



State of New Jersey

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

S.G.,

PETITIONER,

v.

**DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES AND
HUDSON COUNTY BOARD OF
SOCIAL SERVICES,**

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 4343-2021

On Remand HMA 11198-2020

As Assistant Commissioner of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision, the OAL case file and the documents filed below. Neither party filed exceptions in this matter. Procedurally, the time period for the Agency Head to file a Final Decision is April 28, 2022 in accordance with an Order of Extension.

The matter arises regarding the imposition of a transfer penalty on Petitioner's receipt of Medicaid benefits. By letter dated September 29, 2020, Hudson County informed Petitioner that she had been found eligible as of November 1, 2019 but was subject to a transfer penalty until 2022 for funds transferred to her son from a Charles Schwab account. Petitioner died in 2021.

The prior hearing found that Hudson County determined the penalty amount was rescinded but for "a transfer from a Schwab account, claiming it is an asset to compensate a relative for care/services provided for free at the time of delivery." HMA 11198-2020 ID at 1. The penalty amount was purportedly reduced to \$61,098.62. HMA 11198-2020 ID at 2.

The Order of Remand found that the record did not contain documentation to support a rescission of the penalty. As such it was determined that further development of what was originally identified as a transfer penalty and why Hudson County took additional action on the penalty amount was warranted. Certain transactions alleged to represent reimbursement by Petitioner for credit card charges related to multiple restaurants with some exceeding \$400 or in one case over \$700; \$1,370.12 from a wine store and \$8,350 from a portrait studio needed further development. HMA 11198-2020 ID at 4.

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). 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). It is Petitioner’s burden to overcome the presumption that the transfer was done – even in part – to establish Medicaid eligibility.

The transfers at issue on remand were payments made from Petitioner’s Schwab account for room and board charges for \$70,728.70; transfers for credit card for \$24,747.77; and a generator for \$6,880. During 2018, Petitioner’s son also paid \$36,672.61 for caregivers to attend to Petitioner and produced quarterly employer tax filings in support of these expenditures. Those expenditures are not part of the assessed penalty. The Initial Decision determined that Petitioner was only subject to a transfer penalty for \$61,096.62. For the following reasons, I hereby REVERSE the Initial Decision and FIND that the transfer amount is \$102,356.47 or a penalty of 291 days.

On remand Petitioner’s daughter-in-law testified about Petitioner’s “comfortable lifestyle, enjoying wine and treating her family to nice dinners on three occasions.” ID at 2. The record does not support that Petitioner, who was over 90 years old at the time of these expenses, had the income or resources to pay for the lifestyle alleged by her daughter-in-law. There is no evidence that Petitioner routinely made purchases in 2014-2017 or in 2019 to the extent of those made in 2018. Her monthly retirement benefit was \$1,310 in 2018 yet in April of 2018 she reimbursed her son for purchases totaling \$1,990.57 including \$1,370.12 for wine and two restaurants for \$106.20 and \$151.41.

The three restaurant charges referenced in the remand order were only examples of the large restaurant bills paid for with Petitioner’s resources. There are a total of 40 expenses in 2018 listed as meals paid for by Petitioner and were not explained on

remand. Additionally the \$8,530 charge for a portrait studio was not addressed on remand.

Rather the record shows that the Schwab account was depleted to pay for these expenses. That account was opened in January 2018 with the opening deposit of \$187,437.07 matching the proceeds from the sale of her Florida home that same month. R-1. No other assets or documentation showing Petitioner's spending habits were presented. I FIND that the transfer of \$24,747.77 is subject to penalty.

The Initial Decision states her daughter-in-law testified that the generator was "purchased for the [son's] home after Super Storm Sandy." Super Storm Sandy made landfall in 2012. The generator was purchased six years later in 2018. There is no nexus between the two events. Thus, I FIND that that purchase was a transfer of assets.

Petitioner has not rebutted the presumption that these transfers to her son were done to qualify for Medicaid. At the time of the transfers, Petitioner had sold her home in Florida and moved to New Jersey. There is no evidence that Petitioner's income or resources supported these types of expenditures from her Schwab account prior to 2018. Additionally, the record shows that Petitioner's health had declined since in 2018 and 2019, Petitioner's funds were used to employ caregivers. At the first hearing, her son testified that in 2016 Petitioner was no longer able to care for herself and she moved into her son's home. HMA 11186-2020 ID at 2. Additionally, when questioned by Hudson County Petitioner son stated that he could not produce a signed agreement regarding the room and board transfers because Petitioner's health had deteriorated and she was unable to sign anything. The regulation places the burden of demonstrating that the transfer was done exclusively for another purpose on the Petitioner. N.J.A.C. 10:71-4.10(k). I do not FIND Petitioner has met that burden.

Additionally, the remand asked for clarification on the assessed penalty for room and board. However, the son's calculation totals \$70,728.70 and he identified four transactions from the Schwab account he states reflected the room and board charges – \$37,381.19 on March 2, 2018 ; \$10,319.01 on August 31, 2018; \$17,934.32 on March 13, 2019 and \$5,094.19 on April 8, 2019. Somehow that amount on March 2, 2018 was reduced to \$27,750 without explanation either at the first hearing or on the remand. The Schwab account shows that \$37,381.19 was withdrawn on that day and that is the amount the son used in his own spreadsheet. As the financial documents support that the transfer amount was \$37,381.19 and I hereby MODIFY the penalty to reflect that amount.

Thus, for the reasons set forth above, the Initial Decision is REVERSED and a penalty of \$102,356.47 imposed.

THEREFORE, it is on this ^{27th} day of APRIL 2022,

ORDERED:

That the Initial Decision is hereby REVERSED.



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