



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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Assistant Commissioner

STATE OF NEW JERSEY  
DEPARTMENT OF HUMAN SERVICES  
DIVISION OF MEDICAL ASSISTANCE  
AND HEALTH SERVICES

P.L.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

MORRIS COUNTY OFFICE OF

TEMPORARY ASSISTANCE,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 02697-2022

As Assistant Commissioner for the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision and the Office of Administrative Law (OAL) case file. Petitioner filed exceptions in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is October 21, 2022, in accordance with an Order of Extension.

This matter arises from the imposition of a transfer penalty on Petitioner's receipt of Medicaid benefits. On March 24, 2022, Petitioner received a letter from the Morris County Office of Temporary Assistance (Morris County), which granted Petitioner's March 2021

application with eligibility as of March 1, 2021. However, a penalty period of 2,451 days was assessed resulting from the transfer of assets, totaling \$876,967.76, for less than fair market value during the five-year look-back period. The transfer of assets stem from (1) a check issued to Petitioner's daughter in the amount of \$2,500, and (2) the value of an alleged life estate held by Petitioner in a property in Brooklyn, New York that sold on June 29, 2017. Petitioner does not contest the penalty associated with the \$2,500 check. Morris County initially valued the alleged life estate interest at \$874,467.76; however, during the course of the present appeal, the parties agreed that this amount was incorrect and Morris County amended the assessment to \$513,532.24.<sup>1</sup> Thus, the total transfer amount penalized by Morris County in this matter is \$516,032.24.

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

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<sup>1</sup> This amount was calculated by using the sale price of \$1,388,000 and multiplying that by .36998, which is the life estate value for Petitioner's age, pursuant to the guidelines set forth in N.J.A.C. 10:71-4.10(6)(iii).

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.

The Initial Decision determined that the imposed penalty was appropriate, as Petitioner held a life estate interest in the Brooklyn property and that she sold that interest for less than fair market value. I disagree. The ownership of the property at issue was originally transferred to Petitioner’s family’s Irrevocable Trust (Trust) on May 28, 2014. ID at 3. Petitioner, and her now, deceased spouse were listed as the Grantors of the Trust and J.A., Petitioner’s daughter, was listed as the Trustee. Ibid. The Trust required that during Petitioner’s life, the Trustee would pay income to or for the benefit of Petitioner. Id. at 4. The Trust additionally provided Petitioner with the right to occupy the premises for residential purposes, without paying rent; however, if Petitioner vacated the property or resided elsewhere for a continuous period of six months, the Trustee had right to sell the property. Ibid. The Trust additionally provided that if the property is sold, the proceeds for the trust would be added to the Trust to provide for Petitioner and not accumulate funds for the remainder beneficiaries. Ibid. The remaining Trust property would then be distributed to Petitioner’s daughter once the Trust terminates upon Petitioner’s death. Ibid.

It is a long-standing principle that life estates have value. See e.g., In re Estate of Romnes, 79 N.J. 139, 150 n.4 (1979); In re Estate of Lichtenstein, 52 N.J. 553, 563 (1968); Neiman v. Hurff, 11 N.J. 55, 62-63 (1952); Camden v. Williams, 61 N.J.L. 646, 647 (N.J. 1898). However, a life estate is created by deed, can be freely alienated, and is taxable. N.J.S.A. 46:3-5 and -13. N.J.S.A. 46:3-13 specifically provides that “in the absence of other words in the deed clearly indicating an intention to limit the estate to the life of the grantee, [it is to] be considered as presumptive evidence that the grantor intended thereby to convey

an estate in fee simple. . . .” Moreover, as noted by Petitioner in her exceptions, New York requires that any “common interest appertaining to the unit” be disclosed in writing in the deed or lease. N.Y. Real Prop. Law § 339-o4. Although the Trust documents required that Petitioner have the right to occupy the property after the ownership of the property was transferred to the Trust, the Deed that transferred the property to the Trust in 2014 does not contain language that a life estate interest was reserved for Petitioner. Additionally, the deed transferring ownership of the property from the Trust to a third party in 2017 did not contain language reserving a life estate interest in the property. The deeds also do not contain restrictions on the ownership, use, or sale of the Brooklyn property. J-1. Without language to the contrary in the deeds, it is presumed that the transfer of the Brooklyn property was meant to be conveyed in fee simple. Accordingly, I FIND that Petitioner did not own a life estate interest in the Brooklyn property, and therefore, the imposition of a transfer penalty related to the sale of the property was inappropriate. However, as Petitioner does not contest the imposition of a transfer penalty in relation to the \$2,500 check issued to her daughter, the imposition of a penalty related to that transfer is appropriate.

THEREFORE, it is on this 18th day of OCTOBER 2022

ORDERED:

That the Initial Decision is hereby REVERSED.



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