



January 2013 divorce. Petitioner contends that the divorce and agreement was not done so as to qualify for Medicaid and that she has provided the necessary information.

In determining Medicaid eligibility for someone seeking institutionalized benefits, the counties must review five years of financial history. 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.<sup>1</sup> N.J.A.C. 10:71-4.10 (c). It is Petitioner's burden to overcome the presumption that the transfer was done – even in part – to establish Medicaid eligibility. The presumption that the transfer of assets was done to qualify for Medicaid benefits may be rebutted “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).

Petitioner married her husband in 2002 when they were both in their seventies. They resided in New York. In 2011 Petitioner was hospitalized and was going to require nursing care. ID at 2. Her husband was already in a nursing home and was legally blind. Petitioner's daughter sought legal advice to obtain financial support from her husband. When Petitioner's husband, through his adult children and Power of Attorney, countersued for divorce, the settlement agreement was reached wherein Petitioner received a total of \$30,000 and retained the property she owned prior to their marriage.

There is no doubt that Petitioner contemplated Medicaid eligibility during the divorce proceedings. In need of long term care in 2011, Petitioner's first Medicaid application had been denied due to the failure to provide information about the couple's resources. ID at 2. That denial prompted Petitioner's daughter to seek legal counsel. However, contemplating Medicaid does not affect transfers that are made for fair market value.

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<sup>1</sup> 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).

Based upon my review of the record, I hereby ADOPT the Administrative Law Judge's recommended decision concluding that Petitioner's divorce was not arranged so as to qualify her for Medicaid. As a second marriage, Petitioner and her husband were married when they were over seventy-years old and both were in failing health when they divorced. They had few joint assets. While the divorce was settled, it began as a contested matter and Petitioner's settlement was based on the applicable New York marital law. Thus, the divorce settlement was a transfer for fair market value and Petitioner's application should continue to be processed.

THEREFORE, it is on this 11<sup>th</sup> day of MAY 2018,

ORDERED:

That the Initial Decision is hereby ADOPTED; and

That the matter is RETURNED to Sussex County to complete the eligibility determination.

  
Meghan Davey, Director  
Division of Medical Assistance  
and Health Services