

transfer of assets totaling \$85,813.07 for less than fair market value during the five-year look-back period. R-7.

By way of background, Petitioner filed two Medicaid applications. The first application filed December 30, 2022, was denied for failure to provide all requested information. Specifically, at the time of the December 2022 denial, the following requested information remained outstanding: 1) marriage certificate, 2) Designated Authorized Representative Form, 3) Aetna Card, and 4) proof that Petitioner had funded the Qualified Income Trust. (2T16:9-11), (2T18:2-8).¹ The Initial Decision found that Petitioner failed to provide documents requested in Mercer County's January 5, 2023, and January 19, 2023, Requests for Information letters. ID at 8. I agree. In order to complete the Medicaid application process, Petitioner is required to provide all requested documentation. N.J.A.C. 10:71-2.2 (e). Without receipt of all the information requested, Mercer County was unable to make an eligibility determination, and accordingly the denial was appropriate.

Thereafter, on March 30, 2023, Petitioner filed a second Medicaid application. R-4². However, December 30, 2022, the date the first application was filed, serves as the baseline date that triggers the Medicaid transfer penalty look back period. Mercer County determined that within this timeframe, Petitioner made transfers totaling \$85,813.07 in resources for less than fair market value. R-7. The cash withdrawals in question stem from the withdrawals made from two of Petitioner's investment accounts beginning in April 2018 through February 2022. ID at 5-7. The first account #7453, shows cash withdrawals for the period of April 19, 2018 through May 9, 2019. The second account #5263 reflects

¹ "2T" refers to the transcript dated February 21, 2024.

² Petitioner's first application filed December 30, 2022 was denied on February 2, 2023 for failure to provide requested information. P-10.

cash withdrawals for the period of June 3, 2019 through February 3, 2022.³ To justify some of these expenditures, S.M. explained that \$6,200 was withdrawn incrementally from the joint account to purchase hearing aids for Petitioner. ID at 7. S.M. also explained that prior to purchasing the hearing aids Petitioner's vehicle broke down so Petitioner wanted to purchase another vehicle instead of purchasing the hearing aids, and since Petitioner no longer had a valid license, the vehicle was registered and insured in her name. Ibid. S.M. further explained that Petitioner did not use credit cards and made most of the cash withdrawals which were used to assist M.N., Petitioner's wife, with payment of bills for the marital residence, as well as birthday and Christmas gifts. Ibid. In addition, S.M. explained that she covered all household bills during the time Petitioner resided with her to include Meals on Wheels, gas, electric, television, and utilities, and that over \$11,875 in expenses incurred were attributed to Petitioner's care. ID at 8. M.N. concurred with S.M. that Petitioner did provide cash for expenses at the marital home and added that Petitioner would also provide her with checks. (1T74:7-10).⁴ Yet, despite Petitioner's submission of voluminous documentation, Mercer County alleges no bills, receipts, or copies of checks were produced into evidence. ID at 11. Without this necessary financial information Petitioner failed to rebut the presumption that the transfers at issue were made in order to establish Medicaid eligibility, and therefore a transfer penalty is appropriate.

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

³ Petitioner jointly owned account #7453 with his daughter and jointly owned account #5263 with his son.

⁴ "1T" refers to the hearing transcript dated November 21, 2023.

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.

It is well established that the transfer of an asset jointly held with another person shall be considered transferred by the individual when action is taken. N.J.A.C. 10:71-4.10(o). In addition, transfers of assets to a friend or relative for care or service provided free in the past are presumed to have been delivered without compensation. N.J.A.C. 10:71-4.10(b)(6)(ii). If payment is to be made there must be a preexisting written agreement to pay for such services at the relevant market rate.

Here, the Administrative Law Judge (ALJ) determined that Petitioner failed to rebut the presumption that the transfers totaling \$85,813.07 were made exclusively for some

other purpose than to establish Medicaid eligibility, and failed to show the transfers fell within an exception set forth in N.J.A.C. 10:71-4.10. ID at 13. Ibid. I concur that Mercer County was justified in imposing a transfer penalty. However, I have concerns regarding the total penalty amount due to an apparent discrepancy between the figures presented by Mercer County, and those outlined in the Initial Decision and supporting financial documentation. Specifically, based on the information outlined in the Initial Decision, it appears that the transfers in question total \$81,866, rather than \$85,813.07.

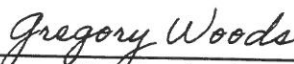
Thus, based upon my review of the record, and for the reasons set forth herein, I hereby ADOPT in part the ALJ's recommended findings that a transfer penalty should be imposed and RETURN the matter to Mercer County to recalculate the total penalty amount and number of days in accordance with the modified penalty amount determined. Specifically, upon return, Mercer County shall provide a detailed breakdown that includes account numbers, relevant dates, and total amounts for each transaction. This information is essential for clarification of the appropriate penalty.

THEREFORE, it is on this 25th day of SEPTEMBER 2024,

ORDERED:

That the Initial Decision is hereby ADOPTED in part as set forth above.

That the Initial Decision is hereby RETURNED in part as set forth above.



Gregory Woods, Assistant Commissioner
Division of Medical Assistance
and Health Services