



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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

A.K.,	:	
	:	
PETITIONER,	:	ADMINISTRATIVE ACTION
	:	
v.	:	ORDER OF REMAND
	:	
DIVISION OF MEDICAL ASSISTANCE	:	OAL DKT. NO. HMA 11760-2016
	:	
AND HEALTH SERVICES AND	:	
	:	
CAMDEN COUNTY BOARD OF	:	
	:	
SOCIAL SERVICES,	:	
	:	
RESPONDENTS.	:	

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 in this matter is February 21, 2017 in accordance with an Order of Extension.

The matter arises regarding Petitioner's transfer of assets during the look-back period. Petitioner applied for Medicaid benefits In July 2015. Camden County found

Petitioner otherwise eligible as of August 1, 2015 but imposed a transfer penalty until February 21, 2016 due to the transfer of her home in June 2015 to her daughter. Petitioner sought to have the transfer penalty considered under the caregiver child exemption. The Initial Decision found that Petitioner's June 2015 transfer of her home met the caregiver exemption.

Based on the record before me and as explained below, I cannot discern if Petitioner resided in her home for the two years prior to becoming institutionalized; if the caregiving services were provided by her daughter or if the year of full-time rehabilitation services was the reason Petitioner was able to remain at home. As such, I hereby REVERSE and REMAND the Initial Decision.

The purpose of the caregiver exemption is to compensate a son or daughter who has provided care to such an extent that the applicant remained in the community and not receiving institutionalized based services from Medicaid for at least two years. By way of background, when an individual is seeking benefits which require meeting an institutional level of care, any transfers of resources are scrutinized. N.J.A.C. 10:71-4.10. 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. N.J.A.C. 10:71-4.10 (c). Individuals who transfer or dispose of resources for less than fair market value during or after the start of the sixty-month look-back period before the individual becomes institutionalized or applies for Medicaid as an institutionalized individual, are penalized for making the transfer. 42 U.S.C.A. § 1396p(c)(1); N.J.A.C. 10:71-4.10(m)(1). Such individuals are treated as though they still have the resources

they transferred and are personally paying for their medical care as a private patient, rather than receiving services paid for by public funds. In other words, the transfer penalty is meant to penalize individuals by denying them Medicaid benefits during that period when they should have been using the transferred resources for their medical care. See W.T. v. Div. of Med. Assistance & Health Servs., 391 N.J. Super. 25, 37 (App. Div. 2007).

Limited exemptions to the transfer penalty rules exist. For example, the caregiver exemption provides that an individual will not be subject to a penalty when the individual transfers the "equity interest in a home which serves (or served immediately prior to entry into institutional care) as the individual's principal place of residence" and when "title to the home" is transferred to a son or daughter under certain circumstances. N.J.A.C. 10:71-4.10(d). The son or daughter must have "resid[ed] in the individual's home for a period of at least two years immediately before the date the individual becomes an institutionalized individual" and "provided care to such individual which permitted the individual to reside at home rather than in an institution or facility." N.J.A.C. 10:71-4.10(d)(4) (emphasis added). This exemption mirrors the federal Medicaid statute. 42 U.S.C.A. § 1396p(c)(2)(A)(iv).

The federal statute calls for an explicit exemption from the transfer rules and is meant to compensate the child for caring for the parent. The New Jersey regulations regarding this transfer exemption are based on the federal statute. Compare 42 U.S.C. § 1396p(c)(2)(A)(iv) and N.J.A.C. 10:71-4.10(d). The statute provides that if the "equity interest in a home" is transferred by title to a son or daughter who provided such care that prevented institutionalization for at least two years, the transfer is exempt from penalty. The care provided must exceed normal personal support activities and

Petitioner's physical or mental condition must be such as to "require special attention and care." N.J.A.C. 10:71-4.10(d). It is Petitioner's burden to prove that she is entitled to the exemption.

