

This matter arises from the Morris County Office of Temporary Assistance's (Morris County) November 29, 2021 determination that Petitioner transferred \$25,375 during the look-back period and was therefore subject to a transfer penalty. Medicaid law contains a presumption that any transfer for less than fair market value during the look-back period was made for the purpose of establishing Medicaid eligibility. See E.S. v. Div. of Med. Assist. & Health Servs., 412 N.J. Super. 340 (App. Div. 2010); N.J.A.C. 10:71-4.10(i). 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). 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).

It is undisputed that the Petitioner transferred \$25,375 to his son during the Medicaid application look-back period. On November 29, 2021, Morris County imposed a 70 day penalty for the transfer of \$25,375. On December 7, 2021, Petitioner's son wrote a check to the nursing facility in the amount of \$25,375. Neither Petitioner nor his son testified at the hearing. Instead, Donna Pelaia, an employee of Holly Manor Center (Holly Manor), testified at the hearing. Pelaia is not Petitioner's Designated Authorized Representative (DAR) or Power of Attorney (POA). It is unclear who she represents in this matter. She did not dispute the transfer penalty, and did not offer any explanation regarding why the money had been transferred to Petitioner's son. Instead, she disputed that the payment to the nursing facility was meant to address the transfer penalty, and argued it was to pay off pre-eligibility debt. Pelaia's testimony is contradicted by the check to Holly Manor which states in the memo line, "reimbursement of Medicaid penalty."

I agree with the ALJ that Petitioner's son's check to Holly Manor does not sufficiently satisfy the requirement that all assets transferred for less than fair market value be returned to the individual so that the transfer penalty could be dismissed. N.J.A.C. 10:71-4.10(e)(6)iii. Petitioner's son did not return the money to his father. Instead, he wrote a check to Holly Manor from his personal funds. No documentary or testamentary evidence was presented to explain the circumstances surrounding Petitioner's son's payment to Holly Manor. Accordingly, the ALJ found that Petitioner failed to meet his burden of proof to establish that Petitioner received fair market value for the transferred assets, nor was he able to show that all of the assets transferred were returned to him. 42 U.S.C. §1396p(c)(2)(C).

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 17th day of MAY 2022,

ORDERED:

That the Initial Decision is ADOPTED.



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