



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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

R.S.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

BURLINGTON COUNTY BOARD

OF SOCIAL SERVICES,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 08981-2021

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. No exceptions were filed in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is May 26, 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. By letter dated September 14, 2021, the Burlington County Board of Social Services (BCBSS) granted Petitioner's August 9, 2021 application; however, BCBSS imposed a 532-day penalty resulting from transfers totaling \$192,197.04 during the look-back

period. R-1 at 3-7. The only transfers that are being contested in this matter are four \$900 transfers from Petitioner to a grantor trust account¹ on April 23, 2021, May 24, 2021, June 10, 2021, and July 19, 2021, and the transfer of Petitioner's Maple Shade property to the grantor trust account for \$148,884.74 less than fair market value.²

The Initial Decision reverses the imposition of a transfer penalty related to the four \$900 transfers and upholds the imposition of a transfer penalty imposed in relation to the transfer of the Maple Shade property. Based upon my review of the record, I hereby ADOPT in part and REVERSE in part 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.

¹ The Initial Decision appears to confuse Petitioner's Qualified Income Trust (QIT) with the grantor trust. However, these are two separate trusts, and the QIT is not at issue in this matter. The transfers at issue occurred between Petitioner and the grantor trust, which names Petitioner's son, R.S. Jr., as the trustee.

² BCBSS also identified transfers in the amount of \$2,056.94 on February 14, 2021, resulting from a transfer of a life insurance policy, \$14,085.47 on March 29, 2021, \$9,300 on April 28, 2021, and \$14,269.89 on June 10, 2021. Petitioner is not contesting the imposition of a penalty on these transfers.

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.

Petitioner transferred ownership of his Maple Shade property to the grantor trust through deed dated February 19, 2021. R-I. Petitioner then entered into a lease agreement for the Maple Shade property on the same date, wherein Petitioner agreed to pay \$900 on the first day of each month to the grantor trust in order to continue residing in the Maple Shade property. P-F. The Initial Decision found that the four \$900 transfers to the trust were valid lease payments to the grantor trust in accordance with the February 19, 2021 lease agreement. I concur. The account statement for the grantor trust provided shows that a \$900 transfer from Petitioner was electronically deposited into the trust on July 19, 2021. P-H. The rental agreement provided shows that a lease payment of \$900 per month is agreed upon in order for Petitioner to continue residing in the Maple Shade property. P-F. Petitioner was residing in the Maple Shade property at the time these transfers were made and up to at least the date of the hearing in this matter, Petitioner still resided in the Maple Shade property. ID at 4. Accordingly, I FIND that Petitioner has rebutted the presumption that these four \$900 payments made on April 23, 2021, May 24, 2021, June 16, 2021, and July 19, 2021 were made in order to establish Medicaid eligibility.

As it relates to the transfer of the Maple Shade property to the grantor trust, Petitioner argues that the valuation of property that was determined by BCBSS is incorrect, as the property was transferred subject to a Home Equity Line of Credit (HELOC). Accordingly, Petitioner argues that the fair market value of the property that was determined by BCBSS,

which is \$148,884.74, should be reduced by the balance of the HELOC, pursuant to N.J.A.C. 10:71-4.10(b)7. The Initial Decision finds that Petitioner has not provided sufficient documentation to show that the value of the property should be reduced by the HELOC. Specifically, the Initial Decision references that a box on the Affidavit of Consideration for use by Seller, also known as the RFT-1 form, is checked that states “no prior mortgage to which property is subject.” R-I. The Initial Decision also provides that Petitioner failed to show documentation that an actual statement of account for the HELOC for February 19, 2021, the date that the deed was executed, was requested to show the principal balance at the time of the transfer. ID at 7. The Initial Decision, thus, finds that the “[d]eed recording information is inaccurate, incomplete and does not reflect the transaction intended.” Id. at 8. I disagree.

Petitioner provided a Home Equity Line of Credit Agreement, dated September 2, 2014, showing that the agreement is secured by a mortgage, dated September 2, 2014, on property located in Burlington County, New Jersey. P-K. The agreement provided that the credit limit was \$112,000 and that \$80,978.44 of that line of credit would be paid to Wells Fargo Home Mortgage. Ibid. The agreement was signed by Petitioner and his spouse on September 2, 2014. Ibid. Petitioner also provided a New Jersey Open-End Mortgage, dated September 2, 2014, showing an agreement between Petitioner and his spouse with Citizens Bank regarding the HELOC on the Maple Shade property. P-L. Petitioner additionally provided a HELOC account statement that shows that the line funding occurred on September 2, 2014 and a balance forwarding of \$80,978.44 occurred on the same date. P-J. A letter from Citizens Bank, dated September 8, 2021, was also provided that shows that a wire transfer in the amount of \$80,978.44 was sent to Wells Fargo Home Mortgage. P-I. The letter references the Maple Shade address. Ibid. The aforementioned HELOC account statement additionally shows that on September 9, 2014, an advance of \$31,021.56 was taken on the line of credit. P-J. The principal balances and payments made between September 27, 2014 and January 25, 2022 were also included on the statement. Ibid. The

principal balance of the HELOC as of February 8, 2021 was \$106,614.62, and it was the same amount on March 8, 2021. Ibid. Accordingly, it is reasonable to assume that the balance of the HELOC on the date the deed was executed, February 19, 2021, was also \$106,614.62. Although the Affidavit of Consideration for use by Seller erroneously states that the property was not subject to a mortgage at the time the Maple Shade property was transferred, Petitioner has provided documentation to show that a HELOC existed on the property at the time it was transferred and that payments are being made by the grantor trust to Citizens Bank on the HELOC. P-H. Accordingly, there is sufficient documentation in the record to show that the Maple Shade property was transferred to the grantor trust subject to the pre-existing HELOC. N.J.A.C. 10:71-4.10(b)7 provides that the “[u]ncompensated value (UV) [of a transfer] shall be the difference between the fair market value at the time of the transfer (less any outstanding loans, mortgages or other encumbrances on the asset) and the amount of consideration received for the asset.” As Petitioner has shown that the Maple Shade property was transferred pursuant to the existing HELOC, I FIND that the value of the property, as determined by BCBSS to be \$148,884.74 should be reduced by the balance of the HELOC at the time of the transfer, which in this case is \$106,614.62.

Accordingly, and based upon my review of the record, I hereby ADOPT in part and REVERSE in part the ALJ’s recommended decision, as set forth herein, and FIND that the transfer penalty imposed by BCBSS be reduced by a total of \$110,214.62, which represents the four \$900 lease payments made to the grantor trust and the \$106,614.62 balance of the HELOC on the Maple Shade property at the time of its transfer.

THEREFORE, it is on this 17th day of MAY 2022,

ORDERED:

That the Initial Decision is hereby ADOPTED in part and REVERSED in part, as set forth above.



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