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

M.H.,	:	
PETITIONER,	:	**ADMINISTRATIVE ACTION**
v.	:	**FINAL AGENCY DECISION**
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES AND HUNTERDON COUNTY BOARD OF SOCIAL SERVICES,	:	**OAL DKT. NO. HMA 15919-17**
RESPONDENTS.	:	

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision, the documents in evidence and Petitioner's exceptions. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is March 8, 2018, in accordance with

an Order of Extension, or modify the Initial Decision within 45 days of receipt. The Initial Decision in this matter was received on December 6, 2017.

At issue is a 193 day penalty imposed due to Petitioner's transfers totaling $81,907.42. 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.[1] 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). Here, Petitioner is seeking to show that she received fair market value for the transferred assets by asserting that a series of checks issued to her grandchildren were compensation for caregiving services.

The best evidence to rebut the presumption that caregiving services provided by relatives was done to establish Medicaid eligibility would be a written agreement between the parties pre-existing the delivery of the care or services. However, even where a pre-existing care agreement exists, "the mere existence of a pre-existing care agreement for services does not automatically establish that the services were rendered for fair market value." See E.S. v. Div. of Med. Assistance & Health Servs., 412 N.J.

[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).

Super. 340, 352-53 (App. Div. 2010)." E.A. v. DMAHS and Hunterdon County Board of Social Services, supra. The court went on to find that "[n]otwithstanding a care agreement, the applicant still bears the burden to establish the types of care or services provided, the type and terms of compensation, the fair market value of the compensation, and that the amount of compensation or the fair market value of the transferred asset is not greater than the prevailing rates for similar care or services in the community. N.J.A.C. 10:71-4.10(b)(6)(ii) and (j)." Id.

Here, Petitioner and her grandchildren did not enter into a written care agreement prior to delivering care giving services. Instead, Petitioner presented undated, written explanations of the services purportedly provided by the grandchildren. While Petitioner did regularly issue checks to her grandchildren beginning in November 2013, the varying amounts are not supported by time keeping records for services performed in connection with those checks. Further, Petitioner presents no evidence that the rate of $100 per day was comparable to the prevailing rate for similar caregiving services. Finally, even if the tasks were aligned, there is no basis for Petitioner to pay her grandchildren commensurate with the rate paid to a home health agency. See E.A. v. DMAHS and Hunterdon County Board of Social Services, A-2669-13T3, decided July 20, 2015, upholding the finding that a care agreement could not use the fee schedule for "trained/bonded/licensed caregivers."

Moreover, I am not convinced that the evidence presented establishes that a loan agreement existed between Petitioner and Petitioner's granddaughter, S.M., to pay Rolling Hills Nursing home from Petitioner's great-grandchildren's 529C accounts. However, I am curious by the footnote on page seven which states that Hunterdon County's representative "agreed that checks 2603, 2604 and 2605 represented repayment of a legitimate loan." S.M. states that Rolling Hills required a $25,000

payment in order for Petitioner to remain at the facility. As a result, S.M. stated that she withdrew that amount plus additional monies form Petitioner's great-grandchildren's 529C accounts to pay for Rolling Hills and college tuition. Yet, while the checks made out to Rolling Hills total $24,719.16, the payments to her great grandchildren total $24,999.99. Without bills regarding college tuition and Rolling Hills costs, it is difficult to establish with certainty which withdrawals were intended to aid the Petitioner. Furthermore, there are no 529C statements showing that the money was returned to the great-grandchildren's 529C accounts. Finally, 529C permissible withdrawals generally include only those expenses associated with higher education. Nonqualified withdrawals are usually subject to penalties. If the monies were withdrawn to aid Petitioner, there should be documentation regarding the assessed penalty.

Therefore, it is on this 6th day of FEBRUARY 2018,

ORDERED:

That the Initial Decision is hereby ADOPTED with regard to Petitioner's failure to meet her burden of proof concerning the $56,907.43 transferred to her grandchildren for caregiving services; and

That the Initial Decision is REMANDED to give Petitioner the opportunity to present evidence, such as a Rolling Hills bill for $25,000, college tuition bills for Petitioner's great-grandchildren, 529C statements showing the 8,333.33 was returned to the great-grandchildren's 529C accounts, and any documentation regarding the penalties assessed for nonqualified withdrawals.

Meghan Davey, Director
Division of Medical Assistance
and Health Services