

At issue is a \$218,000 transfer penalty.¹ On September 28, 2021, Petitioner filed a Medicaid application with the Bergen County Board of Social Services (BCBSS). In determining Medicaid eligibility for someone seeking institutionalized benefits, the counties must review five years of financial history. Medicaid law contains a presumption that any transfer for less than fair market value during the five year look-back period was made for the purpose of establishing Medicaid eligibility. See E.S. v. Div. of Med. Assist. & Health Servs., 412 N.J. Super. 340 (App. Div. 2010); N.J.A.C. 10:71-4.10(i). 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). 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).

The transfer at issue concerns the sale of Petitioner’s home to her son. February 28, 2020, Petitioner and her husband transferred their house to their son for \$10.00. Four years prior, Petitioner’s son negotiated a sum of \$690,000 to satisfy the Final Judgement entered against his parents when they defaulted on their mortgage. However, the house remained in Petitioner’s and her husband’s name until February 2020. Petitioner does not dispute that the house was transferred to her son in February 2020. Rather, she argues that the house had no value at the time of transfer, that the compensation she received was greater than the value of the house, and that the estimated value of \$908,100 should be rejected.

BCBSS is tasked with valuing the transferred resource and determining if the Petitioner received fair market value. The value of a resource “shall be defined as the price that the resource can reasonably be expected to sell for on the open market in the particular

¹ The penalty amount is the difference between the amount Petitioner’s son paid to satisfy the mortgage and the fair market value of the home. That amount was then divided between Petitioner and her husband, who simultaneously applied for Medicaid. Each was penalized \$109,050 resulting in a ten month, one-day penalty period.

geographic area minus any encumbrances (that is, its equity value)." N.J.A.C. 10:71-4.1(d). When the eligible individual is the sole owner of real property and has the right to dispose of the property, "the total equity value shall be counted toward the resource maximum." N.J.A.C. 10:71-4(d)1i. The calculation for the equity value of real property is laid out in the regulations which provides that the equity value is the "tax assessed value of the property multiplied by the reciprocal of the assessment ratio as recorded in N.J.A.C. 10:71-4.1 most recently issued State Table of Equalized Valuations, less encumbrances, if any. N.J.A.C. 10:71-4.1(d)1iv.

I recognize that our current Medicaid regulation defines equity value as the taxed assessed value of the property. N.J.A.C. 10:71-4.1(d)(1)(iv). However, I agree with the ALJ that the tax assessed value is not necessarily an accurate reflection of the price that property can garner on the open market, especially where, as here, the property's assessed value has not changed for more than a decade. Consequently, in an attempt to decipher the fair market value of the property, the CWA consulted an independent real estate marketing company to provide another valuation. Petitioner's claim that the valuation was too high and did not reflect the market value of the property was not supported by competent evidence. N.J.A.C. 1:1-15.5(b), the residuum rule, requires "some legally competent evidence" to exist "to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness." No such evidence was presented in this matter that would overcome the independent valuation.

THEREFORE, it is on this 26th day of JULY 2022,

ORDERED:

That the Initial Decision is ADOPTED.



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