State of New Jersey
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
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STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES

Y.S.,	:	
PETITIONER,	:	**ADMINISTRATIVE ACTION**
v.	:	**ORDER OF REMAND**
	:	**OAL DKT. NO. HMA 01047-2022**
BERGEN COUNTY BOARD	:	
OF SOCIAL SERVICES,	:	
RESPONDENTS.	:	

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 August 5, 2022 in accordance with an Order of Extension. The Initial Decision was received on May 4, 2022.

This matter arises from the Bergen County Board of Social Services' (BCBSS)

January 18, 2022 determination that Petitioner transferred $194,000 during the look-back period and was therefore subject to a 757 day transfer penalty. 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.[1] N.J.A.C. 10:71-4.10 (c). Where Petitioner has filed multiple Medicaid applications, the federal government has directed all fifty states to calculate the look back period based upon the first application for Medicaid. Centers for Medicare and Medicaid Services, State Medicaid Manual §3258.4(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. 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).

On November 7, 2015, Petitioner filed her first Medicaid application with the BCBSS. Accordingly, November 7, 2015 serves as the baseline date that triggers the five year look-back period. Within that period, on May 31, 2012, Petitioner transferred her home to her

[1] Congress understands that applicants and their families contemplate positioning assets to achieve Medicaid benefits long before ever applying. To that end, Congress extended the look back period from three years to five years. Deficit Reduction Act of 2005, P.L. 109-171, § 6011 (Feb. 8, 2006).

daughter for $10. The value of the property was $194,000. Despite this transfer, Petitioner continued to live in the property and pay $400 monthly rent to her daughter. To date, Petitioner resides at the same property and pays rent to her daughter. Petitioner's son-in-law provides twenty-five weekly hours of Personal Care Assistant (PCA) services[2] to the Petitioner and is compensated through the Personal Preference Program (PPP). Sometime in May 2016, Petitioner was transferred from ABD to MLTSS. This change did not become known to Bergen County until October 26, 2020.

The New Jersey Medicaid Comprehensive Waiver permits those who have income that is equal to or below the Federal Poverty Level (FPL) to self-attest that assets or resources have not been transferred, in lieu of the five year look-back process. Med-Com 12-18. The form must be completed when: (1) an individual has income equal to or below the FPL; (2) an individual is in need of an institutional level of care, and (3) has stated that no assets or resources have been transferred in the previous sixty months. Med-Com 16-01. When an individual is already receiving NJ FamilyCare ABD (non-institutional) benefits, is enrolled in managed care, and appears to need long term services and supports, the MCO care manager is responsible for completing the clinical assessment needed to determine level of care. Med-Com 16-01. The MCO also distributes the Transfer of Assets Self-Attestation Form and notifies DMAHS of the members need for long term care. Med-Com 16-01.

Petitioner has asserted that she was unaware of the change from ABD Medicaid to MLTSS. Here, Petitioner applied for and was found eligible for ABD Medicaid effective November 1, 2015. She was enrolled in the MCO Aetna. In or about May 2016, Aetna found Petitioner clinically eligible for MLTSS. At the time, Aetna would have provided Petitioner with the Transfer of Assets Self-Attestation Form. That form does not appear in the record before me, but is essential to determine whether Petitioner was aware of the change in the

[2] PCA services are non-emergency, health related tasks to help individuals with activities of daily living (ADL) and with household duties essential to the individual's health and comfort, such as bathing, dressing, meal preparation and light housekeeping.

program and the financial implications associated with that change.

THEREFORE, it is on this 5th day of AUGUST 2022,

ORDERED:

That the Initial Decision is REVERSED and REMANDED to determine whether Petitioner was aware of the change in the program and the financial implications associated with that change, including but not limited to the production of documents such as the Transfer of Assets Self-Attestation Form provided at the time of Petitioner's transfer from ABD to MLTSS, and testimony if necessary.

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