

The matter arises regarding the determination that Petitioner was subject to a transfer penalty. Camden County found that Petitioner had transferred \$42,905.80 during the five-year look-back period. Petitioner was found otherwise eligible for Medicaid as of June 1, 2019 but subject to a 124-day penalty that ended October 3, 2019.

The Initial Decision upholds the transfer penalty as Petitioner did not rebut the presumption that the transfer was done for the purpose of qualifying for Medicaid. N.J.A.C. 10:71-4.10(j). A resource cannot be transferred or disposed of for less than fair market value during or after the start of the five-year look-back period before the individual becomes institutionalized or applies for Medicaid as an institutionalized individual. 42 U.S.C.A. 1396p(c)(1); N.J.A.C. 10:71-4.10(a). "A transfer penalty is the delay in Medicaid eligibility triggered by the disposal of financial resources at less than fair market value during the look-back period." E.S. v. Div. of Med. Assist. & Health Servs., 412 N.J. Super. 340, 344 (App. Div. 2010). "[T]ransfers of assets or income are closely scrutinized to determine if they were made for the sole purpose of Medicaid qualification." Ibid. Congress's imposition of a penalty for the disposal of assets for less than fair market value during or after the look-back period is "intended to maximize the resources for Medicaid for those truly in need." Ibid.

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). The burden of proof in rebutting this presumption is on the applicant. Ibid. The regulations also provide that "if the applicant had some other purpose for transferring the asset, but establishing Medicaid eligibility appears to have been a factor in his or her decision to transfer, the presumption shall not be considered successfully rebutted." N.J.A.C. 10:71-4.10(i)2.

The reduction sought by Petitioner is in violation of 42 U.S.C. § 1396p(c)(2)(C) and any reduction of the penalty is predicated on whether "[a] satisfactory showing is made to

the state (in accordance with regulations promulgated by the Secretary) that (i) the individual intended to dispose of the assets either at fair market value, or for other valuable consideration, (ii) the assets were transferred exclusively for a purpose other than to qualify for medical assistance, or (iii) all assets transferred for less than fair market value have been returned to the individual." 42 U.S.C. § 1396p(c)(2)(C) (emphasis added). See also N.J.A.C. 10:71-4.10(e)(6)(iii) and Med-Com 10-06. Therefore, partial returns are not permitted to modify the penalty period and, absent a return of all the assets, the penalty continues uninterrupted. See C.W. v. DMAHS and Union County Division of Social Services, A- 2352-13T2, decided August 31, 2015 (finding that arguments for the partial reduction of a ten year, four month and thirteen day penalty "lacked any legal support").

Based upon my review of the record, I hereby ADOPT the Administrative Law Judge's recommended decision concluding that the Petitioner was properly assessed a penalty. The transfers at issue were made in two payments. The first one was for \$23,699.30 on May 7, 2014. The second transfer of \$19,236.50 occurred on January 19, 2016. R-1 at 19. Petitioner claimed that the transferred funds were used to purchase a Dodge automobile for the daughter to drive Petitioner around and then used to trade-in that vehicle for an Audi. R-1 at 20. At the hearing the daughter claimed she used \$12,685 of the funds to purchase a prepaid funeral. ID at 2. She provided a copy of a September 1, 2016 agreement with the funeral home.

I FIND no nexus between the transfers and the purchase of the funeral expenses. There is no proof in the record that a portion of those transferred funds were used to purchase a prepaid funeral. Camden County noted that the stated purpose of the transfers were to purchase vehicles for the daughter. The 2016 transfer of \$19,236.50 occurred nine months before the prepaid funeral was purchased. Moreover, as the full amount of the transferred funds was not returned to the Petitioner, there is no basis to modify the penalty.

THEREFORE, it is on this ^{14th} day of DECEMBER 2019,

ORDERED:

That the Initial Decision is hereby ADOPTED.

A handwritten signature in black ink, appearing to read "Jennifer Langer Jacobs", written over a horizontal line.

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