

Petitioner was found eligible for Medicaid benefits as of January 1, 2013. However, she was found to have transferred one-half of the value of her house when it was sold in August 2012 for \$305,000. Her son, to whom she transferred half interest in 2010, took the proceeds and left the state. Petitioner first applied in January 2013. The nursing home filed for a fair hearing as Petitioner's authorized representative.

The Initial Decision found that Petitioner had no access to the stolen funds due to no fault of her own and that she was entitled to a waiver of the transfer penalty due to fulfillment of the requirements for an undue hardship. To that end, the Initial Decision concluded that Petitioner was not subject to a transfer penalty. For the reasons that follow, I hereby ADOPT in part, REVERSE in part and MODIFY in part the Initial Decision.

First and foremost, the house and Petitioner's assets were always available to her by and through her son and Power of Attorney, until such time as her son converted the funds for his own use. Regardless of how Petitioner's son conducted her financial transactions, there was someone authorized to act on her behalf and access her funds. Indeed, the sale of Petitioner's house in 2012 was done using the authority Petitioner granted her son. The regulation and relevant cases cited in the Initial Decision only apply to assets when there is no one who can act on the individual's behalf. Here Petitioner executed a General Durable Power of Attorney that permitted her son the legal authority to manage her finances and act for her in transactions such as selling her house. Furthermore, the essence of imposing a transfer penalty requires that the funds be not available to individual. Passaic County agrees that the funds are not available to Petitioner, by and through the actions of her attorney-in-fact. To that end, I REVERSE

the Initial Decision's conclusion that the funds or the house were unavailable to Petitioner.

Rather the issue here is whether Petitioner was entitled to a waiver of the transfer penalty for the transfer of all her interest in her home. It is unclear why Passaic County only penalized her for half of the proceeds realized from the sale. The record clearly shows that Petitioner transferred ½ share of the house in 2010 to her son. ID at 11. As she applied in 2013, this transfer for less than fair market value is subject to penalty as well as the transfer of the remaining ½ to her son.

A resource cannot be transferred or disposed of for less than fair market value during or after the start of the five-year look-back period before the individual becomes institutionalized or applies for Medicaid as an institutionalized individual. 42 U.S.C.A. 1396p(c)(1); N.J.A.C. 10:71-4.10(a). "A transfer penalty is the delay in Medicaid eligibility triggered by the disposal of financial resources at less than fair market value during the look-back period." E.S. v. Div. of Med. Assist. & Health Servs., 412 N.J. Super. 340, 344 (App. Div. 2010). "[T]ransfers of assets or income are closely scrutinized to determine if they were made for the sole purpose of Medicaid qualification." Ibid. Congress's imposition of a penalty for the disposal of assets for less than fair market value during or after the look-back period is "intended to maximize the resources for Medicaid for those truly in need." Ibid.

However, N.J.A.C. 10:71-4.10q(1)(i) provides that undue hardship exists when a transfer penalty "would deprive the applicant/beneficiary of medical care such that his or her health or his or her life would be endangered" and when "the transferred assets are beyond his or her control and that the assets cannot be recovered. The applicant/beneficiary shall demonstrate that he or she made good faith efforts, including

exhaustion of remedies available at law or in equity, to recover the assets transferred.” In this case Petitioner, through her authorized representative then who hired counsel to represent her at the fair hearing, sought to recover the transfer assets from her son. That recovery includes a judgement against him for the funds.

I have reviewed the record and the facts of this case and FIND that due to the unique circumstances presented by Petitioner that a waiver of the transfer penalty is warranted pursuant to N.J.A.C. 10:71-4.10q(1)(i). Petitioner, by and through the nursing home, has taken action to enforce a judgement against her son.¹ Thus, due to the unique circumstances and facts of this case I ADOPT the Initial Decision’s finding that Petitioner warrants a waiver of the transfer penalty. I hereby ORDER that the status of that judgment shall be updated and included in Petitioner’s redetermination as well as inclusion in any estate recovery matter.

¹ The nursing home certified that its charges only amount to \$148,352 as of December 31, 2012. Certification of Richard Kozel, Esq, date March 6, 2013. If Medicaid covers Petitioner after that date, the judgment of \$327,628 entered on January 16, 2015 will cover that amount and will render Petitioner ineligible for benefit due to excess resources.

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

ORDERED:

That the Initial Decision is hereby ADOPTED with regard to the waiver of the transfer penalty; and

That the Initial Decision is hereby REVERSED with regard to the home and the proceeds being available to Petitioner; and

That the Initial Decision is hereby MODIFIED to reflect that Petitioner's transfer penalty should have been based on the transfer of the ½ interest of her house in 2010 and ½ of the proceeds obtained when the property sold in August 2012.



Valerie Harr, Director
Division of Medical Assistance
and Health Services
