

had transferred her two-family home to her two daughters in May 2015. She applied for Medicaid in February 2016. The record does not contain the letter granting her eligibility. Rather there is a letter from Somerset County Board of Social Services (SCBSS) dated October 26, 2016 stating that the Caregiver status was denied. A revised notice was issued on November 2, 2016 stating "Caregiver status" was denied because the documentation did not demonstrate that Petitioner needed institutional level of care for the two year prior to being institutionalized. R-1. It is this determination that is the subject of appeal.

By way of background, when an individual is seeking benefits which require meeting an institutional level of care, any transfers of resources are scrutinized. N.J.A.C. 10:71-4.10. 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). Individuals who transfer or dispose of resources for less than fair market value during or after the start of the sixty-month lookback period before the individual becomes institutionalized or applies for Medicaid as an institutionalized individual, are penalized for making the transfer. 42 U.S.C. § 1396p(c)(1); N.J.A.C. 10:71-4.10(m)(1). Such individuals are treated as though they still have the resources they transferred and are personally paying for their medical care as a private patient, rather than receiving services paid for by public funds. In other words, the transfer penalty is meant to penalize individuals by denying them Medicaid benefits during that period when they should have been using the transferred resources for their medical care. See W.T. v. Div. of Med. Assistance & Health Servs., 391 N.J. Super. 25, 37 (App. Div. 2007).

Limited exemptions to the transfer penalty rules exist. For example, the caregiver exemption provides that an individual will not be subject to a penalty when the individual transfers the "equity interest in a home which serves (or served immediately prior to entry

into institutional care) as the individual's principal place of residence" and when "title to the home" is transferred to a son or daughter under certain circumstances. N.J.A.C. 10:71-4.10(d). The son or daughter must have "resid[ed] in the individual's home for a period of at least two years immediately before the date the individual becomes an institutionalized individual" and "provided care to such individual which permitted the individual to reside at home rather than in an institution or facility." N.J.A.C. 10:71-4.10(d)(4) (emphasis added). This exemption mirrors the federal Medicaid statute. 42 U.S.C. § 1396p(c)(2)(A)(iv).

The federal statute calls for an explicit exemption from the transfer rules and is meant to compensate the child for caring for the parent. The New Jersey regulations regarding this transfer exemption are based on the federal statute. Compare 42 U.S.C. § 1396p(c)(2)(A)(iv) and N.J.A.C. 10:71-4.10(d). The statute provides that if the "equity interest in a home" is transferred by title to a son or daughter who provided such care that prevented institutionalization for at least two years, the transfer is exempt from penalty. The care provided must exceed normal personal support activities and Petitioner's physical or mental condition must be such as to "require special attention and care." N.J.A.C. 10:71-4.10(d). The Initial Decision finds that Petitioner became institutionalized on February 1, 2016. ID at 4. At minimum, it is her burden to prove that she is entitled to the exemption due to the care provided by her daughter from February 1, 2014 through February 1, 2016.

In May 2015, a deed transferred the interest in the home to both daughters. It is a two-family home. Petitioner lives with one daughter, M.D.C., in one of the units. Her other daughter J.D.C. lives in the other unit. It appears that the home was transferred back to Petitioner in October 2016. Accordingly, there is no transfer penalty that could be subject to a waiver. Nevertheless, the Initial Decision proceeded to make findings regarding whether Petitioner qualified for the exemption.

This matter was previously remanded to develop the record as to which of Petitioner's daughters was providing care beyond normal support that kept Petitioner from being

institutionalized and whether that care spanned the two full years preceding institutionalization. J.D.C. testified at the remand hearing that she was Petitioner's primary care giver. She also provided 292 pages of Petitioner's medical records. Many of the records provided were dated post institutionalization and are not germane to the present matter. See PR-1. The Initial Decision finds that J.D.C. was Petitioner's primary caregiver who provided care to Petitioner beyond normal support and that Petitioner needed institutional level of care for the two years immediately preceding institutionalization. I disagree with the Initial Decision's assessment regarding Petitioner's care needs. The care provided must be at a level so as to permit Petitioner to remain out of the nursing facility and was provided for two years prior to admission. I cannot find the support in the record of her needing that level of care for the entire two-year period.

For the reasons that follow, I hereby REVERSE the Initial Decision, as the inconsistencies between the testimony and the documents presented over the course of the proceedings do not support a finding that Petitioner met the requirements for a care giver exemption. These inconsistencies were not resolved by a preponderance of credible evidence, and I FIND the record does not support that the care spanned the full two years as required by the law.

As previously noted in the Order of Remand, Petitioner originally presented three doctor's letters, including two from the same doctor, which were inconsistent and failed to provide the necessary information and documentation to support a finding that Petitioner needed institutional level of care for the two years preceding institutionalization and that the care was provided by J.D.C. Accordingly, the Order of Remand directed that additional findings should be made regarding whether Petitioner met the level of care necessary under the exemption. The documentation provided by Petitioner fails to support a finding that she met that standard for the entire two-year period prior to institutionalization. As noted above, many of the records presented by Petitioner at the remand hearing post-dated Petitioner's

institutionalization. Further, many of the records during the relevant time period are medical testing reports with no explanation on how these reports relate to Petitioner's care needs. Moreover, the narrative reports from doctor's visits during the relevant time period do not show the care Petitioner needed or the care that was provided to Petitioner. In fact, a "Consultation Report" for April 21, 2015, which is in middle of the relevant time period, appears to state that Petitioner's health was improving. PR-1. The record has no mention of help that Petitioner required with her activities of daily living or in relation to any medical needs. Ibid. J.D.C.'s testimony at the hearings in this matter also do not specifically address what care was provided to Petitioner and only generally discusses same.

Moreover, the Order of Remand specifically requested records related to the home health aides for the period between August 2015 and February 2016, as records from the program were "contemporaneous medical records assessing her level of care for at least part of the time period in question." Petitioner failed to present any documentation related to the home health aide, which may have provided details relevant to at least a portion of the two-year period at issue in this matter.

Accordingly, Petitioner failed to meet her burden in showing that the care Petitioner needed for the two years prior to institutionalization exceeded normal personal support activities and Petitioner's physical or mental condition must be such as to "require special attention and care" as required by the regulations in order to qualify for the exemption. As Petitioner failed to meet the level of care necessary for the exemption, this Final Agency Decision will not make a determination regarding whether J.D.C. qualified for the caregiver exemption based upon her testimony as Petitioner's primary caregiver.

Based upon my review of the record and for the reasons set forth herein, I hereby REVERSE the Initial Decision and FIND that SCBSS appropriately denied Petitioner's request for the caregiver exemption in this matter.

THEREFORE, it is on this 7th day of JULY 2022,

ORDERED:

That the Initial Decision is hereby REVERSED.



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