



under 42 U.S.C. §1396a(e)(14)(A) and N.J.S.A. 52:14B-10(f). The ASSISTANT COMMISSIONER OF THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES cannot reject or modify this decision.

The Notice of the e(14) waiver granting authority states, "The state requested this temporary authority apply to a specific subset of fair hearing requests for all member populations, specifically those where an applicant or beneficiary has been denied or terminated from enrollment for: 1) being over income; 2) being over resources; or 3) failing to provide requested information. This means that in these types of cases, the Initial Decision will become the Final Agency Decision without further review by DMAHS. By letter dated July 28, 2023, CMS granted New Jersey's request under section 1902(e)(14)(A) of the Act. Under the approval, New Jersey is required to follow the standard fair hearing process for all other fair hearing requests." As this matter concerns the imposition of a transfer penalty and is not one of the three case types listed above, the recommended decision submitted by the Administrative Law Judge (ALJ) is not deemed adopted as the Final Agency Decision. Procedurally, the time period for the Agency Head to render a Final Agency Decision is December 16, 2024.

This matter arises from the imposition of a transfer penalty on Petitioner's receipt of Medicaid benefits. By letter dated November 20, 2023, the Middlesex County Board of Social Services (Middlesex County) advised Petitioner that a penalty of 260 days was assessed on Petitioner's receipt of Medicaid benefits resulting from the transfer of assets totaling \$100,208.61 for less than fair market value, during the five-year look-back period. After receiving additional documents from Petitioner, the total was reduced to \$48,869.65. The Initial Decision found that Petitioner had failed to rebut the presumption that \$48,293.78 in transfers were 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 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 June 21, 2023, a Medicaid application was filed by Petitioner for the aged, blind, and disabled program. (R-A). Middlesex County determined that Petitioner was eligible for Medicaid benefits; however, through a letter dated November 20, 2023, Petitioner

was advised that Petitioner was being assessed a transfer penalty totaling \$100,208.61, as a result of transfers made for less than fair market value during the look-back period. (R-B). Specifically, Middlesex County provided a spreadsheet listing approximately 573 items transferred between the dates of June 1, 2018 and April 28, 2023. (R-C). On April 17, 2024, Middlesex County sent Petitioner a letter reducing the transfer penalty to \$73,799.94. Ibid. On May 14, 2024, Middlesex County sent Petitioner a letter reducing the transfer penalty to \$56,099.94. Ibid. On July 22, 2024, Middlesex County sent a final letter reducing the transfer penalty to \$48,869.65. Ibid.

During the fair hearing, Kurt Eichenlaub, human services specialist 3, testified that after receiving Petitioner's application, Middlesex County notified Petitioner of the transfer penalty in the amount of \$100,208.61. ID at 3. After receiving additional documents from Petitioner, Middlesex County eventually reduced the transfer penalty to \$48,869.65. Ibid. Eichenlaub testified that Middlesex County went over the file thoroughly, and in the ledger provided on July 22, 2024, there were still outstanding items with no supporting documentation. Ibid.

Rebecca Ehren testified for Petitioner. Ehren works with Senior Planning Services and oversees Shoshana Price, the worker who had submitted Petitioner's Medicaid application and at that time was the designated authorized representative for Petitioner. ID at 3. Ehren testified that Petitioner was very active and that Petitioner spent the money on items for himself. Ibid. Ehren stated that they were able to obtain some, but not all of the receipts. Ibid. Ehren also stated that some checks were written to family members over the holidays as gifts. Lastly, Ehren testified that Petitioner should not be penalized for withdrawals for which there are no receipts because that money was not transferred to make

Petitioner eligible for Medicaid. Ibid.

C.F., Petitioner's daughter, testified that Petitioner often took money out of Petitioner's account and that Petitioner was very active. ID at 4. C.F. stated that Petitioner has eight or nine grandchildren and at Christmastime Petitioner would give them monetary gifts. Ibid. C.F. also stated that Petitioner paid for the electric bill or contributed to gas for her car when she took him to the doctor but that there was no contract to provide service to Petitioner. Ibid.

L.D., Petitioner's daughter, testified that C.F. stopped her life to care for their father, who had cancer and diabetes, and the money Petitioner had was used for his care. ID at 4. L.D. testified that the goal was that Petitioner would use his money to take care of himself. Ibid. L.D. also stated that Petitioner went into a nursing home and they paid the expenses for approximately sixteen months until Petitioner's funds were depleted. Ibid.

In the Initial Decision, the ALJ found that the transfer penalty should be reduced from \$48,869.65 down to \$48,293.78 because Petitioner submitted a receipt for payment made to ABBA Medical in the amount of \$250 and a receipt for payment made to Exceptional Medical Transportation in the amount of \$325.87. ID at 5. The ALJ also found that Petitioner provided no agreement establishing the expectation of care and compensation for services between Petitioner and C.F. ID at 7. The ALJ concluded that Petitioner failed to meet their burden of proof to show by a preponderance of the evidence that C.F. was entitled to compensation related to the care provided during the look-back period. ID at 8. Additionally, the ALJ concluded that Petitioner failed to rebut the presumption that \$48,293.78 was transferred from Petitioner's accounts to establish Medicaid eligibility, and that Petitioner is therefore subject to a 126-day transfer penalty. Ibid.

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 FIND that Petitioner has failed to present any documentation to support a finding that the transfers were solely for any reason other than to establish Medicaid eligibility.

Thus, based on the record before me and for the reasons enumerated above, I hereby ADOPT the Initial Decision and FIND that a transfer penalty of 126 days was appropriate.

THEREFORE, it is on this 13th day of DECEMBER, 2024

ORDERED:

That the Initial Decision is hereby ADOPTED.

*Gregory Woods*

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