



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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CHRIS CHRISTIE
Governor

ELIZABETH CONNOLLY
Acting Commissioner

KIM GUADAGNO
Lt. Governor

MEGHAN DAVEY
Director

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

R.R.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

& HEALTH SERVICES &

MORRIS COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

Vertical line of dots separating petitioner and respondents

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 3644-2015

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 April 1, 2016, in accordance with an Order of Extension.

Based on a Medicaid application, Petitioner was found otherwise eligible as of March 1, 2014 but Morris County imposed a transfer penalty through September 21, 2014. Morris County assessed the penalty due to transfers totaling \$53,514.28 that occurred from 2009 through 2014. Petitioner is under guardianship with the Office of the Public Guardian (OPG) as of September 2014. Prior to this appointment, Petitioner's daughter held a Power of Attorney.

Under Medicaid law, a resource cannot be transferred or disposed of for less than fair market value during or after the start of the five-year look-back period before the individual becomes institutionalized and applies for Medicaid as an institutionalized individual. 42 U.S.C.A. 1396p(c)(1); N.J.A.C. 10:71-4.10(a). Medicaid law contains a presumption that any transfer for less than fair market value during the look-back period was made for the purpose of establishing Medicaid eligibility. See E.S. v. Div. of Med. Assist. & Health Servs., 412 N.J. Super. 340 (App. Div. 2010); N.J.A.C. 10:71-4.10(i). The applicant, "may rebut the presumption that assets were transferred to establish Medicaid eligibility 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). The burden of proof in rebutting this presumption is on the applicant. Ibid. The regulations also provide that, "if the applicant had some other purpose for transferring the asset, but establishing Medicaid eligibility appears to have been a factor in his or her decision to transfer, the presumption shall not be considered successfully rebutted." N.J.A.C. 10:71-4.10(i)2.

Petitioner is not contesting \$24,265.56 of the transfers but claims that the \$29,248.72 should be removed from the transfer penalty. In support of this Petitioner produced a judgment for this amount against his daughter. P-1 at Exhibit E.

The record contains no basis as to why this exact amount was sought. The papers seeking the judgement state the amount is from monies the daughter received from Petitioner on August 10, 2010 and November 4, 2011. P-1 at Exhibit F. The record does not show any transfer on August 10, 2010 and the two transfers on November 4, 2011 total \$13,508.51.¹ R-1 at E.

Regardless, the Initial Decision correctly finds that the partial reduction of Petitioner's penalty is not permitted under federal law. See 42 U.S.C. § 1396p(c)(2)(C). Any reduction of the penalty imposed for transferred funds is predicated on whether "[a] satisfactory showing is made to the state (in accordance with regulations promulgated by the Secretary) that (i) the individual intended to dispose of the assets either at fair market value, or for other valuable consideration, (ii) the assets were transferred exclusively for a purpose other than to qualify for medical assistance, or (iii) all assets transferred for less than fair market value have been returned to the individual." 42 U.S.C. § 1396p(c)(2)(C) (emphasis added). Therefore, partial returns are not permitted to modify the penalty period and, absent a return of all the assets, the penalty continues uninterrupted. Med-Com 10-06. See C.W. v. DMAHS and Union County Division of Social Services, A- 2352-13T2, decided August 31, 2015 (finding that arguments for the partial reduction of a ten year, four month and thirteen day penalty "lacked any legal support"). Since the \$53,514.28 was not returned to Petitioner, the six month and twenty-one day penalty is unchanged.

¹ The Initial Decision states the \$29,248.72 judgment is the sum of two checks made out to the daughter. ID at 5. The two transfers identified as being made to Petitioner's daughter were done on November 4, 2011 and January 31, 2014 and total \$26,649.22, not \$29,248.72. See R-1 at E.

Thus based on the record before me and the applicable law, I hereby ADOPT the Initial Decision.

THEREFORE, it is on this ^{28th} day of MARCH 2016

ORDERED:

That the Initial Decision is hereby ADOPTED.

A handwritten signature in black ink, appearing to read "Meghan Davey", written over a horizontal line.

Meghan Davey, Director
Division of Medical Assistance
and Health Services