

the look-back period. Medicaid law contains a presumption that any transfer for less than fair market value during the 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 only transfer still at issue is that of Petitioner’s NGL pre-need insurance policy to her daughter. There is no question that Petitioner transferred ownership to her daughter. Accordingly, she is subject to a transfer penalty unless she can demonstrate that transfer was for fair market value and not for the purpose of qualifying for Medicaid. To that end, Petitioner submitted multiple letters from NGL stating that at times the policy was revocable and at other times was irrevocable. The first two letters confirming the transfer of ownership and revocable nature of the assignment were signed by an NGL account coordinator. Conversely, the last two letters dated August 25 and 26, 2021 were sent by an unnamed customer service representative. The August 25, 2021 letter, which was filled with inconsistencies, now claimed that the policy “was irrevocably assigned at the time of issue on 01/15/2015.” However, the letter itself identifies the date of issue as 01/08/2015. It also shows a change in the policy type and claimed that it could no longer be surrendered for cash value. Finally, the August 26, 2021 letter shows that the death benefits can be paid to any funeral services provider who can furnish proof of services rendered. The contradictory nature of the January and August NGL letters makes them unreliable. Petitioner was given an opportunity on remand to present additional documentation to show that the policy met

the guidelines for preneed funeral trust, and that Petitioner received fair market value for her transfer. Petitioner could have provided a copy of the policy in question and/or a copy of the burial agreement. Unfortunately, Petitioner merely resubmitted the August 25, 2021 letter referenced above which had already been established as unreliable and insufficient evidence.

As a result, I FIND that Petitioner was the owner of an NGL insurance policy, and that Petitioner transferred said ownership of that policy to her daughter on or about June 25, 2020. In transferring the asset to her daughter, Petitioner subjected herself to a transfer penalty in the amount of the cash value of the NGL policy. Additionally, I FIND that Petitioner did not meet her burden to show that she received fair market value for the transfer of the policy to her daughter or that she transferred the policy for some purpose other than to qualify for Medicaid.

THEREFORE, it is on this 1st day of FEBRUARY 2022,

ORDERED:

That the Initial Decision is REVERSED; and

That the transfer penalty is upheld.



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