

Petitioner's eligibility date for Medical Assistance (Medicaid).

M.K. applied eligibility determination on November 13, 2017. In a letter dated January 9, 2018, the Department notified Petitioner that a transfer penalty of one hundred fifty-three (153) days would be imposed from November 1, 2017 through April 2, 2018, for transfers from Petitioner to M.B., her daughter/attorney-in-fact, in the amount of \$65,000 during the five-year look-back period. M.B. requested a Fair Hearing on behalf of M.K. On behalf of her mother, M.B. asserted that all of the transfers from her mother to herself were made to reimburse M.B. for the care and services she rendered to her mother and to repay a loan from M.B. to her mother. In the alternative, M.B. argued that she qualified for the "caregiver child exception."

The Initial Decision found that the transfers from M.K. to M.B. were for the purpose of establishing Medicaid eligibility because there was no credible evidence to support the existence of an express, pre-existing agreement between M.B. and M.K. authorizing the payments, from M.B. and M.K.'s joint account, to M.B. "A transfer of assets to a friend or relative for the alleged purpose of compensating for care or services provided free in the past shall be presumed to have been transferred for no compensation." The presumption may be rebutted only by the presentation of "credible documentary evidence preexisting the delivery of the care or services." Ibid. Although Petitioner presented a written agreement, the Initial Decision concluded that the language in the agreement presented indicates that M.B. and M.K. were anticipating applying for Medicaid. The agreement was signed on March 10, 2017, and expressly states, "I understand that because there was no 'written' loan agreement between us that Medicaid will question my daughter." As stated in the Initial Decision, the agreement did not preexist the services freely rendered by M.B. in the past and also indicates that Medicaid eligibility was a factor for the transfer.

Even if M.K. had some other purpose for transferring the asset, Medicaid eligibility appears to have been a factor in the decision. Therefore, the presumption that the transfer was made to establish Medicaid eligibility has not been rebutted. N.J.A.C. 10:71-4.10(1)(2). I agree with the Initial Decision's conclusion that the Department properly imposed the one hundred fifty-three (153) day transfer penalty on M.K., based on the transfer of \$65,000 from M.K.'s account to M.B.

Finally, the Initial Decision concluded that the "caregiver child exception" did not apply to the circumstance of this case because M.K.'s equity interest in her primary residence was not transferred to M.B. The caregiver exception applies when an applicant transfers "her equity interest in a home" and "the title to the home is transferred" to the caregiver child. N.J.A.C. 10:71-4.10(d). The Initial Decision found that M.K.'s residence was sold and the proceeds of the sale were put into an account jointly owned by M.B. and M.K. Neither M.K.'s equity interest in the home, or the title to the home was transferred to M.B.

Based on my review of the record, I concur with the Initial Decision.

THEREFORE, it is on this ^{27th} day of JULY 2018,

ORDERED:

That the Initial Decision is hereby ADOPTED.


Meghan Davey, Director
Division of Medical Assistance
and Health Services