



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

S.V.,
PETITIONER,
v.
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES AND
MONMOUTH COUNTY DIVISION
OF SOCIAL SERVICES,
RESPONDENTS.
ADMINISTRATIVE ACTION
FINAL AGENCY DECISION
OAL DKT. NO. HMA 04937-2022

As Assistant Commissioner for the Division of Medical Assistance and Health Services (DMAHS), 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 January 3, 2023, 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 May 31, 2022, the Monmouth County Division of Social Services (MCDSS) granted Petitioner's March 29, 2022 Medicaid application¹ with eligibility

¹ This is Petitioner's second application for Medicaid.

as of May 1, 2022; however a penalty of 764 days was assessed resulting from the transfer of assets totaling \$275,962.49 for less than fair market value during the five-year look-back period. The transfer of assets stemmed from Petitioner gifting the proceeds of the sale of her Brooklyn, NY property to various family members in 2018, totaling \$268,476.16 and the gifting of the cash surrender value of two life insurance policies valued at \$7,486 to her daughter, S.M.

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 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.

At the hearing in this matter, Petitioner’s power of attorney (POA), L.L., testified that

Petitioner gifted the net proceeds from the sale of her home in Brooklyn, NY to help her family members. ID at 3. Petitioner moved in with L.L. in 2020, when Petitioner's health became progressively worse. Ibid. The record does not appear to include an explanation related to Petitioner gifting the cash surrender value of her two life insurance policies to her other daughter, S.M.

The Administrative Law Judge (ALJ) found that the Petitioner failed to demonstrate that the transferred funds were exclusively for another purpose than to qualify for Medicaid. I concur. Only tangible compensation with intrinsic value can be considered when determining whether an applicant transferred property for fair market value. N.J.A.C. 10:71-4.10(b)6i. To that end, "love and affection" is not considered a transfer for fair market value. Ibid. Accordingly, the transfers at issue were gifts to her family and were not exchanged for fair market value. Petitioner bears the burden of showing through credible documentary evidence that the transfers at issue were transferred exclusively for some other purpose than to qualify for Medicaid. Petitioner gifted money to various family members in varying amounts over the span of six months, totaling \$268,476.16. Petitioner was 83 years-old when she gifted this money to her family and as noted by L.L. in her testimony, Petitioner has "a lot of illnesses," which eventually resulted in Petitioner needing daily care. As noted by the ALJ, Petitioner failed to detail how she planned to support herself, including paying for her medical and care needs, after the transfers were made. See N.J.A.C. 10:71-4.10(j)1iv. Moreover, Petitioner gifted the cash surrender value of her two life insurance policies to her other daughter in April 2022, two months after first applying for Medicaid. Based upon Petitioner's age and health at the time of all of these transfers, it is not unreasonable that Medicaid eligibility would be contemplated. Without documentation showing another purpose for the transfers, Petitioner has failed to meet her burden in showing that the transfers at issue were not done for the purposes of qualifying to Medicaid benefits.

Accordingly, and based upon my review of the record, I hereby ADOPT the ALJ's

recommended decision and FIND that Petitioner has failed to rebut the presumption that the transfers at issue in this matter were made in order to establish Medicaid eligibility, and, therefore, the penalty imposed was appropriate.

THEREFORE, it is on this 23rd day of DECEMBER 2022,

ORDERED:

That the Initial Decision is hereby ADOPTED.



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