



November 10, 2014 in the amount of \$27,915. On the same day, her nephew presented a cashier's check in the same amount to an auto dealer. Petitioner, born in 1917, does not and has never driven. Sussex County imposed an eighty-four day penalty for this transfer.

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.

N.J.A.C. 10:71-10(j) sets forth how an individual can rebut the presumption that a transfer for less than fair market value was made to qualify for Medicaid. Factors which may indicate that the transfer was for some other purpose:

The presence of one or more of the following factors, while not conclusive, may indicate that resources were transferred exclusively for some purpose other than establishing Medicaid eligibility.

1. The occurrence after transfer of the resource of:
  - i. Traumatic onset of disability;
  - ii. Unexpected loss of other resources which would have precluded Medicaid eligibility;
  - iii. Unexpected loss of income which would have precluded Medicaid eligibility.
2. Resources that would have been below the resource limit during each of the preceding 30 months if the transferred resource has been retained.
3. Court-ordered transfer.
4. Evidence of good faith effort to transfer the resource at FMV.

At the time of the transfer, Petitioner was 97 years old. At best she was an ancillary beneficiary of the purchase. In reality, she received nothing for her gift. Her nephew owned the car and never used it to transport her due his own ill health. Indeed, the use of an applicant's assets to purchase a car for someone else is not an uncommon explanation for transfer of funds. See S.L. v. DMAHS and Essex County Board of Social Services, 2014 N.J. Super. Unpub. Lexis 2152 (September 2, 2014) and C.S. v. DMAHS and Cape May CWA, OAL Dkt. No. HMA 9764-2014 (FAD signed December 23, 2014).

The facts in S.L. are quite similar. S.L., who was ninety-seven when she testified at the hearing, had also gifted funds two years before entering a nursing facility so that her son could purchase a car to drive her around. Despite actually using the car, the Appellate Division found that Petitioner had not rebutted the presumption that this and other transfers were for the purpose of qualifying for Medicaid.

Indeed, the Initial Decision states that the "contemplation of Medicaid eligibility would not have been unrealistic" before finding Petitioner's testimony was sufficient to rebut the presumption. ID at 4. However, to rebut the presumption, the transfer must be exclusively for a purpose other than Medicaid. The Initial Decision's indication that it was realistic that Medicaid would have been contemplated mandates a finding that Petitioner has not rebutted the presumption.

Additionally, it cannot be said that the transfer was solely for the stated purpose of providing Petitioner with access to transportation as Petitioner never saw the car and never once benefited from its purchase. Once it became apparent that car was not being used for the reason she gifted the money, Petitioner did not attempt to retrieve the car or the funds but permitted the transfer to be an outright gift. Thus, I FIND the record and the

findings of the Initial Decision necessitate a finding that Petitioner did not rebut the presumption that the transfer was done for Medicaid purposes.

THEREFORE, it is on this 20<sup>th</sup> day of MARCH 2018,

ORDERED:

That the Initial Decision is hereby REVERSED.



Meghan Davey, Director  
Division of Medical Assistance  
and Health Services