

Services (MCDSS) granted Petitioner's September 2020 application with eligibility as of November 1, 2020. However, a penalty of 865 days was assessed resulting from the sale of Petitioner's property (the property) for \$293,014 less than fair market value and various cash transfers, totaling \$16,644, during the look-back period.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 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.

¹ In an Order of Remand, issued on December 23, 2021, I adopted the previously-issued Initial Decision's determination that Petitioner failed to rebut the presumption that the \$16,664 in cash transfers were made for the purposes of qualifying for Medicaid. Accordingly, the penalty imposed on these transfers has been affirmed.

On September 5, 2015, Petitioner executed a deed that transferred her property to her children, G.V. and A.F., for the sum of \$1.00. R-1. The deed was recorded at the Monmouth County Clerk's Office on September 23, 2015. Ibid. Petitioner filed an application for Medicaid benefits on September 19, 2020. Ibid. In reviewing Petitioner's application, MCDSS determined that the \$16,644 in cash transfers and the transfer of Petitioner's property were made for less than fair market value during the five-year look-back period and assessed a total transfer penalty in the amount of \$309,658.82. By letter dated December 23, 2020, MCDSS notified Petitioner of its intent to impose the 865 day penalty for the transfers and provided Petitioner until January 12, 2021 to respond to the letter. Ibid. Petitioner did not respond.

The previously issued Initial Decision, dated October 12, 2021, found that because the deed was executed on September 5, 2015 and Petitioner filed for Medicaid benefits on September 19, 2020, the transfer of the property was outside of the five-year look-back period and therefore, the penalty imposed on that transfer was improper. I concurred with the ALJ's assessment that, in this matter, the execution date of September 5, 2015, rather than the recordation date of September 23, 2015, is the date upon which the property was transferred. See H.K. v. State of New Jersey, 184 N.J. 367 (2005). However, Petitioner's application noted that she previously filed a Medicaid application. R-1. The matter was then remanded for clarification regarding whether Petitioner had previously filed an application for Medicaid benefits and if so, on what date had the application been submitted. During the remand proceedings, MCDSS supplied a copy of Petitioner's April 3, 2020 Medicaid application, which was denied as a result of Petitioner's failure to provide requested verifications. R-1A and R-2B.

Each applicant has a baseline look-back period, regardless of how many applications are filed. The federal government has directed states to calculate the look-back period based upon the first application for Medicaid. See State Medicaid Manual §3258.4(C). Accordingly,

the look-back period in this matter is determined by Petitioner's first application, dated April 3, 2020, rather than her September 19, 2020 application. As a result, the transfer of the property to Petitioner's children on September 5, 2015 falls within the look-back period. The property was transferred without receiving the fair market value of the property, identified by MCDSS as \$293,014, and Petitioner has failed to provide any documentation showing that the transfer was made solely for any other reason than to qualify for Medicaid.

Accordingly, and based upon my review of the record, I hereby ADOPT the Administrative Law Judge's recommended decision and FIND that the penalty imposed by MCDSS in this matter was appropriate.

THEREFORE, it is on this 25th day of OCTOBER 2022

ORDERED:

That the Initial Decision is hereby ADOPTED.



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