

of assets totaling \$196,787 for less than fair market value during the five-year look-back period. The transfer of assets stemmed from cash ATM withdraws from Petitioner's bank account, transfers made to a farm upon which she resided, and unspecified gifts. On March 4, 2020, HCBSS issued an amended letter advising that the penalty was revised to 718 days, resulting from transfers totaling \$257,787. During the underlying proceedings in this matter, HCBSS agreed to accept a 1099-C tax form showing that Petitioner paid a caregiver \$26,000 in 2014 and reduced the outstanding transfer amount that was penalized. However, the total amount of the outstanding transfers at issue and what transfers comprise that amount are unclear from the record.

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 outset, I note that Petitioner was originally represented by her daughter and power of attorney, R.G., until R.G.’s death in late 2019. On January 8, 2020, Petitioner’s granddaughter, J.V., appointed Antoinette Koshykar of Senior Change Solutions as Petitioner’s Designated Authorized Representative (DAR). By the time that Ms. Koshykar was appointed as Petitioner’s DAR, Petitioner had also passed away. There is nothing in the record to show that an estate has been opened in this matter nor that J.V. was appointed as the administrator of Petitioner’s estate. While the Administrative Law Judge (ALJ) in this matter stated that “[t]here was no challenge to petitioner’s standing on behalf of J.B.”, it does not appear that either Ms. Koshykar or J.V. had the authority to pursue the present appeal, as Petitioner is deceased and no estate has been opened. Accordingly, I REMAND the matter for further development of the record and findings regarding whether either of the aforementioned parties has standing to pursue the present appeal. Specifically, documentation should be provided showing whether an estate has been opened upon Petitioner’s passing and if so, who has been appointed as the administrator of Petitioner’s estate.

Further, the record is unclear regarding the total amount of the penalized transfers at issue in this matter and the transactions that encompass the penalized transfers. Additionally, there is conflicting documentation in the record regarding whether HCBSS accepted the lease provided by J.V. and Ms. Koshykar and credited Petitioner for payments made pursuant to that lease. It is additionally unclear how much the total amount of the farm taxes in this matter were, why Petitioner was required to pay these taxes quarterly in addition to a monthly lease payment of \$2,400 on a farm she did not own, who owned the farm, who else resided on the farm, who else was responsible for payment of the farm taxes, and whether Petitioner resided alone. Accordingly, should standing to pursue the present appeal

be established, I also REMAND this matter for further development of the record to clarify the record related to the full penalty and transactions at issue. Specifically, a detailed accounting of all transactions subject to the penalty, credits to Petitioner for identified expenses accepted by HCBSS, and the total amount of the penalty ultimately being imposed by HCBSS need to be provided. Moreover, copies of all farm tax bills for the years in question where Petitioner allegedly made payments to the farm for said taxes need to be provided, showing the total amount paid on the property for each tax year. Documentation should be provided that shows the division of property taxes between the residents of the property, a calculation that determined Petitioner's share of the farm taxes, and how the amount set forth on the lease was determined. Additionally testimony should also be provided to explain any other outstanding issue noted above, including why Petitioner agreed and was required to pay farm taxes for a property not owned by her, who else resided on the property, who owned the property, and whether Petitioner resided alone.

I further note that the Initial Decision in this matter does not make a determination regarding the specific transfers that the ALJ found were rebutted by J.V. and Ms. Koshykar nor which transfers were properly penalized by HCBSS. As noted above, it is the applicant's burden to show that the assets that were transferred were not transferred in order to establish Medicaid eligibility by presenting convincing evidence that the assets were transferred exclusively for some other purpose. N.J.A.C. 10:71-4.10(j). Additionally, credible, documentary evidence must exist that shows a nexus between the transfers at issue and the alleged purpose for those transfers. Upon clarification of the record, the Initial Decision on remand should specifically account for any and all transfers that the ALJ finds were successfully rebutted by Petitioner with a detailed discussion explaining the documentary evidence admitted into the record to support such a finding. The Initial Decision should also set forth those transfers which were not successfully rebutted and the total amount of the transfers that the ALJ finds were properly penalized by HCBSS.

Based upon my review of the record and for the reasons set forth herein, I hereby REVERSE the Initial Decision in this matter and REMAND the matter to clarify the record, as detailed herein.

THEREFORE, it is on this 10th day of NOVEMBER 2022,

ORDERED:

That the Initial Decision is hereby REVERSED and REMANDED, as set forth herein.



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