



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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Assistant Commissioner

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

D.L.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

ATLANTIC COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 10534-2019

As Assistant Commissioner for 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. Petitioner filed exceptions in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is January 16, 2020 in accordance with an Order of Extension.

The matter arises regarding the imposition of a 133-day penalty due to Petitioner's sale of her home to her daughter. Petitioner applied for benefits in June 2018. At that time

she was residing in a nursing facility. In December 2018, Petitioner sold her home to her daughter for \$127,000 and used the proceeds to pay for her nursing care. Eligibility was established as of February 1, 2019 and Atlantic County imposed a penalty for the difference between the \$174,127.78 equalized tax assessed value of the home and the price her daughter paid.

Any transfer for less than fair market value during the look-back period is presumed to have been made for the purpose of establishing Medicaid eligibility. E.S. v. Division of Medical Assistance & Health Services, 412 N.J. Super. 340, 353 (App. Div. 2010); N.J.A.C. 10:71-4.10(i). 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). 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.” It is Petitioner’s burden to rebut this presumption.

The Initial Decision upholds the denial and I concur. It is clear that Petitioner was contemplating Medicaid when she sought to sell the home to her daughter. She was living in a nursing home and had applied for Medicaid. Moreover, her daughter had told the realtor that the home was being sold due to the need for Medicaid benefits and that she wanted “a fair price”. The testimony from the realtor bears little weight on the fair market price for the home. The home was never listed for sale nor does there appear to have been a contemporaneous description of its condition.

Regarding the evaluation of a Medicaid applicant’s resources, New Jersey rules provide:

Evaluation of resources: The value of a resource shall be defined as the price that the resource can reasonably be expected to sell for on the open market in the particular geographic area minus any encumbrances (that is, its equity value).

1. Real property:

i. Sole ownership: When the eligible individual is sole owner and has the right to dispose of the property, the total equity value (see (d)1iv below) shall be counted toward the resource maximum.

ii. Joint ownership or ownership in common: Under joint ownership or ownership in common, the equity value of the property shall be divided by the number of owners and the eligible individual's share counted toward the resource maximum.

....

iv. Equity value: The equity value of real property is the tax assessed value of the property multiplied by the reciprocal of the assessment ratio as recorded in the most recently issued State Table of Equalized Valuations, less encumbrance, if any. The Table is available from the State of New Jersey, Department of the Treasury, Trenton, New Jersey 08625.

[N.J.A.C. 10:71-4.1(d).]

Atlantic County used this regulation to assess the equity value of property to be \$174,127.78. Petitioner was paid \$47,127.78 less than that amount. As this home was not sold on the open market or the subject of a professional appraisal, the equity value using the tax assessment method¹ is dispositive.

In exceptions, Petitioner argues that Atlantic County failed to take steps in N.J.A.C. 10:71-4.10(j) to "investigate the circumstances surrounding the transfer." However, the answer to each of those steps is contained in the record. The stated purpose for transfer was to make Petitioner eligible for Medicaid. N.J.A.C 10:71-4.10(j)1.i. See ID at 4. There was no attempt to dispose of the property at fair market value as it was never offered for sale to anyone but Petitioner's daughter. N.J.A.C 10:71-4.10(j)1.ii. The reason for accepting less than fair market value is alleged to have been problems with the property

¹ Each county must calculate the difference between the assessed value and the market price in a table of equalization value and file it with the Division of Taxation. N.J.S.A. 54:3-17. The value can found online at <http://www.state.nj.us/treasury/taxation/lpt/lptvalue.shtml>.

that are not supported by an inspection or appraisal. N.J.A.C 10:71-4.10(j)1.iii. See ID at 4. Petitioner intended on Medicaid paying for her care after the transfer of the house and the transfer was to Petitioner's daughter. N.J.A.C 10:71-4.10(j)1.iv and v. Moreover, Petitioner had the opportunity to submit relevant and pertinent evidence at the hearing. N.J.A.C 10:71-4.10(j)2. Those documents and the factors of N.J.A.C. 10:71-4.10(j) were considered by the ALJ and it was determined that she did not rebut the presumption by presenting "convincing evidence to show that the asset was transferred exclusively for some other purpose." There is no basis to alter that determination.

THEREFORE, it is on this ^{22nd} day of DECEMBER 2019,

ORDERED:

That the Initial Decision is hereby ADOPTED as set forth above.



Jennifer Langer Jacobs, Assistant Commissioner
Division of Medical Assistance
and Health Services