



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.H.

PETITIONER,

ADMINISTRATIVE ACTION

V.

FINAL AGENCY DECISION

DIVISION OF MEDICAL ASSISTANCE

OAL DKT. NO. HMA 07348-16

AND HEALTH SERVICES &

ESSEX COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

As Director of the Division of Medical Assistance and Health Services (DMAHS), I have reviewed the record in this case, including the OAL case file, the documents in evidence and the Initial Decision in this matter. 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 October 27, 2016 in accordance with an Order of Extension.

This matter arises from the imposition of an eight month and nine day transfer penalty in connection with Petitioner's Medicaid application. On April 12, 2016, the Essex County Board of Social Services (ECBSS) found Petitioner eligible for Medicaid benefits as of March 10, 2016 but instituted a penalty due to the transfer of \$78,015.05. Petitioner appealed the denial and the matter was transmitted to the Office of Administrative Law (OAL).

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).

Petitioner was represented at the hearing by Cecelia Jacques of Eldercaid, L.L.C., Medicaid Specialists (Eldercaid). It is undisputed that Petitioner transferred money to her daughter, D.R., which was used to pay for D.R.'s credit card debt, vacation, jewelry and home renovations. Petitioner's representative claims that since

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).

her daughter is considered disabled by the Social Security Administration (SSA), the transfers to her do not result in a penalty. N.J.A.C. 10:71-4.10(d)(2). At the hearing, Petitioner's representative provided the court with a packet of documents including an SSA Benefits Planning Query for D.R., bank statements and a lengthy letter from D.R. attempting to explain the banking arrangement that existed between Petitioner and herself. No witnesses appeared on behalf of Petitioner and no testimony was given to authenticate the documents submitted by Petitioner's representative.


While a finding that D.R. was disabled would exempt transfers made to Petitioner's daughter, the record is unclear which transfers to the daughter were part of the assessed penalty. I note that any transfers made directly to a party other than D.R., including but not limited to D.R.'s daughter, husband, credit card or other company, would not be exempt from penalty. Petitioner's representative submitted several bank statements with handwritten notes attempting to explain the transactions. Without providing a witness to explain the transactions, answer questions on cross-examination or move documents into evidence, Petitioner has very likely failed to prove that these transfers were not made in order to qualify for Medicaid. However, Petitioner's representative did submit a document from the SSA which seems to suggest that her daughter, D.R., may have been determined disabled, thereby exempting some, if not all, of the transfers from penalty. Therefore, I am RETURNING this matter to the ECBSS for further examination of D.R.'s status as a disabled adult child and reassessment of transfers made directly to D.R if the SSA has determined she is disabled.

THEREFORE, it is on this 18th day of OCTOBER 2016

ORDERED:

That the Initial Decision is hereby REVERSED; and

That the matter is RETURNED to ECBSS for further examination of D.R.'s status as a disabled child and reassessment of the transfer penalty for those transactions made directly to a disabled child pursuant to N.J.A.C. 10:71-4.10(d)(2).



Meghan Davey, Director
Division of Medical Assistance
and Health Services