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

D.Q.,	:	
	:	
PETITIONER,	:	ADMINISTRATIVE ACTION
	:	
v.	:	FINAL AGENCY DECISION
	:	
MIDDLESEX COUNTY BOARD	:	OAL DKT. NO. HMA 06406-2023
	:	
OF SOCIAL SERVICE AND	:	
	:	
DIVISION OF MEDICAL ASSISTANCE	:	
	:	
AND HEALTH SERVICES	:	
	:	
RESPONDENTS.	:	

As Assistant Commissioner for the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision and the Office of Administrative Law case file. No exceptions were filed by either party in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is May 30, 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 letter dated May 9, 2023, Middlesex County Board of Social Services (Middlesex County) approved Petitioner's January 17, 2023 application, but assessed a penalty of 823 days on the receipt of Medicaid benefits resulting from a transfer of assets totaling \$308,463.12 for less than fair market value during the five-year

look-back period.¹ R-1. Petitioner, however, only challenges \$98,404 of the \$308,463.12 transfer penalty imposed. See Petitioner's Letter of Memorandum at p. 1.

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 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.

¹ The total number of days Petitioner has been penalized is based on the total transfer penalty of \$308,463.12 rather than the \$98,404 being challenged by Petitioner.

On January 17, 2023, Petitioner filed an application for Medicaid. R-1, Ex. A. Accordingly, January 17, 2023 serves as the baseline date that triggers the look back period. Within this timeframe, Petitioner made transfers totaling \$308,463.12 in resources for less than fair market value. Here, however, Petitioner challenges only \$98,404 of the transfer penalty imposed. According to Petitioner's former counsel, J.W.C, Esq. (J.W.C.) Petitioner's daughter, D. made unauthorized withdrawals from two of Petitioner's Providence bank accounts, namely accounts #3466 and #3339 without Petitioner's knowledge or consent. R-1, Ex. D. J.W.C alleges these unauthorized withdrawals occurred from February 16, 2018 through June 1, 2022. Ibid. J.W.C further alleges that \$67,225 was withdrawn from account #3466 and \$31,179 was withdrawn from #3339 totaling \$98,404. Ibid. Lastly, J.W.C concedes that \$36,189 and \$57,933 were gifted to D. during that same timeframe. Ibid. In a letter dated February 2, 2024, Petitioner's relative and current attorney, F.T. alleges that Petitioner had no knowledge about the checks that D. allegedly forged and cashed from these accounts totaling \$98,404 until the bank notified Petitioner and Petitioner's husband, R.Q. that the account had been overdrawn.

Additionally, by letter dated October 31, 2023, J.S. of Provident bank explained that D. began cashing checks in 2018. See Petitioner's Memorandum of Law, Exhibit D. J.S. further explained that when D. presented a check to be cashed, the bank would call Petitioner for permission to cash the check and each time D. presented a check, Petitioner authorized the transaction. Petitioner's explanation to the bank was that D. was ill and needed the money for medical bills. J.S. alleges that it was suggested that Petitioner pay D.'s providers directly, but Petitioner informed them that D. "liked to take care of things on her own." Lastly, J.S. alleges that at the end of 2021, the bank informed Petitioner's

husband, R.Q. that D. had made numerous withdrawals from Petitioner's bank accounts, but did not return to cash any other checks after January 2022. Ibid.

During the Office of Administrative Law proceeding, Petitioner provided testimony from Petitioner's husband R.Q. and produced certifications which primarily stated that D. was an addict.² R.Q. testified that he was unaware that D. had forged checks until the bank notified them. Petitioner believed that D. had a medical condition, which is why Petitioner provided D. with financial assistance to pay medical bills. Petitioner alleges to have had no knowledge about the forgeries until after D. had passed. ID at 6.

Petitioner relies on B.H. v. Camden County Board of Social Services, 2019 N.J. AGEN LEXIS 1221 (Feb. 19, 2019) to show that criminal activity may rebut the presumption that an asset was improperly transferred as a gift. Petitioner's reliance on B.H. is misplaced. In B.H., Petitioner claimed her spouse, P.H. made transfers to pay prostitutes as part of a blackmail scheme. Id. at 6. The B.H. court determined that B.H. had "the burden to establish by convincing evidence the existence of the scheme to financially exploit P.H." Id. The B.H. court also determined that Petitioner's reasons for failing to initiate a criminal investigation must be weighed against New Jersey's policy interest to be the source of last resort. Id. Ultimately, the B.H. court determined that B.H. had not met her burden despite alleging being the victim of a crime. Like, B.H. the Petitioner in the current matter alleges to have been a victim of a criminal offense. However, the weight of the evidence presented fails to support this proposition. Accordingly, I FIND that Petitioner failed to demonstrate that the funds at issue, totaling \$98,404 were made solely for a purpose other than to qualify for Medicaid benefits.

The Initial Decision determined that "petitioners verbal permission to Provident Bank to allow D. to cash checks that Petitioner had not herself written served to negate

² D. died from a drug overdose on June 2, 2022.

any rebuttal to the presumption that the resource was transferred for the purpose of establishing Medicaid eligibility.” See ID at 8. The Initial Decision also determined that Petitioner has failed to meet Petitioner’s burden of proving “that the \$98,404 in checks bearing Petitioner’s name and cashed by her daughter D. [was] not transferred as gifts by Petitioner to D.” ID at 9. The Initial Decision further determined that Petitioner has failed to rebut the statutory presumption that these funds were transferred for the purpose of establishing Medicaid. Ibid. Lastly, the Initial Decision found that Petitioner’s reliance on B.H. was unfounded. I agree. The transfers at issue in this matter stem from Petitioner’s transfer of assets totaling \$308,463.12 for less than fair market value during the five-year look-back period. Petitioner is only contesting \$98,404 of the transfer penalty which they argue is the amount of written checks cashed by D. However, Petitioner failed to present any evidence to corroborate that D. forged 82 checks without Petitioner’s knowledge or consent. Petitioner also failed to present a handwriting expert to show that the checks presented to the bank had been forged, failed to provide evidence of Petitioner’s drug addiction, failed to notify the authorities about this alleged crime, and failed to initiate an investigation. In addition, the letter from J.S. of Providence Bank solidifies the fact that each time the bank contacted Petitioner about D.’s attempt to cash a check, Petitioner gave verbal authorization to the bank to cash the checks D. presented. Based on the evidence presented, Middlesex County was correct to impose the transfer penalty of 823 days on the receipt of Medicaid benefits resulting from a transfer of assets totaling \$308,463.12 for less than fair market value during the five-year look-back period.

Thus, based upon my review of the record and for the reasons set forth herein, I hereby ADOPT the ALJ’s recommended decision, as set forth above. Further, I FIND that Petitioner has failed to rebut the presumption that the transfers at issue in this matter

were made in order to establish Medicaid eligibility, and, therefore, the imposed penalty period is appropriate.

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

ORDERED:

That the Initial Decision is hereby ADOPTED, as set forth herein.

Gregory Woods

OBO JLJ

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