



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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

M.K.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES AND
SOMERSET COUNTY BOARD OF
SOCIAL SERVICES

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 713-2016

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this matter, consisting of the Initial Decision, the documents in evidence and the contents of the OAL case file. Petitioner filed exceptions to the Initial Decision. Procedurally, the time period for the Agency Head to render a Final Agency Decision is December 17, 2018 in accordance with N.J.S.A. 52:14B-10, which requires an Agency Head to adopt, reject, or modify the Initial Decision within 45 days of the agency's receipt. The Initial Decision was received on November 2, 2018.

The matter concerns a transfer penalty imposed on Petitioner for twenty-eight months and twenty-six days. Petitioner had been residing in the nursing home since 2012. Her husband died in 2014. Petitioner applied in September 2015 and was found otherwise eligible for Medicaid as of December 1, 2015. However, Somerset County identified transfers of Petitioner's assets totaling \$288,299. The transfers stemmed from the 2013 sale of Petitioner's home where she and her husband had retained a life estate after the November 2012 transfer to her son, a \$13,000 gift to her son and \$28,039 for payments on her son's credit card.

Based upon my review of the record, I hereby ADOPT the recommended decision of the Administrative Law Judge in its entirety and incorporate the same herein by reference. It is a long-standing principle that life estates have value. See, e.g., In re Estate of Romnes, 79 N.J. 139, 150 n.4 (1979); In re Estate of Lichtenstein, 52 N.J. 553, 563 (1968); Neiman v. Hurff, 11 N.J. 55, 62-63 (1952); Camden v. Williams, 61 N.J.L. 646, 647 (N.J. 1898). However, Petitioner received no compensation when she extinguished her life estate.

The Appellate Court has ruled on this issue and found that when the Medicaid applicant retains a life estate, there must be compensation to the life tenant when the property is sold. The failure to compensate the life tenant is a transfer of assets for Medicaid purposes. E.S. v. DMAHS, 2016 N.J. Super. Unpub. LEXIS 2389.

Like any other interest in real estate, a life estate is created by deed, N.J.S.A. 46:3-13; see also H.K., supra, 184 N.J. at 382-83, can be freely alienated, N.J.S.A. 46:3-5, is taxable, and has value. See In re Estate of Romnes, 79 N.J. 139, 150 n.4 (1979) ("Life estates are taxable under N.J.S.A. 54:34-1 and the method of valuation is set forth in N.J.S.A. 54:36-2"). For that reason, the uncompensated transfer of a life estate warrants a transfer penalty under the law.[footnote omitted]. See In re Peterson v. Daines, 77 A.D.3d 1391, 1392 (N.Y. App. Div. 4th Dep't 2010).

Petitioner conflates how transfers are treated under Internal Revenue Service rules with how transfers are treated under Medicaid rules. There is no correlation between transfers that do not result in a gift tax and transfers that result in a Medicaid penalty. See In re A.N., 430 N.J. Super. 235 (2013). Rather the Medicaid rules provide that when an individual is seeking benefits which require meeting an institutional level of care, any transfers of resources are scrutinized. N.J.A.C. 10:71-4.10. 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. N.J.A.C. 10:71-4.10 (c). Individuals who transfer or dispose of resources for less than fair market value during or after the start of the sixty-month look-back period before the individual becomes institutionalized or applies for Medicaid as an institutionalized individual, are penalized for making the transfer. 42 U.S.C.A. § 1396p(c)(1); N.J.A.C. 10:71-4.10(m)(1).

Thus, I FIND that Somerset County properly assessed a penalty for the full value of the house. Petitioner and her husband gave up the remainder value upon filing the deed in February 2013 and then gave up their life tenant value when the property was sold to a third party in July 2013. These two transfers encompass the full value of the home which is noted on the HUD-1 as \$247,109.61. It is that value that is considered a transfer of assets and subject to penalty under Medicaid.


The Initial Decision noted that in a letter dated July 1, 2016, Petitioner’s son agreed with the penalty for the \$13,000 gift and the \$28,039 paid to his credit card. In exceptions, Petitioner’s son reverses his position and argues the credit card payments are Power of Attorney expenses. The record shows that those payments were set up as electronic payments from Petitioner’s Wells Fargo account and paid for her son and his wife to travel

to Florida six times and once to Mexico and Hawaii, including boarding their dog. There are two other trips that cannot be identified. The printout of the son's credit card contains hand written notes that during the six trips to Florida that Petitioner and her husband were "discussed . . . with family members in Florida". One of those trips included a charge for \$1,574 to Marriott Vacation Club. R-1. As justification for the trips to Mexico and Hawaii, which included expenses for helicopter trips and other excursions, Petitioner's son wrote that he had conference calls with the nursing home during those trips. I FIND that these trips are not for the benefit of Petitioner and Somerset County was correct to impose a penalty on the use of Petitioner's funds to pay her son's credit cards.

THEREFORE, it is on this 13th day of DECEMBER 2018,

ORDERED:

That the Initial Decision affirming the transfer penalty is hereby ADOPTED.


Meghan Davey, Director
Division of Medical Assistance
and Health Services