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DEPARTMENT OF HUMAN SERVICES
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GREGORY WOODS
Assistant Commissioner

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

D.M.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE :
AND HEALTH SERVICES AND :
CUMBERLAND COUNTY BOARD :
OF SOCIAL SERVICES, :
RESPONDENTS. :

:
: **ADMINISTRATIVE ACTION**
:

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: **ORDER OF RETURN**
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: **OAL DKT. NO. HMA 09682-23**
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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 July 12, 2024 in accordance with an Order of Extension.

This matter arises from the imposition of a transfer penalty on Petitioner's receipt of Medicaid benefits by the Cumberland County Board of Social Services (Cumberland County.) The issue presented here is whether Cumberland County correctly imposed a penalty of 196 days totaling \$73,468.63.

On June 1, 2022, Petitioner applied for Medicaid with Cumberland County while they resided in Cumberland County Manor, a nursing facility. On March 8, 2020, Petitioner sold their home for \$255,000. (P-31.) The home was located in an age-restricted development in Florence Township. The Florence Township tax assessor valued the home at the time of sale at \$324,100. (P-25.) Cumberland County determined that the fair market value (FMV) of the house was \$328,468.63 utilizing information from New Jersey government database. By letter dated September 6, 2022, Cumberland County granted Petitioner's June 2022 Medicaid application with eligibility as of June 1, 2022. However, a penalty of 196 days was assessed resulting from a transfer of assets, totaling \$73,468.63, for less than fair market value during the five-year lookback period. (P-4.) Petitioner appealed the Medicaid eligibility transfer penalty of 196 days imposed by Cumberland County for the sale of their home for less than the fair market value. A telephonic hearing was conducted on May 17, 2023. The Administrative Law Judge (ALJ) reversed the 196-day transfer penalty. ID at 10. On September 7, 2023, the matter was remanded solely to allow Petitioner the opportunity to provide sufficient credible evidence to support the conclusion that the sale price of the home was the fair market value of the home because there was no record to support that conclusion. ID at 2.

Thereafter, on March 20, 2024, a new hearing was conducted in accordance with the remand. Prior to the hearing, Petitioner offered the appraisal of M.G. (M&M Valuations and Consulting, Inc.), a certified real estate appraiser, in support of the fair market value of the property being \$250,000 as of March 20, 2020. (P-2.) At the hearing,

Cumberland County acknowledged receipt of the retroactive appraisal and did not object to the appraisal being admitted into the record. (R-3.) Additionally, at the hearing J.S. Esq., attorney for Petitioner's Designated Authorized Representative (DAR) and S.S. of Future Care Consultants testified on behalf of Petitioner as to the condition of the property at the time of sale and that the offer accepted was the highest and best offer. ID at 4-5.

The ALJ found that Cumberland County properly calculated the fair market value by multiplying the tax-assessed value of the property by the reciprocal of the assessment ratio at the time of application without the certified appraisal or other evidence. The ALJ also found that Petitioner's witnesses credibly testified that due to the condition of the property, the offer accepted was the highest and best offer. The ALJ reversed the penalty period noting the appraisal of the certified real estate appraiser that the fair market value of the property as of March 20, 2020, was \$250,000 and finding that Petitioner did not sell the home for less than fair market value to establish eligibility. ID at 11. I concur that based on the certified appraisal, that Petitioner did not sell the home for less than fair market value.

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.

The fair market value of a property is "an estimate of the value of an asset, based on generally available market information, if sold at the prevailing price at the time it was actually transferred." N.J.A.C. 10:71-4.10(b)6. Absent a certified appraisal, the value of a resource is considered "the price that the resource can reasonably be expected to sell for on the open market in the particular geographic area minus any encumbrances (that is, its equity value)." N.J.A.C. 10:71-4.1(d). The equity value of real property is "the tax assessed value of the property multiplied by the reciprocal of the assessment ratio as recorded in the most recently issued State Table of Equalized Valuations, less encumbrances, if any. . . ." N.J.A.C. 10:71-4.1(d)1iv.

Here, Petitioner did not provide a certified appraisal at the time of the initial application. Therefore, Cumberland County correctly determined at the time that Petitioner sold their home for less than fair market value, and assessed a penalty of 196 days. Cumberland County, relying on N.J.A.C. 10:71-4.1(d)(1)(iv), determined the tax assessed value of the property to be \$328,468.63. However, during the initial May 17, 2023 hearing, Petitioner argued that the tax assessed value was not an accurate indicator

of the home's fair market value because the home was in poor condition, and the price the home was sold for, \$255,000, was for fair market. While the ALJ found that the property was in poor condition at the time of the sale and therefore, the sale price was the fair market value of the property, there was no credible documentary evidence in the record to show the condition of the property at the time of the sale, such as the cost of any repair that the property needed, or a certified appraisal of the property prior or subsequent to the sale of the property.

Pursuant to the remand, on February 28, 2024, Petitioner provided the real estate appraisal of M.G., a certified real estate appraiser. Per M.G., the fair market value of the property as of March 20, 2020, was \$250,000. (P-2.) The certified real estate appraisal established that the fair market value of the house was almost the same as what it was sold for. The appraiser obtained details of the condition of the property from the listing information, pre-sale photos of the interior of the property, and documentary evidence of the cost. Although J.S., Esq., attorney for Petitioner's DAR, and S.S. of Future Care Consultants, testified as to the state of the property at the time of the sale, S.S. was not appointed as Petitioner's DAR until April 15, 2022. Therefore, it is unclear how either S.S. as the attorney for the DAR, or J.S. had firsthand knowledge of the state of the property when it was sold in March 2020, more than two years before Petitioner appointed S.S. as their DAR. Notwithstanding this unclear testimony, the appraisal obtained is sufficient to establish the fair market value of the home at the time of the sale.

Based on the record before me, Petitioner established sufficient evidence to overcome the tax assessment and establish that Petitioner's property was sold for fair market value. To that end, I hereby ADOPT the Initial Decision's conclusion that Petitioner's property was sold for fair market value and RETURN the matter to Cumberland County to issue a reversed determination letter.

THEREFORE, it is on this 1st day of JULY 2024,

ORDERED:

That the Initial Decision is hereby ADOPTED.

Gregory Woods

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