

2020 application with eligibility as of October 26, 2020. A penalty of 55 days was assessed resulting from the transfer of assets totaling \$18,878.17 for less than fair market value during the five-year look-back period. The transfer of assets stemmed from (1) an October 25, 2017 transfer in the amount of \$1,400; (2) a January 16, 2018 transfer in the amount of \$1,500; and (3) an August 12, 2020 cash withdrawal by Petitioner's son, L.C., Jr., in the amount of \$15,978.17. ID at 2. Atlantic City subsequently removed the \$1,400 and \$1,500 transfers from the penalty calculation, after it was determined that these were actually deposits rather than debits. Id. at 3. Accordingly, the penalty period was reduced to 44 days based solely upon the \$15,978.17 cash withdrawal made by L.C., Jr. Ibid.

The Initial Decision upholds the imposition of the transfer penalty at issue, as the Initial Decision found that Petitioner failed to demonstrate that the funds contained in the joint bank account that Petitioner held with L.C., Jr., solely belonged to L.C., Jr. and thus, Petitioner failed to rebut the presumption and that the funds withdrawn from the joint bank account were transferred for the purpose of qualifying Petitioner for Medicaid. See N.J.A.C. 10:71-4.10(j). Based upon my review of the record, I hereby ADOPT 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.

In the present matter, Petitioner submitted a Medicaid application on November 3, 2020, which sought institutionalized care. ID at 2. Petitioner jointly owned a TD Bank account with L.C., Jr. and Petitioner agrees that she had full access to the funds contained in the joint account. On August 12, 2020, less than two months before the Medicaid application was filed, L.C., Jr. withdrew all of the funds in the joint account, which totaled \$15,978.17. Petitioner argues that the funds contained in the joint bank account solely belonged to L.C., Jr. Specifically, Petitioner argues that L.C., Jr. received Social Security benefits on a Direct Express debit card, would then withdraw money from that card, and deposit either all or some of the funds withdrawn into the joint TD Bank account. P-1. Petitioner claims that her name was listed on the TD Bank account for convenience purposes in case L.C., Jr.’s medical challenges prevented him from going to the bank. ID at 4. Petitioner presented bank statements from L.C., Jr.’s Direct Express account and the joint T.D. Bank account. The Direct Express statements, for the periods between January 2017 and April 2020 show that funds would be withdrawn from the Direct Express account in cash via an ATM every month. P-1. The average amounts withdrawn each month ranged between \$900 and \$1,100. Ibid. The TD Bank statements, for the periods between October 2015 and September 2020, when the account was closed, show that, on average, deposits ranging

between \$300 and \$1,200 were made into the account on various months. Ibid. Deposits were not made every month into the TD Bank account. The statements do not show who made the deposit or how the deposit was made. The amounts of the deposits do not correspond with the amounts of the withdrawals from L.C., Jr.'s Direct Express account. It remains unclear where the funds deposited into the joint TD Bank account originated. However, as joint account holder of the TD Bank account, the funds contained in the account were available to Petitioner and Petitioner agrees that she had access to those funds. Notably, the account was closed and the funds withdrawn less than two months prior to Petitioner applying for Medicaid, at a time that Medicaid eligibility would have been a consideration. Petitioner, thus, has not shown that the funds contained in the joint TD account solely belonged to L.C., Jr.

Accordingly, and based upon my review of the record, I hereby ADOPT the ALJ's recommended decision and FIND that Petitioner has failed to rebut the presumption that the transfer at issue in this matter was made in order to establish Medicaid eligibility, and, therefore, the penalty imposed was appropriate.

THEREFORE, it is on this 24th day of JUNE 2022,

ORDERED:

That the Initial Decision is hereby ADOPTED.

Gregory Woods

OBO

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