

Petitioner's transfer of her home to her daughter in June 2016. Petitioner is seeking an exemption to the transfer penalty for a caregiver child.

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 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.

The ALJ noted that while Petitioner's daughter cared for her, it did not "rise to the level of care to permit the child care-giver exemption." ID at 11. The medical documents presented "are terse one or two paragraph notes that are devoid of the type of care petitioner required and contained no time reference for the ailments noted, nor the care required for the same." Additionally, Petitioner's daughter testified that Petitioner "was able to perform daily activities on her own." The transcript recounts Petitioner's daily routine after her daughter left for work. She took her pills, added milk to her cereal and then left and locked up the house and rode a bus to a senior center sponsored by the town. TR at 27-28. She then returned by bus and let herself into the house. These are not the activities of someone who would have been institutionalized but for her daughter's care.

In exceptions, Petitioner's counsel argues facts not in evidence and expanded on the hearsay letters from Petitioner's doctors. There can be no judicial notice taken of "the nature of the illness [Petitioner] suffered from." Judicial notice can be taken of facts beyond dispute. To claim that a medical diagnosis that is not in any of the documents in the record, its specific effect on Petitioner, and counsel's explanation of "habit memory", presented for the first time in exceptions, fall in that category is absurd.

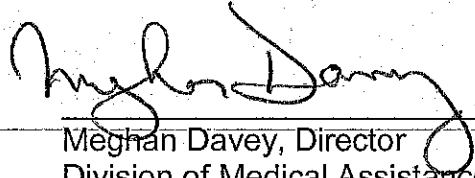
It is disingenuous to suggest that the town senior center was an adult day care or that it was the same level of care as the assisted living residence as alleged by Petitioner's daughter. TR at 73. Assisted living facilities are licensed and must comply with extensive regulatory requirements. See N.J.A.C. 8:36-1, et seq. Rather it appears Petitioner attended a free social program for seniors residing in her municipality. In fact, the New Jersey Department of Health provides a list of adult day care facilities in Bergen County and the senior center is not on the list. See <http://web.doh.state.nj.us/apps2/healthfacilities/fsFacilityList.aspx>.

There is no basis to Petitioner's arguments that the ALJ was "fixated" by her daughter's ability to work outside the home from 7:45 am to 2:45 pm with a one-way commute of thirty to forty minutes. Exceptions at 2. Rather it was the totality of the record including the daughter's own testimony how Petitioner could bathe, dress and toilet through the day as well as enter and leave the home by herself that factored into the Initial Decision. Petitioner did this until June of 2016 when "it became apparent that [Petitioner] was unable to remain by herself in the house" and entered the assisted living facility. TR at 26. Thus, I concur that, while Petitioner's daughter did care for her mother, that Petitioner neither had the deficiencies nor did she require care that rose to the level of nursing home.

THEREFORE, it is on this ^{10th} day of JANUARY 2018,

ORDERED:

That the Initial Decision is hereby ADOPTED.



Meghan Davey, Director
Division of Medical Assistance
and Health Services