



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

G.C.,
PETITIONER,
v.
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES AND
ESSEX COUNTY BOARD OF
SOCIAL SERVICES,
RESPONDENTS.
ADMINISTRATIVE ACTION
FINAL AGENCY DECISION
OAL DKT. NO. HMA 17957-15

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 documents in evidence. Neither party filed exceptions. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is February 16, 2016, 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 31, 2015.

At issue is a fifty-six day penalty imposed due to Petitioner's transfers totaling \$18,598.49. In determining Medicaid eligibility for someone seeking institutionalized benefits, the counties must review five years of financial history. 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). It is Petitioner's burden to overcome the presumption that the transfer was done – even in part – to establish Medicaid eligibility. 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). Here, Petitioner is seeking to show that she received fair market value for the transferred assets by asserting that a series of checks issued to her granddaughter and granddaughter's partner from August 2012 through June 2014 were compensation for caregiving services.

In March 2012, after a home incident resulted in a hospital visit, staff advised that Petitioner could never be alone and required twenty-four hour care. Petitioner's son and Power of Attorney (POA), R.C., hired a live-in aide to care

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).

for Petitioner. Dissatisfied with the care Petitioner received, R.C. agreed to pay his daughter, C.C. and her partner, N.V., to move in with Petitioner and provide her with twenty-four hour care, seven days a week. Checks were issued to either C.C. or N.V. every other week. The checks do not reflect a steady rate of pay, but rather an increasing daily rate of pay that eventually rose to approximately \$150 per day for seven days a week.

It does not appear from the record that the parties memorialized the terms of their arrangement in a caregiver agreement. 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. No such document was presented here.

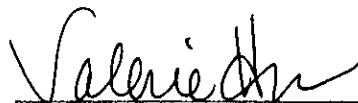
The record contains no basis as to how the monthly rate of pay was reached nor does the record contain competent evidence of exactly what was to be done and for what length of time to receive bi-weekly compensation from Petitioner. C.C. and N.V, while caring for Petitioner, do not have any specialized training or skill that would potentially enable them to have a professional level rate. Furthermore, both C.C. and N.V. were employed by outside companies during the time they were to be providing twenty-four hour care to Petitioner, yet their compensation was not reduced and there is no explanation for how they continued to provide care while employed. Also, C.C.'s January 1, 2015 letter explains that they had the help of a private aide on the weekends, yet their compensation was still calculated based on a seven day work week.

If Petitioner claims that she received fair market value for the caregiving services provided by her family and friends, she will have to provide the appropriate documentation. N.J.A.C. 10:71-4.10(b)6.ii. Accordingly, I am REMANDING this matter to the OAL for a copy of the caregiver agreement and proof that Petitioner received fair market value for the services provided and a recalculation of the transfer penalty in accordance with that documentation or lack thereof.

THEREFORE, it is on this 9th day of FEBRUARY 2016,

ORDERED:

That the Initial Decision affirming the transfer penalty is hereby REMANDED to Essex County for recalculation of the transfer penalty in accordance with the caregiver agreement and proof that Petitioner received fair market value for the services provided.



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