



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

P.O. Box 712
Trenton, NJ 08625-0712

CHRIS CHRISTIE
Governor

ELIZABETH CONNOLLY
Acting Commissioner

KIM GUADAGNO
Lt. Governor

VALERIE HARR
Director

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

M.D.,
PETITIONER,
v.
DIVISION OF MEDICAL ASSISTANCE
& HEALTH SERVICES &
CAMDEN COUNTY BOARD OF
SOCIAL SERVICES,
RESPONDENTS.
ADMINISTRATIVE ACTION
FINAL AGENCY DECISION
OAL DKT. NO. HMA 345-2011

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. Respondent filed exceptions in this matter. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is March 16, 2015.

Based on an application filed in October 2011, Petitioner was found otherwise eligible under the Medically Needy program as of March 1, 2012. Camden County imposed a transfer penalty until September 7, 2013 due to transfers totaling \$139,731.

At issue were numerous transfers from Petitioner's accounts to her children and grandchildren from 2006 forward. Originally Camden County identified \$161,566.85 in transfers but reduced the amount by \$21,835.41 based on documentation provided by Petitioner's son and Power of Attorney. Exhibit 9b.

In 2009 Petitioner had moved into an independent-living facility at St. Mary's Catholic Home. She was having difficulty caring for herself at home. As she declined, Petitioner moved first into the assisted living portion of St. Mary's and then to the nursing home in September 2011. ID at 2. It is during this time that the majority of the transfers occurred.

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 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.

The ALJ found that Petitioner failed to show that the vast majority of the identified transfers were for a reason other than qualifying for Medicaid. As the transfers occurred as Petitioner's health was failing and she was in need of assistance, she could not

assert that the transfers were made prior to the onset of disability. N.J.A.C. 10:71-4.10(k)(1)(i). ID at 22.

Additionally Petitioner's position that she transferred funds to help her son due to financial hardship is belied by the transfers totaling \$72,000 made to her grandchildren and daughter as well as the fact that her son admitted he delayed the transfers "because he was concerned about her ability to cover her living expenses at" St. Mary's. ID at 22.

However, the ALJ did find that Petitioner had been able to show that some of the transfers were spent on her expenses and care needs. A running check ledger spanning February 2009 through January 2014 documented the withdrawals at ATMs were for specific purposes related to Petitioner's needs. With that documentation, the transfer penalty was reduced by \$9,702.36 for transfers made for Petitioner's needs from April 2009 and October 2011 including clothing, spending money and outings. However, other amounts reflected in the check register were disallowed. See ID at 14 fn. 23.

Based on my review of the record I FIND that the well-reasoned analysis of the facts and law by the ALJ should be adopted. Petitioner was able to substantiate that a small portion of the transfers were in fact for her use and she received fair market value. In exceptions Respondent disputed the use of additional evidence, namely the check register, to counter the transfer penalty. While it would have been preferable for Petitioner to have provided the check register to Camden County, I do not agree that it was improperly provided at the hearing.

The issue at the fair hearing is whether the decision was correct that the transfers were for less than fair market value and subject to penalty. To that end,

Petitioner's challenge of that decision would require that she provide additional
competent information to substantiate her claim that the funds were spent for her

benefit. Camden County's position that new evidence is not permitted is correct under those matters where the issue is whether the application was denied for failure to provide information. Applications are governed by a time limit and the failure to provide the information is grounds for denial. N.J.A.C. 10:71-2.3(a). At a hearing on that type of notice, it is correct that no additional information is permitted as Petitioner's burden would be to show that the information was indeed supplied during the application process or that there was reason to permit the time to be extended. Here the issue of fair market value is at issue and would warrant the production of documents to support the fair market value.

Thus, due to the circumstances and facts of this case I ADOPT the Initial Decision's finding that Petitioner's transfer penalty should be reduced by \$9,702.36. Camden County shall recalculate the penalty based on transfers totaling \$130,039.08.

THEREFORE, it is on this ^{13th} day of MARCH 2015

ORDERED:

That the Initial Decision is hereby ADOPTED in that Petitioner is subject to a transfer penalty of \$130,039.08; and

That Camden County shall recalculate the penalty based on the above amount.



Valerie Harr, Director
Division of Medical Assistance
and Health Services