



**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**

**G.E.,**

**PETITIONER,**

**v.**

**DIVISION OF MEDICAL ASSISTANCE  
AND HEALTH SERVICES AND  
MORRIS COUNTY BOARD OF  
SOCIAL SERVICES,  
RESPONDENTS.**

**ADMINISTRATIVE ACTION**

**FINAL AGENCY DECISION**

**OAL DKT. NO. HMA 14107-2017**

As Assistant Commissioner of 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. Neither party filed exceptions in this matter. Procedurally, the time period for the Agency Head to file a Final Decision is June 13, 2022 in accordance with an Order of Extension.

The matter arises regarding the imposition of a transfer penalty on Petitioner's

application filed in January 2017. Petitioner had been receiving Medicaid benefits in Florida and moved to New Jersey to be closer to family. Hunterdon County Welfare Agency (CWA) granted Petitioner eligibility as of December 2016 but subject to a transfer penalty of 126 days due to the transfer of \$41,969.26 to her daughter. Petitioner, who passed away in 2017, argued that her eligibility determination in Florida was binding on New Jersey. The Initial Decision agreed with this argument and reversed the penalty assessment. For the reasons that follow, I hereby REVERSE the Initial Decision and reinstate the penalty.

In determining Medicaid eligibility for someone seeking institutionalized benefits, the CWAs must review five years of financial history. Assets 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.*

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). 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).

In reviewing Petitioner's application, Hunterdon County became aware of a transfer of assets totaling \$41,969 to Petitioner's daughter by a bank check dated June 29, 2015. R-14. Petitioner filed for Medicaid in Florida the same day and by letter dated July 20, 2015 was granted benefits. R-15. The record is silent as to whether Petitioner, her daughter or the company hired to file the application disclosed the bank check to Florida's Medicaid program.

Petitioner's proffer that New Jersey is bound to the determination made by Florida's Medicaid program is not supported. In finding for Petitioner, the Initial Decision analyzes N.J.A.C. 10-71-3.8 with regard to Petitioner's entry in to New Jersey. While that regulation would apply if residency had been an issue, as Hunterdon County's found Petitioner eligible, her status of as a New Jersey resident was not in question. R-3.

Each State is responsible for administering a Medicaid program based on certain approvals and requirements set forth by the federal government. Enacted in 1965 as Title XIX of the Social Security Act, 42 U.S.C. § 1396 *et seq.*, the Medicaid Act is a cooperative federal-state program designed to provide medical assistance to persons whose resources are insufficient to pay for the costs of necessary medical care. The program is administered by the federal Centers for Medicare and Medicaid Services (“CMS”), a division of the United States Department of Health and Human Services (“HHS”). States that choose to participate in Medicaid must formulate a plan of

administration, which includes State regulations and administrative policies, that complies with both the Medicaid Act and regulations promulgated by HHS. 42 U.S.C. § 1396a. Participating states must adopt “reasonable standards” for determining eligibility that are “consistent with the objectives” of the Medicaid program. 42 U.S.C. § 1396a(a)(17)(A)–(B). There is no transfer of Medicaid eligibility between states and each state must determine an applicant’s eligibility based on the standards particular to their own Medicaid program. New Jersey is not was bound by Florida’s inaction on the transfer of assets.

Here Petitioner argued, without any legally competent evidence, that Florida considered the transfer of assets. Indeed, the Initial Decision’s finding that Petitioner had informed Florida of the transfer of assets is without citation to the documents presented at the hearing. ID at 10. The transfer of the funds and the Florida application occurred on the same day which raises questions whether Petitioner disclosed the transfer of assets to Florida Medicaid. See R-12 and R-15. Petitioner did not disclose the transfer on the New Jersey application. R-1. Rather Hunterdon County’s imposition of a penalty appears to be the first time a Medicaid agency became aware of the transfer which, in accordance with federal law, is subject to a penalty.

Additionally, the case C.S. v. Cape May County Board of Social Services. HMA 9761-2014, Final Agency Decision (December 23, 2014) cited in the decision demonstrably showed that the transfer of assets in question had been dealt with by the prior state of residence. In that matter, the applicant moved from Pennsylvania where she had been receiving benefits. During that time C.S. sold her Florida home and transferred the proceeds to her children. As a result “the PA-Medicaid imposed a transfer penalty or spend-down plan from December 2010 to September 2011.” HMA 9761-2014, Initial Decision at 4. The record was not clear if there was a penalty or a spend-down,

however, the net effect was ineligibility for Medicaid for nearly ten months. The holding in that case was premised that Petitioner could not be penalized for the same transactions by losing Medicaid eligibility in both the Pennsylvania and New Jersey Medicaid programs. That is not the case here.

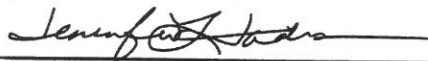
There is simply no proof that Florida Medicaid either knew about or took any action regarding the transfer of assets. There is no break in Florida's Medicaid coverage like there was in C.S., supra. that would indicate a transfer penalty. Since it is Petitioner's contention that Florida knew about the transfer, it is Petitioner's burden to demonstrate that the transfer had already been considered and subject to penalty. Nothing in the record supports her argument.

Thus, for the reasons set forth above, I hereby REVERSE the Initial Decision and reinstate the penalty for 126 days.

THEREFORE, it is on this <sup>26th</sup> day of MAY 2022,

ORDERED:

That the Initial Decision is hereby REVERSED.



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