

7, 2022.

On May 7, 2019, Petitioner, through her daughter, filed a Medicaid application with the Morris County Department of Family Services (Morris County). On May 17, June 11, and August 5, 2019, Morris County sought additional information with regard to several transactions totaling \$15,466.99. Petitioner's daughter testified that some of the funds were used for a personal emergency and that half of it was returned to Petitioner.

Petitioner now argues the amount of the transfer penalty should be reduced as a result of the returned assets.

In 2006, the 42 U.S.C.A. §1396p transfer penalty statute was amended by the Deficit Reduction Act of 2005 ("DRA"). Congress made the penalty for transfers harsher by extending the look back period from thirty-six to sixty months for asset transfers occurring after the date of enactment and making other changes to prevent those with assets from gaining eligibility. It is those rules that govern Petitioner's application.

Petitioner seeks a reduction in the transfer penalty based on a partial return of transferred assets. However, the reduction of the penalty is in violation of 42 U.S.C. § 1396p(c)(2)(C) which was clarified in a Medicaid Communication. Any reduction of the transferred funds is predicated on whether "a satisfactory showing is made to the state (in accordance with regulations promulgated by the Secretary) that (i) the individual intended to dispose of the assets either at fair market value, or for other valuable consideration, (ii) the assets were transferred exclusively for a purpose other than to qualify for medical assistance, or (iii) all assets transferred for less than fair market value have been returned to the individual." 42 U.S.C. §1396p(c)(2)(C) (emphasis added). Therefore, partial returns are not permitted to modify the penalty period and, absent a return of all the assets, the penalty continues uninterrupted. Medicaid Communications (Med-Comms) 10-02 and 10-06.

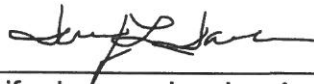
Those Med-Comms state that partial reductions would only be permitted "for Medicaid applications filed prior to May 26, 2010 where assets were partially returned prior to May 26, 2010" so as to permit applications pending at the time Med-Comm 10-02 was promulgated to proceed. In C.W. v. DMAHS and Union County Division of Social Services, the New Jersey Superior Court, Appellate Division upheld the full assessment of a transfer penalty where the applicant argued that a partial return of transferred assets should result in a reduced penalty period. C.W. v. DMAHS and

Union County Division of Social Services, No. A-02352-13 (App. Div. August 31, 2015). Here Petitioner's application was not filed until May 2019. Therefore, the reduced penalty period following a partial return of assets transferred during the lookback period does not apply. It is also clear that Petitioner was not refunded the entire \$15,466.99 and the penalty period stands. Based on my review of the record and for the reasons set forth above, I hereby ADOPT the Initial Decision and uphold the transfer penalty.

THEREFORE, it is on this 2nd day of DECEMBER, 2022,

ORDERED:

That the Initial Decision is hereby ADOPTED.



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