



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
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Governor

KIM GUADAGNO
Lt. Governor

ELIZABETH CONNOLLY
Acting Commissioner

MEGHAN DAVEY
Director

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

N.D..

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES AND
BERGEN COUNTY BOARD OF
SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 08703

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this matter, consisting of the Initial Decision, the documents in evidence and the entire contents of the OAL case file. No exceptions to the Initial Decision were filed. Procedurally, the time period for the Agency Head to render a Final Agency Decision is July 18, 2016, in accordance with an Order of Extension. The Initial Decision was received on April 26, 2016.

At issue is the transfer penalty imposed due to the February 2010 transfer of Petitioner's home (the Property) to her son, H.D for past, present and future care of Petitioner. By Initial Decision dated April 21, 2016, the ALJ found that Petitioner failed to rebut the presumption that the transfer was made to qualify for Medicaid benefits and that Petitioner had transferred the Property for less than fair market value to H.D. However, the ALJ determined that the Bergen County Board of Social Services (BCBSS) incorrectly determined the value of the Property when it assessed a transfer penalty equal to the tax assessed value of the Property in February 2010. Instead, the ALJ determined that the fair market value of the property should have been established as \$276,000, the average sale price of a comparable home in Spotswood, New Jersey between August 2014 and February 2015. After reviewing the record, I concur with the ALJ's findings in the Initial Decision, but REVERSE the decision to reflect the value of the Property pursuant to N.J.A.C. 10:71-4.1(d)(1)(iv) and RETURN the matter to BCBSS for further investigation.

The ALJ correctly noted that the tax assessed value of a home is not necessarily an accurate reflection of the price that the property "can reasonably be expected to sell for on the open market in the particular geographic area." N.J.A.C. 10:71-4.1(d). See also N.J.A.C. 10:71-4.7(b). The equity value of real property is "the tax assessed value of the property multiplied by the reciprocal of the assessment ratio as recorded in the most recently issued State Table of Equalized Valuations, less encumbrances, if any..." N.J.A.C. 10:71-4.1(d)(1)(iv). The regulation is very specific, it states that "[t]he equity value of real property is. . . "It does not leave room for interpretation. The clarity

of the regulation provides for a uniform determination of the value of property, which can be a subjective art.

Here, the tax assessed value of the Property when it was transferred in February 2010 was \$351,900. That amount divided by .8410, which is the Middlesex County assessment ratio for Spotswood, New Jersey in the State Table of Equalized Valuations, results in an equity value of \$418,430. (State of New Jersey, Department of the Treasury, Division of Taxation, Table of Equalized Valuations, Middlesex County, available at <http://www.state.nj.us/treasury/taxation/lpt/lptvalue.shtml>).

Furthermore, the documents submitted into evidence by the Petitioner, specifically the December 18, 2013 and February 19, 2015 transcripts of court proceedings before the Honorable Frank M. Ciuffani, P.J.Ch., refer to a trust established for Petitioner's benefit that at the time was paying her income of \$1400 per month. The record does not indicate that any trust was disclosed on Petitioner's August 2014 Medicaid application. Without this information, BCBSS is unable to determine if the trust and the income meet the criteria to be properly excluded.

THEREFORE, it is on this *6th* day of JULY 2016,

ORDERED:

That the Initial Decision is hereby ADOPTED with regard to Petitioner's failure to rebut the presumption that the Property was transferred in order to qualify for Medicaid benefits; and

That the Initial Decision in this matter is hereby REVERSED in that the equity value of the Property should be assessed at \$418,430; and

That the matter shall be RETURNED to the Bergen County Board of Social Services to take action in accordance with this Final Agency Decision including, but not

limited to. the production of evidence, specifically any trusts established for or by
Petitioner. necessary to determine Petitioner's income, resources and ultimately
establish her eligibility date.

Carol Grant on behalf of Meghan Davey
Meghan Davey, Director
Division of Medical Assistance
and Health Services