



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES

L.D.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

MIDDLESEX COUNTY BOARD

OF SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 02621-2021

As Assistant Commissioner for the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision and the Office of Administrative Law (OAL) case file. No exceptions were filed in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is January 18, 2022, in accordance with an Order of Extension.

This matter arises from the imposition of a transfer penalty on Petitioner's receipt of Medicaid benefits. By letter dated February 17, 2021, the Middlesex County Board of Social Services (MCBSS) advised Petitioner that a penalty of 191 days was assessed on her receipt of Medicaid benefits resulting from the transfer of assets, totaling \$68,425.38 for less than

fair market value, during the five-year look-back period. The transfer of assets stem from the sale of Petitioner's property for \$34,000.36 less than fair market value and transfers to Petitioner's daughter and power of attorney (POA), M.S., and to "cash," totaling \$34,425.02.

The Initial Decision determined that Petitioner had shown that a portion of the transfers were reimbursements for Petitioner's expenses, and reduced the penalty imposed in relation to those expenses. The Initial Decision, however, found that Petitioner had failed to rebut the presumption that the remaining transfers and the sale of Petitioner's property for less than fair market value were done for the purposes of qualifying for Medicaid benefits. Based upon my review of the record, I hereby ADOPT in part and REVERSE in part the findings and conclusions of the Administrative Law Judge (ALJ).

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.

On December 28, 2020, a Medicaid application was filed on Petitioner’s behalf by M.S. and attorney Jason Alguram, Esq. R-1. At the time of the application, Petitioner was residing in a nursing facility. ID at 2. MCBSS determined that Petitioner was eligible for Medicaid benefits; however, through a letter dated February 17, 2021, Petitioner was advised that she was being assessed a transfer penalty totaling \$68,425.38, as a result of transfers made for less than fair market value during the look-back period. R-2. Specifically, MCBSS advised that the sale of Petitioner’s property for \$215,000 on April 27, 2016 was completed for \$34,000.36 less than fair market value. Ibid. MCBSS determined that the fair market value of Petitioner’s property at the time of its sale was \$249,000.36. MCBSS further determined that Petitioner made several unverified withdrawals from her Wells Fargo bank account totaling \$34,425.02. Ibid. MCBSS provide a list of the unverified transactions at issue, which were dated from December 31, 2016 through September 21, 2020.¹ Ibid.

As it relates to the sale of Petitioner’s property, M.S. testified that the property was sold “as is” because it needed substantial repairs and there was insufficient money to pay for the necessary remodeling costs.” ID at 4. The property was not appraised prior to the sale. Ibid. The fair market value of a property is “an estimate of the value of an asset, based on generally available market information, if sold at the prevailing price at the time it was actually transferred.” N.J.A.C. 10:71-4.10(b)6. Absent a certified appraisal, the value of a resource

¹ The Initial Decision notes that Petitioner provided MCBSS with information regarding some of the transfers originally at issue, and MCBSS revised the list of transfers that were subject to the penalty. ID at 3. While the February 17, 2021 letter from MCBSS contained thirty-two transfers, the Initial Decision provides a list of only twenty-one transfers. R-2 and ID at 7. Accordingly, it appears that only the twenty-one referenced transfers, totaling \$14,875 and issued between December 31, 2016 and November 7, 2019, are at issue in this matter. However, I note that it is unclear from the record whether MCBSS removed the remaining eleven transactions from the imposed penalty.

is considered “the price that the resource can reasonably be expected to sell for on the open market in the particular geographic area minus any encumbrances (that is, its equity value).” N.J.A.C. 10:71-4.1(d). The equity value of real property is “the tax assessed value of the property multiplied by the reciprocal of the assessment ratio as recorded in the most recently issued State Table of Equalized Valuations, less encumbrances, if any. . . .” N.J.A.C. 10:71-4.1(d)1iv. MCBSS determined that the equity value of the property at the time it was sold was \$249,000.³⁶²

Petitioner provided a letter, dated March 9, 2021, from Thomas Campbell, the listing relator for the sale, who stated that the property was listed on the Garden State Multiple Listing Service and “[t]he property did need updating throughout, especially in the kitchen and bathroom.” P-2. He stated that he believed the property was sold at market value. *Ibid.* Mr. Campbell did not testify at the hearing in this matter and accordingly, his letter is considered hearsay. While hearsay evidence shall be admissible during contested cases before the OAL some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness. N.J.A.C. 1:1-15.5(b). The finding of fact cannot be supported by hearsay alone. Rather, it must be supported by a residuum of legal and competent evidence. *Weston v. State*, 60 N.J. 36, 51 (1972). No other documentation supporting Petitioner’s contention that the property was in need of repairs has been provided to support either M.S.’s testimony or the contents of Mr. Campbell’s letter. Absent a certified appraisal for the property and documentary evidence to support Petitioner’s contention that the property was in a deteriorated condition at the time of the sale and could not be sold for

² The tax assessed value of the property when it was sold in April 2016 was \$68,500. That amount divided by .2751, which is the Middlesex County assessment ratio for Woodbridge Township, New Jersey in the State Table of Equalized Valuations, results in a valuation of \$249,000.36. See State of New Jersey, Department of the Treasury, Division of Taxation, Table of Equalized Valuations, Middlesex County, 2016, <http://www.state.nj.us/treasury/taxation/lpt/lptvalue.shtml>.

