

State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
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Acting Commissioner

MEGHAN DAVEY
Director

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Governor

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

T.E.B.,

PETITIONER,

ADMINISTRATIVE ACTION

v

FINAL AGENCY DECISION

DIVISION OF MEDICAL ASSISTANCE:

OAL DKT. NO. HMA 12646-2016

AND HEALTH SERVICES AND

SALEM 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. Petitioner filed exceptions. Procedurally, the time period for the Agency Head to file a Final Decision is April 17, 2017, in accordance with N.J.S.A. 52:14B-10 which requires an Agency Head to adopt, reject, or modify the Initial Decision within 45 days of receipt. The Initial Decision was received on March 1, 2017.

The matter arises regarding the imposition of a transfer penalty of \$626,704 or sixty-one months and fourteen days. Petitioner entered the nursing home in July 2014 after residing in an assisted living facility since December 2013. In July 2016, Petitioner applied for Medicaid. Salem County assessed the penalty for transfers to Petitioner's son from April 2011 through December 2015. ID at 3. Petitioner claimed that he paid his son between \$2,300 and \$2,700 in rent for a total of \$56,000. No lease or rental agreement was produced. He claimed that the amount was based on what he had paid when he lived with his wife at Cardinal Village Center in an independent living apartment. Petitioner also gave his son \$570,704 from a Raymond James account. ID at 3.

There is 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. 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(l)2.

The Initial Decision held the transfer penalty was properly assessed as Petitioner failed to rebut the presumption that the transfer were done to establish Medicaid. ID at 8. Petitioner's son admitted that he had received, albeit poor, advice in 2010 about structuring his father's accounts to protect the assets "from any kind of a look-back

process" and transfer the funds to him and his wife. ID at 5. This alone demonstrates that Petitioner pursued Medicaid planning in 2010 and that the transfers were made so as to qualify for Medicaid.

In exceptions, Petitioner argues that, based on a document signed in 2016, he agreed to pay his son rent from 2011 through 2013 and that the withdrawal of \$170,000 was a loan for his son to purchase another house. As noted in the Initial Decision there was neither a formal rental agreement nor any "credible evidence . . . to support the existence of an express agreement between" Petitioner and his son regarding a loan. ID at 4. The document signed in 2016 was to justify Petitioner's past transfers and is not indicative of a pre-existing arrangement or that Petitioner received fair market value for the transfers. See N.J.A.C. 10:71-4.10(b)(6).

Moreover, the return of some of the transferred funds does not cure the penalty. See 42 <u>U.S.C.</u> § 1396p(c)(2)(C); <u>N.J.A.C.</u> 10:71-4.10(e)(6)(iii) and Med-Com 10-06. Any reduction of the 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) <u>all assets transferred for less than fair market value have been returned to the individual.</u>" 42 <u>U.S.C.</u> § 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. See <u>C.W. v. DMAHS and Union County Division of Social Services</u>, 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").

For the reasons set forth above and in the Initial Decision, I FIND that Salem County properly assessed a transfer penalty in the amount of \$626,704 or sixty-one months and fourteen days. Thus, I hereby ADOPT the Initial Decision in its entirety.

THEREFORE, it is on this 2 day of APRIL 2017,

ORDERED:

That the Initial Decision is hereby ADOPTED.

Meghan Davey, Director

Division of Medical Assistance

and Health Services