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

I.B.,	:	
	:	
PETITIONER,	:	<b>ADMINISTRATIVE ACTION</b>
	:	
v.	:	<b>FINAL AGENCY DECISION</b>
	:	
DIVISION OF MEDICAL ASSISTANCE :	:	<b>OAL DKT. NO. HMA 05905-23</b>
	:	
AND HEALTH SERVICES AND	:	
	:	
CAMDEN 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 case, including the Initial Decision and the Office of Administrative Law (OAL) case file. No exceptions were filed in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is May 23, 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 8, 2023, the Camden County Board of Social Services (Camden County) advised Petitioner that a penalty from December 1, 2022 through September 7, 2024 was assessed on Petitioner's receipt of Medicaid benefits resulting from the transfer of assets,

totaling \$242,156.32 for less than fair market value, during the five-year look-back period. The transfer of assets stems from the sale of Petitioner's property. The Initial Decision found that Petitioner had failed to rebut the presumption that the sale of Petitioner's property for less than fair market value was done for the purposes of qualifying for Medicaid benefits. Based upon my review of the record, I hereby ADOPT the findings and conclusions of the Administrative Law Judge (ALJ).

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.

In this matter, on December 3, 2022, a Medicaid application was filed by Petitioner for the aged, blind, and disabled program. ID at 2. Camden County determined that Petitioner was eligible for Medicaid benefits; however, through a letter dated April 6, 2023, Petitioner was advised that Petitioner was being assessed a transfer penalty totaling \$242,156.32, as a result of a transfer made for less than fair market value during the look-back period. ID at 4. Specifically, Camden County advised that the sale of Petitioner's property for \$160,000 was completed for \$94,000 less than fair market value. Ibid. Camden County determined that the fair market value of Petitioner's property at the time of its sale was \$254,000. Ibid. The proceeds of the sale were then transferred from Petitioner to Petitioner's grandson so that he could purchase a home for himself, which had space for Petitioner to use as her living space. Ibid. Petitioner admitted to wanting to sell the home as soon as possible due to its deteriorating condition, Petitioner's inability to maintain the property, and Petitioner's need to move as soon as possible because Petitioner's medical condition prevented Petitioner from getting up to the second floor to use the bathroom. ID at 16.

Both Petitioner and Petitioner's daughter, M.D., testified that the property was sold "as is" because it needed substantial repairs. ID at 8, 10. Camden County requested that Petitioner obtain a property appraisal (R-4). Ms. Harris, who works for Camden County, testified that an appraisal was not provided. ID at 6.

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)(1)(iv).

The applicable regulations are clear on what is required to establish fair market value of a property. Although Petitioner and Petitioner's daughter both stated that the property was deteriorating, testimony by interested parties alone is not sufficient to establish fair market value. Camden County requested that Petitioner obtain a certified property appraisal which may have confirmed the deteriorated condition of the property and resulted in a reduced fair market value, but Petitioner failed to take that step. Absent additional evidence, which could include documents and independent testimony, to support Petitioner's contention that the property was in a deteriorated condition at the time of the sale and could not be sold for \$254,000, I concur with the ALJ and FIND that Camden County appropriately assessed that the fair market value of the property at the time of its sale was \$254,000.

As mentioned above, "[t]ransfers of assets or income are closely scrutinized to determine if they were made for the sole purpose of Medicaid qualification." E.S. v. Div. of Med. Assist. & Health Servs., 412 N.J. Super. 340, 344 (App. Div. 2010). "[I]f 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. N.J.A.C. 10:71-4.10(k) further states:

(k) The presence of one or more of the following factors, while not conclusive, may indicate that the assets were transferred exclusively for some purpose other than establishing Medicaid eligibility for long term care services:

1. The occurrence after transfer of the asset of:
  - i. Traumatic onset of disability;
  - ii. Unexpected loss of other assets which would have precluded Medicaid eligibility;or
  - iii. Unexpected loss of income which would have precluded Medicaid eligibility;
2. Court-ordered transfer (when the court is not acting on behalf of, or at the direction of, the individual or the individual's spouse); or
3. Evidence of good faith effort to transfer the asset at fair market value.

I further FIND that Petitioner has failed to present any documentation to support a finding that the sale of the property for less than the fair market value was solely for any reason other than to establish Medicaid eligibility.

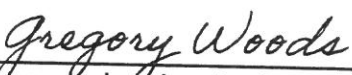
I further FIND that although Petitioner is a recipient of SSI, Petitioner submitted an application for the NJ FamilyCare Aged, Blind, Disabled Programs and therefore is not exempt from the transfer penalty regulation. N.J.A.C. 10:71-4.10(a); 10:71-4.10(b)(2).

Thus, based on the record before me and for the reasons enumerated above, I hereby ADOPT the Initial Decision and FIND that Hudson County's decision of May 8, 2023, finding Petitioner eligible for Medicaid with a transfer penalty of six hundred forty-six days was appropriate.

THEREFORE, it is on this 23rd day of MAY, 2024

ORDERED:

That the Initial Decision is hereby ADOPTED.

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

OBO JLJ