

State of New Hersey

DEPARTMENT OF HUMAN SERVICES PHILIP D. MURPHY DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES Governor PO Box 712 SHEILA Y. OLIVER

TRENTON, NJ 08625-0712

SARAH ADELMAN Acting Commissioner

JENNIFER LANGER JACOBS Assistant Commissioner

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

W.M..

Lt. Governor

PETITIONER.

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MORRIS COUNTY DEPARTMENT OF HUMAN SERVICES/ OFFICE OF TEMPORARY ASSISTANCE,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 10459-21

As Assistant Commissioner for the Division of Medical Assistance and Health Services, I have reviewed the record in this matter, consisting of the Initial Decision, the documents in evidence and the entire contents of the OAL case file. Neither Party filed exceptions to the Initial Decision. Procedurally, the time period for the Agency Head to render a Final Agency Decision is May 20, 2022 in accordance with N.J.S.A. 52:14B-10, which requires an Agency Head to adopt, reject or modify the Initial Decision within 45 days of the agency's receipt. The Initial Decision was received on April 5, 2022.

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