-4.10(i). It is the applicant's burden to rebut this presumption 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).

At issue in this case is the penalty imposed due to Petitioner's transfer of \$16,500 to his son, thirteen days after the submission of his Medicaid application. Middlesex County imposed a 49-day period of ineligibility for the transfer. Petitioner's daughter-in-law, G.A.¹, testified that the transfer was to pay for arrears of rent that Petitioner did not pay during the twelve years he resided with her and her husband. Like the Judge, I find this argument unpersuasive.

Petitioner's son, E.A., had advised the County by letter dated July 5, 2015 that the agreed upon rental amount was \$725 per month and would be taken from his father's monthly social security payment. However, at the hearing, G.A. provided a handwritten note dated April 19, 2003 from Petitioner setting forth his agreement to pay \$700 (not \$725) per month for rent and household expenses. Yet, G.A. was unable to explain why the funds for the alleged agreement were not deducted monthly.

¹ Although the Initial Decision refers to Petitioner's daughter-in-law as J.A., the documents in the record indicate that her initials are G.A.

Moreover, as noted in the Initial Decision, this handwritten note is a hearsay document with no credible evidence offered to substantiate it and the letter was never provided to the County. The ALJ found neither G.A. nor E.A. to be credible, concluding that the care provided to Petitioner while in their home was more likely based on family concerns rather than repayment. See Initial Decision at page 3. I accept the ALJ's fact-findings, which are based, in part, upon his assessment of the witnesses who testified at the administrative hearing. The fact-finder's assessment of the credibility of witnesses is entitled to deference by the reviewing agency head. Clowes v. Terminix, 109 N.J. 577 (1988).

As noted above, Petitioner bears the burden of proof to demonstrate that he received fair market value for the assets transferred. N.J.A.C. 10:71-4.1(j). In accordance with N.J.A.C. 10:71-4.10(b)6.ii, care and services provided for free in the past are presumed to have been intended to be delivered without compensation. If payment is to be made there must a preexisting written agreement to pay for such services at a fair market rate. Given the absence of a credible rental agreement to compensate his son and daughter-in-law, coupled with the transfer only thirteen days after the submission of Petitioner's Medicaid application (instead of monthly rental deductions during the twelve years Petitioner resided with them), I agree with the ALJ's conclusion that the \$16,500 transfer was for less than fair market value.

THEREFORE, it is on this 30th day of October 2015,

ORDERED:

That the Initial Decision affirming the transfer penalty is hereby ADOPTED
as the Final Decision.

A handwritten signature in black ink, appearing to read "Valerie J. Harr". The signature is written in a cursive style with a horizontal line extending to the right from the end of the signature.

Valerie J. Harr, Director
Division of Medical Assistance
and Health Services