



**State of New Jersey**

DEPARTMENT OF HUMAN SERVICES  
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES  
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SHEILA Y. OLIVER  
*Lt. Governor*

SARAH ADELMAN  
*Commissioner*

JENNIFER LANGER JACOBS  
*Assistant Commissioner*

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

S.D.

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

MIDDLESEX COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

**ADMINISTRATIVE ACTION**

**FINAL AGENCY DECISION**

**OAL DKT. NO. HMA 08827-2021**

As Assistant Commissioner of the Division of Medical Assistance and Health Services (DMAHS), I have reviewed the record in this case, including the Initial Decision, the Office of Administrative Law (OAL) case file, and the documents filed below. Petitioner filed exceptions in this matter. Procedurally, the time period for the Agency Head to file a Final Decision is July 28, 2022, in accordance with an Order of Extension.

The matter arises regarding the imposition of a transfer penalty on Petitioner's application for Medicaid benefits by Middlesex County Board of Social Services

(MCBSS). Petitioner was found eligible for benefits effective March 1, 2020, subject to a transfer penalty of 153 days due to the transfer of \$55,000 to his sister in September 2018. Petitioner alleges that the \$55,000 transfer was repayment of a loan incurred by Petitioner from his brother-in-law, which originated sometime in 2012. This matter was previously remanded in order to develop the record and to provide further testimony and documentation regarding the amount of the alleged loan, the terms of repayment, and an explanation regarding why the alleged loan was not repaid prior to 2018.

In determining Medicaid eligibility for someone seeking institutionalized benefits, the 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). 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).

Petitioner's wife and sister allege that the sister's husband loaned Petitioner approximately \$55,000 sometime in 2012. There is no written loan agreement. Petitioner's wife and sister certified that the 2012 payment was done to help Petitioner run his auto business. On or about August 3, 2018, Petitioner was sent a check for \$328,060.40, representing a personal injury settlement. P-4. Petitioner's wife claims that Petitioner had requested that those settlement funds be used to pay off a home equity

loan, credit card bills, and his sister for the more than five-year old loan. ID at 6. On September 9, 2018, Petitioner's wife issued a check to Petitioner's sister in the amount of \$55,000. P-3. At the time of the transfer in 2018 Petitioner had suffered a stroke.<sup>1</sup>

The Initial Decision found that Petitioner had failed to provide competent proof as required by the previously issued Order of Remand in this matter and has not established by a preponderance of the credible evidence that the \$55,000 payment in 2018 constituted repayment of a bonafide loan. I concur. While the Petitioner's wife and sister testified at the remand hearing in this matter, neither individual was a party to the alleged loan agreement and were unable to provide specific information related to the loan agreement or repayment terms between Petitioner and his brother-in-law, who has since passed away. Although the witnesses stated that Petitioner believed that he would pay the loan back when he was able to do so, which Petitioner expected to be within five years, they also acknowledged that Petitioner could have repaid the loan with funds from an AIG retirement account prior to the 2018 payment. There is no explanation of how Petitioner intended to repay the loan prior to the personal injury settlement, which was not contemplated at the time of the alleged loan payment.

Petitioner, in his exceptions to the Initial Decision, states that [a]ll parties stipulated that there was in fact a loan of roughly equivalent value to the application by the payee by check in 2012 [and t]his stipulation was adopted by as fact by the ALJ." (emphasis added). However, neither Petitioner's wife, sister, nor MCBSS were parties to the alleged

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<sup>1</sup> The Initial Decision in this matter states that Petitioner suffered one stroke and was in a rehabilitation center when a discussion occurred between Petitioner and his wife regarding repayment of debts that were owed. ID at 6. Petitioner's wife stated that she believed that Petitioner would recover and return home; however, Petitioner suffered a second stroke and other health issues. Ibid. Petitioner's wife stated "from August to November, it all changed." Ibid.

loan in this matter and can confirm the actual amount of the alleged loan. Further, no documentation, such as bank statements or a check issued to Petitioner by his brother-in-law in 2012, were provided showing the amount of the alleged loan. It is, thus, still unclear whether Petitioner was loaned \$55,000 by his brother-in-law and whether the payment made over five years later to Petitioner's sister was repayment for that alleged loan entered into between Petitioner and his brother-in-law. Petitioner has, thus, failed to show that the payment made to Petitioner's sister in 2018 was made for fair market value, in accordance with N.J.A.C. 10:71-4.10(g), as argued by Petitioner in his exceptions. Additionally, Petitioner has not shown that the transfer was made solely for some other purpose than to qualify for Medicaid, pursuant to N.J.A.C. 10:71-4.10(j).

Accordingly, and based upon my review of the record, I hereby ADOPT the ALJ's recommended decision and FIND that the penalty imposed was appropriate

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

ORDERED:

That the Initial Decision is hereby ADOPTED.



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