



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
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Lt. Governor

VALERIE HARR
Director

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

J.C.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES AND
ATLANTIC COUNTY BOARD OF
SOCIAL SERVICES,

RESPONDENTS.

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ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 13872-14

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 file a Final Agency Decision in this matter is March 30, 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 in this case was received on February 12, 2015.

At issue is a two-month and twenty-nine day penalty imposed due to Petitioner's transfers totaling \$23,115. Petitioner bears the burden of proof to demonstrate that she received fair market value for the assets transferred. N.J.A.C.10:71-4.10(j). Petitioner offered no corroborating evidence with regard to the nature of the transfers at issue. Despite this, the ALJ found that Petitioner transferred \$1,115 to her nephew to pay for jewelry repair and another \$2,000 to F.G.'s estate to cover expenses.

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.¹ N.J.A.C. 10:71-4.10 (c). The presumption that the transfer of assets was done to qualify for Medicaid benefits may be rebutted "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). It is Petitioner's burden to overcome the presumption that the transfer was done – even in part – to establish Medicaid.

The ALJ relied on the testimony of Petitioner's son to rebut the presumption that the transfers were made for the purpose of qualifying for Medicaid. A finding of fact based on hearsay must be supported by competent evidence. N.J.A.C. 1:1-15.5(b), the **residuum rule**, requires "some legally competent evidence" to exist "to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of

¹ Congress understands that applicants and their families contemplate positioning assets to achieve Medicaid benefits long before ever applying. To that end, Congress extended the look back period from three years to five years. Deficit Reduction Act of 2005, P.L. 109-171, § 6011 (Feb. 8, 2006).

arbitrariness." Here the son presented no documentation to support the purpose of these transfers.

Petitioner was unable to rebut the presumption that the transfers were for less than fair market value. Accordingly, the Atlantic County Board of Social Services (ACBSS) correctly included the \$1,115 and \$2,000 transfers in its penalty calculation.

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

ORDERED:

That the Initial Decision is hereby REVERSED with regard to the exclusion of the \$1,115 and \$2,000 transfers and the initial penalty imposed by ACBSS is reinstated.



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