



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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

N.K.,	:	
	:	
PETITIONER,	:	ADMINISTRATIVE ACTION
	:	
v.	:	FINAL AGENCY DECISION
	:	
DIVISION OF MEDICAL ASSISTANCE	:	OAL DKT. NO. HMA 11328-14
	:	
AND HEALTH SERVICES AND	:	
	:	
BERGEN COUNTY BOARD OF	:	
	:	
SOCIAL SERVICES,	:	
	:	
RESPONDENTS.	:	

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision and the OAL case file. Neither Party filed exceptions in this matter. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is February 13, 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 December 30, 2014.

This matter arises from Petitioner's March 20, 2014 application for Medicaid benefits. On July 17, 2014, the Bergen County Board of Social Services (BCBSS) denied Petitioner's application for benefits due to a transfer of \$121,465.55 for a 12 month and 27 day penalty period. After receiving sufficient proofs from Petitioner, BCBSS issued a November 17, 2014 notice with a recalculated transfer penalty amount of \$69,200 and a new penalty period of 7 months and 10 days. The Petitioner asserted that the transfers in question, checks made payable to "cash," were for the purpose of paying the salary of a live-in caregiver for her husband, H.K., and her daily living expenses. The ALJ found that Petitioner successfully rebutted the presumption that the transfers were made to establish Medicaid eligibility in accordance with N.J.A.C. 10:71-4.10(j) and ordered BCBSS' decision to impose a transfer penalty be reversed. For the reasons that follow, I hereby REVERSE the Initial Decision.

In determining Medicaid eligibility for someone seeking institutionalized benefits, the counties must review five years of financial history. During that time period, a resource cannot be transferred or disposed of for less than fair market value. 42 U.S.C.A. § 1396p(c)(1); see also N.J.A.C. 10:71-4.10(a). 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. Ibid.; N.J.S.A. 30:4D-3(i)(15)(b). Petitioner bears the burden of proof to demonstrate that she received fair market value for the assets transferred or that the assets were transferred exclusively for a purpose other than to qualify for medical assistance. N.J.A.C.10:71-4.10(j). Here, Petitioner was unable to rebut the presumption that the transfers for less than fair market value were made to establish Medicaid eligibility.

Petitioner, an eighty-seven year old widow, did not testify at the hearing. Testifying on her behalf were her stepchildren, J.K.¹ and S.L. and her grandson, G.K, none of whom assisted Petitioner with paying her bills, specifically those related to caregiving services. Despite their limited knowledge, Petitioner's family testified that a woman, known only as "Jasmine," was employed by Petitioner as a caregiver for her husband; that "Jasmine" insisted on being paid \$1,000 per week, and that Petitioner made sporadic payments to "Jasmine" in cash. Petitioner's family is not able to provide a last name for their parents' live-in caregiver, a date of hire, a contract of employment or the rate, method and timing of payment. "Jasmine" did not appear at the hearing and Petitioner's family is unable to contact her.

After hearing the testimony of witnesses, the ALJ found that the Petitioner's family credibly testified to "Jasmine's" employment by Petitioner as a live-in aide and compensation in cash of \$1,000 per week. 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). However, 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 arbitrariness." No such evidence was presented in this matter.

In support of her position, Petitioner's family presented Nyack Hospital Home Care (Nyack Hospital) invoices, an August 5, 2014 letter from United Hospice of Rockland, the affidavit of Marie Lesperance and Home Aides of Rockland rates for service. The Initial Decision does not address the Nyack Hospital invoices. There is no assertion that "Jasmine" was employed by Nyack Hospital. If she were, the Petitioner would be able to confirm employment. I assume these were submitted to show

¹ J.K. resides in Singapore. After being duly sworn, he testified via speakerphone.

Petitioner's husband was receiving some visiting nurse services through Nyack Hospital, but it has no bearing on the existence or employment of "Jasmine." The affidavit of M.L.² and the August 5, 2014 letter from United Hospice of Rockland are hearsay. They establish neither the existence of "Jasmine" nor her employment as Petitioner's caregiver. The rates for service provided by Home Aides of Rockland, where Petitioner resided, lends no support to Petitioner's position as "Jasmine" was not employed by this or presumably any other agency.

Furthermore, even if we were to assume "Jasmine" worked as a live-in caregiver for Petitioner, there is no evidence in the record that the \$69,200 in cash withdrawals were used to pay her salary and Petitioner's living expenses. From March 2009 through January 2010, Petitioner sporadically cashed numerous checks in varying amounts anywhere from \$1,000 to \$7,655.55. Some months show more than one withdrawal while others show no withdrawals at all. None of the checks indicate the purpose for which the funds were used. Aside from testimony from family members, Petitioner offered no corroborating evidence with regard to the nature of the transfers at issue. There is no evidence establishing a pattern of payment to anyone, let alone a twenty-four hour day, seven-day a week live-in caregiver, who insisted upon being paid \$1,000 per week from 2007 through early 2010. Petitioner was unable to rebut the presumption that the transfers for less than fair market value were to qualify for Medicaid. N.J.A.C. 10:71-4.10. Accordingly, the BCBSS properly imposed the \$69,200 transfer penalty for a period of seven months and ten days.

THEREFORE, it is on this 29th day of JANUARY 2015,

² The ALJ notes on page four that she did not consider the affidavit of M.L. because she did not testify at the hearing and BCBSS was not given an opportunity to cross examine her. It is worth noting, however, that M.L., who was also a caregiver employed by Petitioner before and after "Jasmine's" employ, does not certify the rate and manner in which she was paid.

ORDERED:

The Initial Decision is hereby REVERSED; and

That the transfer penalty is reinstated.

A handwritten signature in cursive script, appearing to read "Valerie J. Harr", is written above a solid horizontal line.

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