

record, I hereby REVERSE 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.

Limited exemptions to the transfer penalty rules exist. For example, the caregiver exemption provides that an individual will not be subject to a penalty when the individual transfers the “equity interest in a home which serves (or served immediately prior to entry into institutional care) as the individual’s principal place of residence” and when “title to the home” is transferred to a son or daughter under certain circumstances. N.J.A.C. 10:71-4.10(d). The son or daughter must have “resid[ed] in the individual’s home for a period of at least two years immediately before the date the individual becomes an institutionalized individual” and “provided care to such individual which permitted the individual to reside at home rather than in an institution or facility.” N.J.A.C. 10:71-4.10(d)4. This exemption mirrors the federal Medicaid statute. 42 U.S.C.A. § 1396p(c)(2)(A)(iv).

The federal statute calls for an explicit exemption from the transfer rules and is meant to compensate the child for caring for the parent. The New Jersey regulations regarding this

transfer exemption are based on the federal statute. See 42 U.S.C. § 1396p(c)(2)(A)(iv) and N.J.A.C. 10:71-4.10(d). The statute provides that if the “equity interest in a home” is transferred by title to a son or daughter who provided such care to a parent while “residing in such [parent’s] home” that prevented institutionalization for at least two years, the transfer is exempt from penalty. 42 U.S.C. § 1396p(c)(2)(A)(iv). The care provided must exceed normal personal support activities and Petitioner's physical or mental condition must be such as to "require special attention and care." N.J.A.C. 10:71-4.10(d).

In reviewing the caregiver exemption, the Appellate Division noted that the “receipt of Medicaid benefits is not automatic. Understanding the State’s need to conserve limited financial resources to assure monies are paid to those who meet the circumscribed eligibility requirements, we will not merely assume the criteria as satisfied. Rather, proof must be forthcoming specifically establishing each requirement of the exception to obtain its application.” M.K. v. DMAHS and Burlington County Board of Social Services, Docket No. A-0790-14T3, decided May 13, 2016, slip op. at 17.

In the present matter, Petitioner’s daughter is seeking to have Petitioner’s 50% interest in a home they shared transferred to her under the caregiver exemption. Petitioner’s daughter currently owns the other 50% interest in the property. Petitioner was admitted into a nursing facility in December 2019. R-1. Petitioner filed an application for Medicaid benefits on or about February 26, 2020, which was granted, effective May 1, 2020. R-2 and R-3. Petitioner requested a caregiver exemption on April 7, 2020 and April 27, 2020. R-5 and R-6. BCBSS issued two determinations in this matter, dated April 22, 2020 and June 29, 2020, denying Petitioner’s requests for the caregiver exemption. R-4 and R-9. The April 22, 2020 letter provided that “we have denied the request. Based on the daughter’s income tax return, she made decent income for 2017 and 2018. It is impossible to give 24/7 care to client while working a full-time job. . . . no 24/7 care existed.” R-4. June 29, 2020 letter stated that the exemption was denied because “you have not provided proof that [Petitioner] was in need of

an institutional level of care for the two (2) year period prior to entering a nursing home, which would cover the period of December 17 through December 2019.” R-9. The Initial Decision found that the exemption should have been granted, providing that Petitioner was in need of institutional level of care for the two-year period immediately preceding her being admitted into a nursing facility and that her daughter’s care during that time permitted Petitioner to reside at home rather than being institutionalized.

However, there is nothing in the record to show that the property interest at issue was ever transferred to Petitioner’s daughter. Moreover, no penalty was imposed on Petitioner’s receipt of Medicaid benefits related to a transfer of Petitioner’s property interest. Petitioner received uninterrupted Medicaid benefits from May 1, 2020 until her death. The exemption requested specifically hinges on the existence of a penalty being imposed on the applicant’s receipt of Medicaid benefits due to a transfer of resources for less than fair market value. See N.J.A.C. 10:71-4.10(d). Here, as the property interest was never transferred from Petitioner to her daughter and a penalty was not imposed, no exemption can be granted. The requests for said exemption should not have been considered by BCBSS until after the ownership of the property was transferred. I additionally note that, as Petitioner has now expired, the ownership of the property interest belongs to Petitioner’s estate, rather than to Petitioner, and as Medicaid benefits have been terminated as a result of her passing, a penalty on Petitioner’s receipt of benefits can no longer occur. Accordingly, Petitioner is not entitled to a caregiver exemption, pursuant to N.J.A.C. 10:71-4.10(d), in this matter. I note that as Petitioner does not qualify for the caregiver exemption on the basis that the ownership of the property was not transferred, I make no findings related to whether Petitioner’s care needs “exceed[ed] normal personal support activities” to otherwise qualify for the exemption.

Based upon my review of the record and for the reasons set forth herein, I hereby REVERSE the Initial Decision

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

ORDERED:

That the Initial Decision is hereby REVERSED.



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