



State of New Jersey

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

L.S.,
PETITIONER,
v.
DIVISION OF MEDICAL ASSISTANCE
& HEALTH SERVICES and
MORRIS COUNTY BOARD OF
SOCIAL SERVICES,
RESPONDENTS.
ADMINISTRATIVE ACTION
FINAL AGENCY DECISION
OAL DKT. NO. HMA 9660-2015

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. No exceptions were filed in this matter. Procedurally, the time period for the Agency Head to file a Final Agency Decision is May 5, 2016 in accordance with an Order of Extension.

Petitioner entered a nursing home in June 2014. She had previously lived with her daughter; first in a cottage on the daughter's property and then, after her health

declined, in the main house from May 2013 through June 2014. Morris County found that Petitioner was otherwise eligible as of October 1, 2014 but imposed a thirty-four day penalty. Petitioner did provide information that some of the transfers were for fair market value and Morris County reduced the penalty to 29 days. At issue at the hearing were a series of checks for \$800 that were given to the daughter as well as the fair market value of the rent Petitioner paid while living in the main house.

It has been established that “the applicant still bears the burden to establish the types of care or services provided, the type and terms of compensation, the fair market value of the compensation, and that the amount of compensation or the fair market value of the transferred asset.” E.A. v. DMAHS and HCBSS, Docket No. A-2669-13T3, slip op. at 17-18 (July 20, 2015). As stated in the Initial Decision, “[n]either party presented fair market rents for the space” Petitioner “rented” in her daughter’s house. ID at 5. As it is Petitioner’s burden, a review of the figures presented by Petitioner to justify the payments does not demonstrate fair market value. Rather Petitioner is trying to back into the amount of rent she paid to her daughter by using bills accumulated over that time period.¹

There is no rental or lease agreement or any contemporaneous calculation from May 2013 through June 2014 to support the rental amount. Petitioner began paying \$1,050 in June 2013 after she moved into the main house after breaking her hip in February 2013. Her daughter increased the rents to \$1,055 a month in July 2013 and then to \$1,060 in October 2013 and finally to \$1,100 in May 2014. Petitioner entered the nursing home the following month.

¹ The use of N.J.A.C. 10:84-1.6, which sets forth a standard of need for cash assistance programs, is misplaced. The enabling statute at N.J.S.A. 44:10-42 relates to Work First New Jersey that is governed by a different set of rules designed for working individuals and families rather than the program at issue here. N.J.S.A. 44:10-34. See N.J.A.C. 10:84-1.6(c) 4 which includes baby products as miscellaneous expenses to reach the standard of need.

Morris County did attempt to review the actual costs of the shared household by requesting bills and arrived at a fair market value of \$895.24. When subtracted from the rent amounts, Petitioner paid monthly excess between \$159.76 and \$204.76. These amounts were considered to be transfers for less than fair market value.

In justifying the rent payments, Petitioner's daughter listed any payment made during that time period including tree trimming, house painting, power washing and plumbing emergencies to arrive at the rental amount. P-1. These expenses appear to be either one time events with the repairs or expenses occurring on a less than annual basis such as tree trimming and exterior maintenance of the home. The yard maintenance would be needed regardless of Petitioner's residence in the home and it appears that the snow removal of \$360 included in the yard maintenance was reimbursed in check 4828 written on December 2, 2013. R-1 at C ("gave me extra cash- had to shovel 2 doors- 3 times."). Additionally, despite including the cost of electric, oil, gas and water, the daughter added \$25 month for Petitioner's use of the washer and dryer. Petitioner was also charged a third of the cost of the car including gas, insurance and unsupported repairs despite the fact Petitioner was home-bound during this period. P-1.

However, even using Petitioner's own figure of \$1,105 but removing the unexplained \$25 a month cost for using the washer and dryer and the \$190 for what appears to be one time or sporadic capital expenses, the expenses for the shared main home are \$890 ($\$1,105 - \$25 - \190). That is \$5.24 less than the \$895.24 Morris County calculated using the actual bills. Thus, I FIND that Morris County correctly imposed a penalty of \$2,196.88 on the rent Petitioner paid when living in the main house.

The Initial Decision determined that Morris County should have given the renovated space in the main house "fair market value over and above taxes, insurance and utilities." However, Petitioner had already given her daughter \$6,300 to renovate that space. The record contains no indication of the scope of the renovations or the extent to which it increased the value of the home owned by the daughter. To that end, Morris County has allowed the use of Petitioner's assets to contribute to the equity of that space and there is no basis to allow additional funds to be transferred to the daughter for the same purpose.

Turning to the issue of the other checks, Petitioner stated that the checks made out to her daughter were for spending money during a particular month. For the most part the amounts are \$800 with two checks for \$1,000 in February and March 2013. I am satisfied that these checks, save one, were for fair market value for the various expenditures Petitioner incurred during those month. However, there is no explanation as to why there were two checks for \$800 in October 2009. Thus, I FIND that Petitioner has not demonstrated that she received fair market value for the second check written to her daughter, and reinstate that check to the transfer amount.

The Initial Decision raised concern that that Morris County "microscopic review" was not appropriate as Petitioner "did not run through hundreds of thousands of dollars in resources or gift large sums to children or grandchildren." ID at 7. This suggests that there should be a certain threshold amount when reviewing transfers of assets that must be met in order to assess a penalty. No such threshold is found either in federal or state Medicaid law.

On the contrary, Congress has made clear that even minimal amounts transferred are subject to penalty. Specifically, in 2006 Congress changed the Medicaid

transfer rules to prohibit rounding down the duration of the transfer penalty to whole months. 42 U.S.C.A. § 1396p(c)(1)(E)(iv). This change required states to impose "partial month" penalties that can penalize an applicant or beneficiary for a few days.

Thus, I hereby ADOPT the Initial Decision with regard to the checks for \$800 to \$1,000 except for the check mentioned above. I hereby REVERSE the Initial Decision with regard to the fair market value of the rent and the shared expenses from June 2013 through June 2014 and reinstate the penalty.


THEREFORE, it is on this ^{4th} day of MAY 2016

ORDERED:

That the Initial Decision is hereby ADOPTED as to the findings that Petitioner established fair market value for living expenses;

That the Initial Decision is hereby REVERSED as to the determination that Petitioner demonstrated fair market value for the rent paid from June 2013 to June 2014.

That Morris County shall calculate the penalty for those transfers above.



Meghan Davey, Director
Division of Medical Assistance
and Health Services