Recently the Appellate Division reviewed the caregiver exemption and noted that the "receipt of Medicaid benefits is not automatic. Understanding the State's need to conserve limited financial resources to assure monies are paid to those who meet the circumscribed eligibility requirements, we will not merely assume the criteria was satisfied. Rather, proof must be forthcoming specifically establishing each requirement of the exception to obtain its application." M.K. v. DMAHS and Burlington County Board of Social Services, Docket No. A-0790-14T3, decided May 13, 2016, slip op. at 17.

In M.K., the court had "no doubt [the daughter] extended love and care to her mother that added to M.K.'s comfort, welfare and happiness during those years when she was living in her own home, despite significant medical challenges". M.K., Slip op. at 17. However, during the two years prior to entering a nursing home, M.K. moved in with her son for a period of five months. The court found that as "'Medicaid is an intensely regulated program' H.K., supra, 184 N.J. at 380, and its requirements are strictly enforced;" a five month break in "the mandated two-year time period for care" meant that the caregiver exemption had not been met. M.K., Slip op. at 15.

In another case, the Appellate Division also determined that an individual, receiving caregiving services paid for by Medicaid, cannot transfer her home to her daughter under the exemption. "Although appellant cared for her mother during the relevant time period, the key factor that permitted G.B. to remain in her home until 2009 was the Medicaid assistance she received through the services provided by the [Medicaid program]." Estate of G.B. (deceased) by M.B.-M., as Executor v. DMAHS

and Somerset County Board of Social Services, Docket No. A-5086-12T1, decided September 15, 2015, slip op. at 8. In that case, G.B. received 30 hours of caregiving services a week under a Medicaid waiver program that permitted her to remain at home. Id. at 7. Despite the finding by the ALJ that the daughter “tended her mother in decline for many years, and assisted her mother in avoiding institutionalization,” the Appellate Division upheld the Final Agency Decision that overturned that finding and held that G.B. was not entitled to a caregiver exemption. Id. at 5

Like the daughter in G.B., Petitioner’s daughter did care for her. However, the record does not reflect that the assistance was for the full two years. The exact dates of Petitioner’s residence in the home are not in the record. Petitioner’s stroke occurred on ~~December 28, 2012.~~ Petitioner’s other daughter, who is her Power of Attorney, stated that she remained “hospitalized from December 28, 2012 through the end of February 2013.” R-3. When Petitioner was discharged, she received “full-time rehabilitation” where she was “treated by physical therapists, occupation therapists, speech therapist and a host of other health-care professionals.” R-3. Petitioner received this rehabilitation therapy for “the first year at home” from 8:30 am until 3:00 pm. R-9. Petitioner suffered another stroke “end of February/beginning of March 2015” which required hospitalization through May 2015. R-3. She was discharged to Kresson View Care Center on May 11, 2015 and remains there today. Petitioner’s recitation of dates does not definitively show that Petitioner resided in her home for the full two years prior to being becoming institutionalized. Rather Petitioner states she was discharged after the initial stroke the end of February 2013 and suffered another stroke at the end of February 2015. These dates need to specific and documented with medical records as

those dates must show that she resided outside a hospital or nursing home for the required two years.


If it is found that Petitioner resided in the home for the full two years prior to her second stroke, the remand should explore the circumstances during which Petitioner was not under her daughter's care for six and a half hours a day during 2013. Her plan of care during that time will help document the therapies she received and the activities of daily living that were targeted to determine if this service was "the key factor" in permitting her to remain at home.

THEREFORE, it is on this ^{17th} day of FEBRUARY 2017,

ORDERED:

~~That the Initial Decision is hereby REVERSED with regard to caregiver exemption; and~~

That the matter is REMANDED to OAL for further findings and testimony regarding the exact dates of Petitioner's residence at her home and the rehabilitation services as set forth above.


Meghan Davey, Director
Division of Medical Assistance
and Health Services