

\$55,200 of the \$93,348.81 transfer penalty imposed and stipulates to the penalty assessed on the other transfers. See Petitioner's Closing Summation, p. 2.

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.

Petitioner relocated from Florida to New Jersey in 2019. On or about May 2020, Petitioner vacated the property she had been renting and moved into J.S.'s home. J.S.

owned a two-bedroom home and when Petitioner moved in all bedrooms were occupied. J.S. alleges Petitioner made the decision on her own to hire a contractor to convert the garage and breezeway into living quarters for her to reside in. J.S. alleges that before Petitioner left Florida, Petitioner asked J.S. to purchase a shed so that she would have a place to store her belongings while renovations were underway. J.S. also alleges that he would not have made any renovations or brought a shed if Petitioner were not going to pay for these expenditures. J.S. further alleges that renovations began in early 2020 and was completed either in the spring or summer of 2022. Lastly, J.S. alleges that Petitioner did move into the renovated area before she went into the hospital then nursing home on April 25, 2022.

On November 3, 2022, Petitioner filed an application for Medicaid. Accordingly, November 3, 2022 serves as the baseline date that triggers the look back period. Within this timeframe, Petitioner made the following transfers: 1) check #1221 to John Sharpe for \$3,500 dated December 23, 2019; 2) check #1223 to Freddy Mac Construction for \$22,000 dated February 6, 2020; 3) check #1228 to Freddy Mac Construction for \$20,000 dated March 18, 2020; 4) check #1237 to Freddy Mac Construction for \$8,000 dated July 10, 2020; 5) check #1238 to Freddy Mac Construction for \$1,700 dated August 19, 2020. R-1. By letters dated December 14, 2022 and January 6, 2023, Petitioner was informed a transfer penalty would be imposed based on the transfer of assets for the less than the fair market value. Ibid. The letter dated December 14, 2022, informed Petitioner that the assessed penalty was \$91,476.81, but no definitive start date was provided. The second letter dated January 6, 2023, revised the penalty amount to \$93,348.81 because Petitioner continued to be charged for rent after being admitted to the nursing home in April 2022.¹ On January 20, 2023, the transfer penalty was confirmed and Petitioner was

¹ Petitioner does not dispute any transfer penalty imposed for rental payments.

informed that she was ineligible during the penalty period of December 1, 2022 through August 8, 2023. Ibid.

The Initial Decision determined that M.L. and J.S. were both credible witnesses, but found J.S. was not “always specific as to time and other details relevant to the renovations of the property.” The Initial Decision also determined that the Freddy Mac contract listed both Petitioner and J.S.’s wife and failed to set forth the purpose of the renovations. Lastly, the Initial Decision determined that Petitioner failed to demonstrate that the transferred funds were made exclusively for some other purpose than to qualify for Medicaid, and that Atlantic County was correct to assess a transfer penalty of \$55,200, or 147 days. I disagree with the imposition of a final decision at this time as the record is insufficient to make such a determination. As such, I REVERSE the Initial Decision accordingly and REMAND the matter to allow Petitioner the opportunity to further develop the record and demonstrate that the alleged renovations were done to create living quarters for her to reside in and occurred solely for Petitioner’s benefit. Moreover, documentation should be provided such as an itemized list of all expenses related to the renovation as well as before and after photographs of the areas renovated, architectural design and blue prints, and a fully executed contract signed by all parties.² Petitioner should also produce the contractors to testify about the renovations done at J.S.’s home. This additional information is required since J.S.’s testimony alone is insufficient to overcome the presumption that the transfers were made for the purposes of qualifying for Medicaid.

In exceptions, Petitioner’s counsel alleges that the Administrative Law Judge (ALJ) determined that Petitioner received nothing in return for the renovations she had done to

² The contract Petitioner provided was signed only by the contractor, Freddy Mac Construction, LLC.

J.S.'s home and had no "ownership interest" in the property. Counsel also alleges that based on the ALJ's findings, the ALJ applied the wrong legal analysis, which was contrary to the ALJ's decision in this matter. Counsel further alleges that Petitioner did receive a benefit from the garage being converted into living space so that Petitioner could reside with J.S. and purchase of a shed to store her belongings. However, at this point, based on the limited evidentiary documentation provided, it is unclear what specific areas of J.S.'s property was renovated and if the renovations made were for the sole benefit of Petitioner.

Thus, based upon my review of the record and for the reasons set forth herein, I hereby REVERSE the ALJ's recommended decision, and REMAND the matter to further develop the record in accordance with the reasons as set forth above.

THEREFORE, it is on this 29th day of APRIL 2024,

ORDERED:

That the Initial Decision is hereby REVERSED AND REMANDED, as set forth herein.



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