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

E.S.,	:	
	:	
PETITIONER,	:	ADMINISTRATIVE ACTION
	:	
v.	:	FINAL AGENCY DECISION
	:	
CAMDEN COUNTY BOARD OF	:	OAL DKT. NO. HMA 16705-17
SOCIAL SERVICES,	:	
	:	
RESPONDENTS.	:	

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the OAL case file, the Initial Decision and the documents in evidence in this matter. Neither party filed exceptions to the Initial Decision. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is May 17, 2018 in accordance with an Order of Extension.

This matter arises from the October 17, 2017 notice from the Camden County Board of Social Services (CCBSS) imposing a transfer penalty in connection with the transfer of Petitioner's home to his son for \$1. The CCBSS determined that Petitioner's home, which was worth \$51,988, was transferred for less than fair market value. 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.¹ N.J.A.C. 10:71-4.10 (c). Consequently, CCBSS issued a notice to Petitioner stating its intention to impose a transfer penalty. However, Petitioner claimed that he was entitled to transfer his home to his son under the caregiver exemption. N.J.A.C. 10:71-4.10(d).

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." Id. It is Petitioner's burden to prove that he is entitled to the exemption.

Petitioner has been receiving Medicaid benefits beginning in 2002 through the Community Care Program for the Elderly and Disabled (CCPED).² Applicants must be "in need of the type of care provided in an institutional setting and meet, at a minimum,

¹ Congress understands that applicants and their families contemplate positioning assets to achieve Medicaid benefits long before ever applying. To that end, Congress extended the look back period from three years to five years. Deficit Reduction Act of 2005, P.L. 109-171, § 6011 (Feb. 8, 2006).

² Petitioner continued to receive Medicaid benefits through CAP/NJEH, Global Options and Home and Community Services (HCS) waiver program.

the New Jersey's Medicaid Program's nursing facility's level of care criteria." N.J.A.C. 10:60-10.1(d)(5). Further, because Medicaid funds are limited, only those individuals with income and non-exempt resources below specified levels may qualify for the CCPED. Once a person is deemed eligible for institutional level of care, either within an institutionalized setting or under the parameters of a Medicaid waiver program like CCPED, any transfers of resources are scrutinized. N.J.A.C. 10:71-4.10.

Through the CCPED program, Petitioner received institutional level of care in his home beginning in 2002. He qualified for this waiver program because he was in need of the type of care provided in an institutional setting and because his countable resources did not exceed \$2,000.00. N.J.A.C. 10:60-10.1(d). For purposes of the rule, Petitioner became an "institutionalized individual" in 2002 when he became eligible for the CCPED waiver program. N.J.A.C. 10:71-4.10(b)(2); N.J.A.C. 10:60-10.1(d)(5). The caregiver transfer exemption requires that Petitioner's son provide care for the two years immediately before Petitioner became an institutionalized individual and that the care prevented Petitioner from entering a nursing home during that time. The theory is that the child should be permitted to keep the home as the care prevented Medicaid from having paid for long term care services for at least two years. Petitioner's transfer of the property to his son in March 2016, therefore, precludes him from demonstrating that he transferred the property prior to becoming an institutionalized individual in 2002 or that the care provided by his son during the two years preceding this date enabled Petitioner to remain in his home without the CCPED institutional level of care supports. N.J.A.C. 10:71-4.10(d), -4.10(d)(4).

Petitioner was an institutionalized individual since 2002 by virtue of meeting nursing home level of care needed to permit him to receive waiver services.³ The record shows Petitioner's son residing with his father beginning in 2013.⁴ There is nothing in the record to support a finding that Petitioner's son personally provided caregiving services to his father prior to April 2016 when he was identified as his father's personal care assistant (PCA) through the Personal Preference Program (PPP),⁵ and definitely not before 2002. In fact, prior to October 2014, Petitioner's son was employed full time and Petitioner was receiving Adult Medical Daycare services since at least as early as 2012 through 2016. The care the son allegedly provided to permit this transfer occurred well after Petitioner was classified an institutionalized individual for Medicaid purpose. Further, while Petitioner's son may have supplemented Petitioner's care, it was the services Petitioner received through the CCPED and other Home and Community based waiver programs, paid for by Medicaid, that allowed him to remain at home and avoid an institutional facility.⁶ Thus, he fails to meet the criteria for the transfer exemption.

THEREFORE, it is on this ^{3rd} day of MAY 2018,

ORDERED:

³ Under 42 U.S.C.A. § 1396n(c)(1), the Secretary may by waiver provide that a State plan approved under this title may include as "medical assistance" under such plan payment for part or all of the cost of home or community-based services (other than room and board) approved by the Secretary which are provided pursuant to a written plan of care to individuals with respect to whom there has been a determination that but for the provision of such services the individuals would require the level of care provided in a hospital or a nursing facility or intermediate care facility for the mentally retarded the cost of which could be reimbursed under the State plan.

⁴ Other than a September 2, 2011 doctor's report which references Petitioner's living situation, nothing in the record indicates that Petitioner's son lived with him prior to 2013, as evidenced by his driver's license. There is nothing in the record to indicate that Petitioner's son lived with him prior to 2002 when Petitioner began to receive CCPED benefits.

⁵ Petitioner was approved for a monthly cash grant of \$1,519.83 through the PPP Cash Management Plan, for payment to his PCA.

⁶ Petitioner was entitled to Medicaid State Plan Services as well as waiver services such as case management, homemaker services, medical transportation, respite care and home health services. N.J.A.C. 10:60-10.1(i).

That the Initial Decision is hereby REVERSED, and

That the denial of Medicaid and the imposition of a transfer penalty is upheld.



Meghan Davey, Director
Division of Medical Assistance
and Health Services