

receipt of benefits as a result of transfers totaling \$27,580 for less than fair market value during the look-back period. R-6. This matter was previously remanded for the sole purpose of clarifying how the transfer penalty in this matter was determined.¹

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

¹ The March 4, 2022 Order of Remand reversed the December 9, 2021 Initial Decision’s findings that Petitioner had rebutted the presumption that the transfers at issue were done for the purposes of qualifying for Medicaid. The Order of Remand found that the findings contained in the Initial Decision appeared to be contradictory and the ultimate conclusion that Petitioner overcame the presumption that the transfers at issue were for the purposes of establishing Medicaid eligibility was not supported by the record, as no documentation was supplied on Petitioner’s behalf showing how the funds were used, whether the funds were used for Petitioner’s benefit, or where the funds were deposited. Accordingly, while the present Initial Decision discusses and makes findings related to the contentions of Petitioner’s representatives related to the purposes of the transfers at issue and ultimately upheld the penalty imposed by Morris County, the Order of Remand previously upheld the penalty imposed. The only issue on remand was to clarify the record to show how Morris County calculated and imposed the penalty in this matter.

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.

The Initial Decision affirmed the imposition of the transfer penalty, finding that Petitioner's representatives failed to provide sufficient documentary evidence to find that the transfers at issue were not done in order to establish Medicaid eligibility. Based upon my review of the record, I hereby ADOPT the findings and conclusions of the Administrative Law Judge (ALJ).

The transfers at issue resulted from "[a] close family friend, D.W.," and Petitioner's stepsister, D.K., depositing Petitioner's monthly Social Security benefits from June 2015 through June 2020² into a bank accounts owned by D.W.³ Between June 2015 and June 2020, Petitioner's Social Security benefits, totaling \$27,580, were deposited into D.W.'s bank account. R-5.

While not previously submitted at the original hearing in this matter, Petitioner's representatives provided bank statements at the remand hearing that show that Petitioner's monthly Social Security benefits were deposited into an account held by D.W., with D.K. listed as power of attorney (POA). P-4 and P-5. Petitioner is not listed as an owner of the bank account that her Social Security benefits were deposited into.⁴ Petitioner's representatives did not provide any credible, documentary evidence that shows what the

² The Initial Decision provides that Petitioner's monthly Social Security payments from June 2015 through December 2018 were \$912 and her payments increased to \$934 per month in 2019 and \$942 per month in 2020. ID at 2.

³ Morris County's June 26, 2020 letter to Petitioner states that "[i]t was previously disclosed that [Petitioner]'s income is deposited into an account owned by [D.W.]" and requested bank statements to verify that Petitioner's income was deposited into D.W.'s account during the previous five years. R-4.

⁴ Morris County's exceptions to the Initial Decision additionally points out that although the Initial Decision states that JL held a joint account with either D.W. and/or D.K., there was never a joint account owned by Petitioner with D.W. and/or D.K. Petitioner's income was deposited into an account in the name of D.W. with D.K. listed as POA.

transfers were used to purchase and if the transfers were used for Petitioner's benefit. In fact, the bank statements provided show that Petitioner's Social Security benefits were comingled with D.W.'s funds and D.W. used the account for her own personal needs. There is no way to concretely determine from the bank statements provided if Petitioner's Social Security benefits were used solely for Petitioner, as no receipts or an actual accounting of any of Petitioner's expenses have been provided.

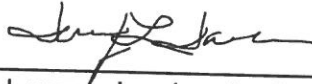
Moreover, as noted by Morris County in its exceptions, the Initial Decision's finding that "[t]here were no extraordinarily large, lump sum transactions typically indicative of someone trying to quickly dissipate their assets for Medicaid qualification" has no effect on whether a penalty should or should not be imposed on a transfer of assets. Nothing in the federal or state transfer rules limit application to wealthy individuals or large, lump sum transfers. Federal law mandates that Medicaid impose a five-year look-back period to determine if the applicant has made any transfers of assets for less than fair market value. 42 U.S.C. 1396p(c)(1)(B)(i). If a transfer of asset occurs, a penalty is calculated wherein no payment may be made for nursing facility care. 42 U.S.C. 1396p(c)(1)(E)(I); see also N.J.A.C. 10:71-4.7.10(m). The federal law was amended in 2006 to require states impose penalties based on the number of days and prohibited excluding any partial days assessed. See 42 U.S.C. 1396p(c)(1)(E)(iv)(providing a "[s]tate shall not round down, or otherwise disregard any fractional period of ineligibility"). As such, Congress made it clear that all penalties, including minimal transfers resulting in a few days of ineligibility, must be imposed.

Petitioner, through her representatives, thus, failed to present any competent evidence to support a conclusion that the funds at issue were transferred solely for a purpose other than qualifying for Medicaid benefits nor was any documentation provided showing that the transfers were used solely for Petitioner's benefit. Accordingly, I ADOPT the ALJ's recommended decision that the penalty imposed by Morris County, as a result of transfers totaling \$27,580, was appropriate.

THEREFORE, it is on this 2nd day of DECEMBER 2022,

ORDERED:

That the Initial Decision is hereby ADOPTED.



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