



\$18,646.26 during the look-back period. Medicaid law contains a presumption that any transfer for less than fair market value during the look-back period was made for the purpose of establishing Medicaid eligibility. See E.S. v. Div. of Med. Assist. & Health Servs., 412 N.J. Super. 340 (App. Div. 2010); N.J.A.C. 10:71-4.10(i). The applicant, “may rebut the presumption that assets were transferred to establish Medicaid eligibility 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). 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 claims that \$15,410.38 was transferred to his sister, K.S., for her assistance from the year 2011 through 2017. Claims that transfers were payment for caregiving services provided in the past by K.S. are unsupported by the record. In accordance with N.J.A.C. 10:71-4.10(b)6.ii, care and services provided for free in the past are presumed to have been intended to be delivered without compensation. If payment is to be made there must a preexisting written agreement to pay for such services at a fair market rate. No such document was presented here for the years 2011 and most of 2012.

Petitioner's representative produced a personal services contract dated November 27, 2012. It is signed by K.S. as Petitioner's POA and appoints K.S. as the personal care services provider. 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. Super. 340, 352-53 (App. Div. 2010).” E.A. v. DMAHS and Hunterdon County Board of Social Services, supra. Petitioner 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. In a situation where the POA has appointed herself to be the recipient of payment for caregiving services, it is vital that she be able to document the care and expenses envisioned by the agreement. I agree with the ALJ that the self-created spreadsheet of work performed by K.S. is insufficient proof that the services were actually performed, let alone that Petitioner received fair market value for said services.

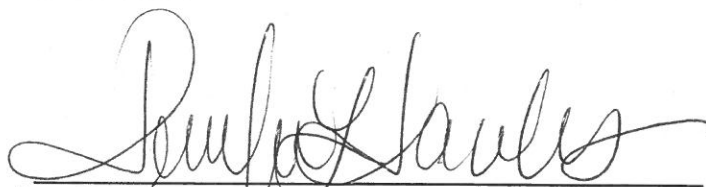
Petitioner also claims that the remaining \$3,235.88 was transferred to his daughter, K.B., to purchase items including cigarettes, clothing, and shoes. These claims are also unsupported by the record, and therefore were properly included in the penalty calculation.

Petitioner was unable to provide any corroborating evidence to establish that the transfers were done for a purpose other than to qualify for Medicaid benefits.

THEREFORE, it is on this *2nd* day of DECEMBER 2019,

ORDERED:

That the Initial Decision is ADOPTED.



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