\$249,000.36, I concur with the ALJ and FIND that the fair market value of the property at the time of its sale was \$249,000.36. I further FIND that Petitioner has failed to present any documentation to support a finding that the sale of the property for less than the fair market value determined by MCBSS was solely for any reason other than to establish Medicaid eligibility.

As it relates to the remaining transfers at issue, M.S. testified that she would purchase items for Petitioner and then reimburse herself from her Petitioner's account. ID at 2. M.S. further stated that she paid a companion approximately \$400 per week to stay with Petitioner and drive Petitioner to doctors' appointments and other locations while Petitioner resided in the community. Ibid. M.S. further stated that she paid for personal care services for Petitioner through a program offered by her employer, where funds to pay a company called Bright Horizons were taken directly from M.S.'s paychecks. Id. at 5. M.S. testified that check number 2160 was a gift to her daughter for helping to care for Petitioner; check number 2231 was written to M.S. on November 7, 2019, after Petitioner moved to a new nursing facility, and "[a]lthough it was likely written to reimburse M.S. for expenditures on behalf of [P]etitioner, M.S. could not identify expenditures;" and check number 2200 was written on November 25, 2018 to M.S.'s fiancé to reimburse him for Amazon purchases he made on Petitioner's behalf. Id. at 6.

M.S. provided bank statements and cashed checks/withdrawal receipts related to the transfers at issue. P-3 and P-5. While some of the checks had handwritten notations, the notations were not originally noted on the checks when they were issued and are only written on the copies of the checks for the purposes of the present matter. Ibid. M.S. additionally provided some documentation related to expenditures she alleged to have made on Petitioner's behalf. She produced documentation for five prescriptions in Petitioner's name, dated between July 22, 2019 and August 7, 2019, totaling \$41.62. P-1. She additionally provided Walmart and JC Penney receipts showing various items, such as a nightlight,

nightgown, and ointment alleged to have been purchased for Petitioner. P-1. M.S.'s credit card statements provided show various purchases; however it is unclear what transactions allegedly relate to Petitioner, as no cooperating documentation was provided. Lastly, M.S. provided emails from Bright Horizons showing that a payment of \$34 was made on July 13, 2019 and three \$36 payments were made on August 10, 2019, August 13, 2019, and August 14, 2019, respectively.³ Ibid.

Based upon the documentation presented and M.S.'s testimony on Petitioner's behalf, the ALJ determined that Petitioner had failed to explain the nature of the majority of the transactions at issue. Specifically, the ALJ noted that no documentation was provided to support M.S.'s testimony that check number 2200 was for Amazon purchases for Petitioner nor was any documentation provided to check number 2142 that was allegedly provided to "granddaughter's friend." ID at 11. Moreover, no documentation was provided showing the purpose of any of the withdrawals that were issued to "cash." Ibid. However, the ALJ found that Petitioner had demonstrated that M.S. expended money on Petitioner's behalf for the Walmart purchases on August 16, 2019, totaling \$10.87, and August 26, 2019, totaling 12.32, as well as the payment for Petitioner's five prescriptions on July 22, 2019 and August 7, 2019, totaling \$41.62, and the payments to Bright Horizons on July 13, 2019, August 10, 2019, August 13, 2019, and August 14, 2019, totaling \$142. The ALJ determined that the imposed penalty in this matter should be reduced by the above-referenced amounts. I disagree.

While M.S. provided documentation related to expenditures that she allegedly made on Petitioner's behalf, there is no nexus between any of these alleged expenditures and the transfers at issue. All of the expenditures noted in the Initial Decision occurred between July and August 2019. The only transfer still at issue that occurred around or after the dates that

³ The Initial Decision provides that the emails show five payments to Bright Horizons. ID at 9. However, an email from August 10, 2019, showing a \$36 payment, was provided twice. P-1. Accordingly, there were only four payments to Bright Horizons shown.

these expenditures took place was check number 2231 in the amount of \$530, which was issued on November 7, 2019. M.S. testified that she could not explain what this check was for or what alleged reimbursements this check covered. While M.S. may have paid for items for Petitioner, there is nothing in the record to show that Petitioner agreed to reimburse M.S. for these alleged payments or that any of the transfers at issue were made to reimburse these expenditures. Moreover, as Petitioner's POA, M.S. had access to Petitioner's bank account, and she appears to have executed all of the unverified transfers in this matter on Petitioner's behalf. It is unclear then why Petitioner's expenses were not paid directly from Petitioner's account. Without adequate documentation showing a nexus between the transfers and alleged reimbursements, Petitioner cannot now claim that the unverified transfers at issue should be offset by random purchases allegedly made on Petitioner's behalf. Accordingly, I FIND that Petitioner failed to demonstrate that all the unverified transfers from Petitioner's Wells Fargo's bank account were made for a purpose other than to qualify for Medicaid benefits.

Thus, based upon my review of the record and for the reasons set forth herein, I hereby ADOPT in part and REVERSE in part the ALJ's recommended decision, as set forth above. Further, I 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 imposed penalty period is appropriate.

THEREFORE, it is on this 18th day of JANUARY 2022

ORDERED:

That the Initial Decision is hereby ADOPTED in part and REVERSED in part, as set forth herein.



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