

July 31, 2021. A penalty of 69 days was assessed resulting from the transfer of assets totaling \$24,990.90 for less than fair market value during the five-year look-back period. The transfer of assets stemmed from withdraws from Petitioner's bank account by A.A., the daughter of Petitioner power of attorney (POA), J.A.S. ID at 3-4.

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 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.

At the hearing in this matter, J.A.S. testified that the funds at issue were used to pay J.A.S. and A.A. to help care for Petitioner, as Petitioner "has always been cared for by others due to [Petitioner] having an 'extreme form' of eczema." ID at 5. J.A.S. testified that

Petitioner did not pay an hourly rate for their care of Petitioner but paid them in different amounts at different times. Ibid. J.A.S. further testified that Petitioner paid for the full cost of a vacation to Orlando, Florida for J.A.S., her husband, A.A., J.A.S.'s stepson, a close family friend, and Petitioner totaling \$5,000, as well as the cost of a twelve-person van for the trip. J.A.S. alleged that she and A.A. took Petitioner to appointments two to three times per week, Petitioner would pay for gas and food when eating out, and would pay for A.A.'s car when it needed work done.

The Administrative Law Judge (ALJ) found that the Petitioner failed to sufficiently explain how the funds at issue were spent and did not offer sufficient, credible evidence to dispute the imposed penalty. I concur. Petitioner failed to produce any documentation that would support the assertion of Petitioner's POA that these funds were used to pay for Petitioner's living expenses. No receipts or invoices were provided showing that any of the alleged expenditures were made or if they were made, they were for Petitioner's benefit. While Petitioner and A.A. provided self-attestations regarding the alleged caregiving services provided to Petitioner as well as a statement of generalized expenses, dated July 1, 2021 and November 1, 2021, respectively, no pre-existing agreements, records, invoices, contracts, receipts, or logs were produced that documented caretaking services that were allegedly paid by Petitioner. N.J.A.C. 10:71-4.10(b)6ii provides that "[i]n regard to transfers intended to compensate a friend or relative for care or services provided in the past, care and services provided for free at the time they were delivered shall be presumed to have been intended to be delivered without compensation." However, this "presumption may be rebutted by the presentation of credible documentary evidence preexisting the delivery of care or services indicating the type and terms of compensation [and] the fair market value of the transferred asset shall not be greater than the prevailing rates for similar care or services in the community." N.J.A.C. 10:71-4.10(b)6iii. Thus, Petitioner bears the burden to demonstrate, through credible documentary evidence, that an agreement establishing the

services and compensation existed prior to the services being rendered and that the compensation for the rendered services was equal to the prevailing rates for similar services. Petitioner failed to meet this burden and failed to present any documentary evidence supporting the assertion that she paid J.A.S. and A.A. for caregiving services.

Accordingly, and based upon my review of the record, I hereby ADOPT the ALJ's recommended decision and FIND that Petitioner has failed to rebut the presumption that the transfers at issue in this matter were made in order to establish Medicaid eligibility, and, therefore, the penalty imposed was appropriate.

THEREFORE, it is on this 28th day of JUNE 2022,

ORDERED:

That the Initial Decision is hereby ADOPTED.

Carol Grant OBO Jennifer Langer Jacobs
Digitally signed by Carol Grant OBO
Jennifer Langer Jacobs
Date: 2022.06.28 09:08:09 -04'00'

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