



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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Commissioner

MEGHAN DAVEY
Director

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

J.C.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

OCEAN COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 18078-2017

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. Neither party filed exceptions in this matter. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is September 4, 2018 in accordance with an Order of Extension.

The matter arises regarding Petitioner's May 2017 application for Medicaid benefits. Petitioner was found eligible as of August 1, 2017 but subject to a transfer penalty of 42 days stemming from a transfer of \$18,004 during the lookback period. Petitioner entered

an assisted living facility in July 2015 and was transferred into a nursing facility in January of 2017. Petitioner passed away on August 22, 2017.

Petitioner's estate is challenging both the eligibility date and the transfer penalty. The Initial Decision upheld the August 1, 2017 eligibility date but modified the penalty to \$10,404 or 24 days. However, I note that Petitioner's death renders this modification meaningless with regard to the payment by Medicaid for nursing home costs.

Under Medicaid law, a resource cannot be transferred or disposed of for less than fair market value during or after the start of the five-year look-back period before the individual becomes institutionalized or applies for Medicaid as an institutionalized individual. 42 U.S.C.A. 1396p(c)(1); N.J.A.C. 10:71-4.10(a). Medicaid law contains 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. See E.S. v. Div. of Med. Assist. & Health Servs., 412 N.J. Super. 340 (App. Div. 2010); 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(i)2.

With regards to the issue of Petitioner's resources, I find no evidence that they fell below \$2,000 until August 2017 so as to establish eligibility. "Resource eligibility is determined as of the first moment of the first day of the month." N.J.A.C. 10:71-4.5(a)(1); see also N.J.A.C. 10:71-4.1(e). Income is only considered "income" in the month it is received. N.J.A.C. 10:71-5.2(b)1. The unspent income in the following month counts towards resources. N.J.A.C. 10:71-4.1(c). Petitioner's failure to spend down her

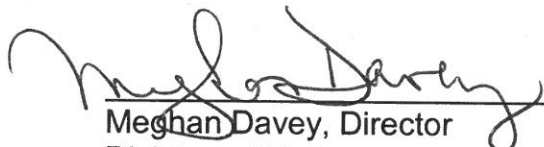
resources as well as the unspent income that was counted as income in the following month resulted in her being ineligible for Medicaid.

The Initial Decision does a thorough job analyzing each of the transfers identified by Ocean County. All told, \$7,600 of the transferred funds was found to be exempt transfers that were not made for the purpose of qualifying for Medicaid. However, the net effect does not change the outcome of Ocean County's original determination. Due to Petitioner's death prior to the end of either of the penalty periods, the nursing home costs remain uncovered by Medicaid. Thus, I hereby ADOPT the Initial Decision.

THEREFORE, it is on this 21st day of AUGUST 2018,

ORDERED:

That the Initial Decision is hereby ADOPTED.


Meghan Davey, Director
Division of Medical Assistance
and Health Services