



Family and Community Development (Atlantic County) granted Petitioner's November 25, 2020 application;<sup>2</sup> however, Atlantic County imposed a four-day penalty resulting from a \$1,500 transfer made by Petitioner's daughter and power of attorney (POA), R.H., to herself from Petitioner's bank account during the look-back period.

The Initial Decision upholds the imposition of a transfer penalty related to the \$1,500 transfer at issue, as the Initial Decision found that Petitioner failed to rebut the presumption that this transfer was done for the purposes of qualifying for Medicaid. See N.J.A.C. 10:71-4.10(j). Based upon my review of the record, I hereby ADOPT the findings and conclusions of the Administrative Law Judge (ALJ).

In determining Medicaid eligibility for someone seeking institutionalized benefits, counties must review five years of financial history. 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). "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

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Development was dated for January 6, 2020; however, this appears to be an error and should have been January 6, 2021. Accordingly, the correct date is noted above.

<sup>2</sup> Petitioner's application was dated for November 23, 2020, but was not received by Atlantic County until November 25, 2020. R-1.

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.

Petitioner husband passed away in June 2020 and a funeral was held for him shortly after his passing. ID at 3. At the time that Petitioner’s Medicaid application was filed on November 25, 2020, Petitioner’s TD Bank account reflected a balance of \$1,365.37. R-1. However, prior to the application being submitted, Petitioner’s account balance exceeded the maximum allowable resource limit of \$2,000, as a result of a November 13, 2020 deposit of \$6,463.90, which represented the life insurance proceeds for Petitioner’s husband. Ibid. On November 16, 2020, R.H. used these funds to pay the balance of her father’s documented funeral expenses and a cashier’s check was issued in the amount of \$4,867.75. Ibid. On that same date, R.H. withdrew \$1,500 in cash from Petitioner’s bank account and then deposited the funds into her own personal checking account. ID at 4. On November 21, 2020, five days after the cash withdrawal, R.H. issued a check in the amount of \$1,500 from her own bank account to Pastor Wayne Derrick Comer II. P-3. On the memo line of the check, R.H. noted “Eulogy/Repass.” Ibid.

R.H. testified that she made the \$1,500 cash withdrawal from Petitioner’s savings account because Petitioner did not have a checking account. ID at 4. She further stated that she withdrew the funds in order to pay Comer for a eulogy and unspecified “funeral expenses that needed to be done . . .” at her father’s funeral. Ibid. She stated that Comer guided Petitioner and her family into the funeral home, stayed with them, went to the grave site with them, and performed the eulogy there. Id. at 5. R.H. testified that the price for these services were discussed at or after the time of her father’s death, and she advised Comer that whatever he wanted to charge was fine. Ibid. Petitioner provided a letter from Comer, dated

January 18, 2021, which stated "I am writing this because I performed the eulogy for [Petitioner's husband] and rendered services to the family's needs thereafter repass etc. Cost and other expenses were \$1,500." P-3.

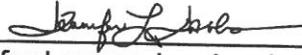
The Initial Decision finds that Petitioner has not met her burden in demonstrating that the \$1,500 cash transfer was solely for some other purpose than to qualify for Medicaid. ID at 8. I concur. The withdraw at issue occurred immediately prior to Petitioner third application for Medicaid benefits and as a result of that withdraw, Petitioner's bank account was under the resource limit to qualify for Medicaid benefits at the time the application as filed. Petitioner has failed to demonstrate that there was a nexus between any alleged services rendered by Comer at her husband's funeral and the \$1,500 withdraw that was issued in cash and deposited in R.H.'s bank account more than five months after the allege services were rendered. Petitioner did not address why there was a more than five month delay in paying Comer for any of the alleged services he rendered during her husband's funeral in June 2020. Further, no invoices or written agreement for the alleged services have been provided and the only documentation alluding to any rendered services is a vague letter from Comer that was drafted two months after the payment was issued and more than seven months after the alleged services were rendered. Moreover, as noted by the ALJ, R.H. testified that she was willing to pay Comer whatever he wanted to charge, ignoring the fair market value for any alleged services rendered and no documentation has been supplied that shows the fair market value for any alleged similar services. Accordingly, I agree with the ALJ's assessment that establishing Medicaid eligibility for Petitioner appears to be a major factor in R.H.'s decision to transfer the \$1,500 from Petitioner's bank account.

Based upon my review of the record and for the reasons set forth herein, I hereby ADOPT the ALJ's recommended decision and FIND that Petitioner has failed to rebut the presumption that the \$1,500 transfer at issue in this matter was made in order to establish Medicaid eligibility, and, therefore, the penalty imposed was appropriate.

THEREFORE, it is on this 21st day of January 2022,

ORDERED:

That the Initial Decision is hereby ADOPTED.



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