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

C.St.J.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE :

AND HEALTH SERVICES AND :

BERGEN COUNTY BOARD :

OF SOCIAL SERVICES, :

RESPONDENTS. :

**ADMINISTRATIVE ACTION**

**ORDER OF RETURN**

**OAL DKT. NO. HMA 01840-24**

As Assistant Commissioner for the Division of Medical Assistance and Health Services (DMAHS), I have reviewed the record in this case, including the OAL case file, the documents in evidence, and the Initial Decision in this matter. Neither Party filed exceptions. Procedurally, the time period for the Agency Head to render a Final Agency Decision is September 5, 2024, in accordance with an Order of Extension.

This matter arises from the Bergen County Board of Social Services' (Bergen County) imposition of a transfer penalty of ten days on Petitioner's receipt of Medicaid benefits. The issue is whether Bergen County's imposition of a transfer penalty of ten days was appropriate under Medicaid regulations.

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 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 the 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.

On August 29, 2023, Petitioner, through their designated authorized representative (DAR), Amy Mac Isaac, submitted a Managed Long Term Support and Services (MLTSS) Medicaid application. (R-1, pages 1-19.) Upon reviewing Petitioner's application and their Columbia Bank statements, Bergen County determined a check issued by Petitioner, payable to Petitioner, dated April 16, 2019, in the amount of \$4,000, was a transfer of assets for less than fair market value. (R-1 pages 20-23.) By letter dated February 22, 2024, Bergen County granted Petitioner's August 29, 2023, Medicaid application. However, a penalty of ten days was assessed resulting from the transfer of assets, totaling \$4,000. (R-1 pages 25-27.) After the penalty was imposed, Petitioner submitted the Affidavit explaining the \$4,000 check at issue. (P-1.) Per the Affidavit, Petitioner currently resides at the Allendale Community for Senior Living. Ibid. On April 16, 2019, Petitioner lived independently without the need for medical assistance. Ibid. Petitioner did not foresee that they would require long-term care in the near future or would need to apply for Medicaid. Ibid. Petitioner used \$500 for a dinner party; \$1,500 for living expenses: food, gas, dining out; \$1,000 was a gift to their daughter's birthday; and \$1,000 was a gift to their son's birthday. Ibid. In 2022, Petitioner was diagnosed with cancer and suffered a traumatic onset of disability. Ibid.

The Administrative Law Judge (ALJ) found that Petitioner successfully rebutted the presumption. ID at 6. The ALJ concluded that Petitioner had met their burden to establish by convincing evidence that the \$4,000 check was issued exclusively for purposes other than Medicaid eligibility. ID at 7. The ALJ relied on M.M. v. Div. of Med. Assistance and Health Servs., HMA 13911-08, where Petitioner and her husband gifted \$50,000 to their daughters during the look-back period. Union County imposed a transfer of penalty of \$50,000. In this case, the ALJ reversed the penalty, and the Director of the DMAHS adopted the Initial Decision, concluding that Petitioner and her husband gifted \$50,000 to

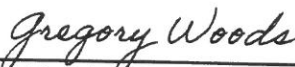
their daughters as the wedding gifts. At the time of the gifts, Petitioner in this case was fifty-six years old and healthy. Petitioner sustained a traumatic onset of disability approximately two years after giving the gifts to her daughters.

It is Petitioner's obligation to present evidence to rebut the presumption and establish fair market value. I agree with the Initial Decision that Petitioner credibly testified that they wrote the \$4,000 check for purposes other than making themselves qualify for Medicaid. Petitioner paid \$500 for their children's birthday party, \$1,000 gifts for each, and for miscellaneous expenses. Petitioner was in good health, driving, and was living independently when they wrote the check. Petitioner was diagnosed with cancer in 2022 and applied for Medicaid in 2023, three years after they transferred the assets. Petitioner did not know that they might need Medicaid in the future when they wrote the check in the amount of \$4,000.

Based on the record before me, I hereby ADOPT the Initial Decision in its entirety and incorporate the same herein by reference. I find that Petitioner successfully rebutted the presumption. Bergen County should not impose a transfer penalty of ten days under Medicaid regulation.

Thus, I hereby ADOPT the Initial Decision and RETURN the matter to Bergen County to issue a new eligibility letter on the basis of the final decision.

THEREFORE, it is on this 5th day of SEPTEMBER 2024,

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