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

L.N.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

MIDDLESEX COUNTY BOARD

OF SOCIAL SERVICES,

RESPONDENT.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 06054-2024

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 August 5, 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 25, 2023, the Middlesex County Board of Social Services (Middlesex County) granted Petitioner's April 14, 2023 Medicaid application with eligibility as of June 19, 2023. ID at 2. By letter dated May 26, 2023, Middlesex County notified Petitioner that a transfer penalty of 138 days was assessed, resulting from the

transfer of assets totaling \$51,907.73. Id. at 3. The transfer of assets stems from the sale of Petitioner's property for \$69,915.46 less than fair market value and a gift of \$16,950. Ibid. The subject property was owned by the Petitioner and their brother. Ibid. As such the realized profit of \$69,915.46 was divided into two equal shares of \$34,957.71, which represents the amount the Petitioner is entitled to. The \$34,957.73 is added to the gift amount of \$16,950 for a total of \$51,907.73. Ibid.

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.

The Petitioner's brother and power of attorney, D.N. testified at the fair hearing that the property in question was in poor condition, including “graded wiring”, holes in the floor, roof damage from Hurricane Sandy, water damage that led to buckling in the cement wood paneling from the 1960s that was buckling, plumbing that was failing and backed up drains. ID at 4. D.N. further testified that a realtor was not used during the sale of the home because that would require an inspection, and that he did not have the money to do repairs on the house. Ibid. The home was ultimately sold to a developer in 2019. Ibid.

Jose Tavaréz, a certified residential real-estate appraiser with over twenty-three years of experience, also testified as a qualified expert in the area of real-estate appraisals. Id. at 5. At D.N.'s request, Tavaréz performed a retroactive appraisal of the property in question. As part of his November 15, 2023, appraisal, Tavaréz interviewed D.N., reviewed details from the township records, and conducted a drive-by of the property. Tavaréz also looked at comparable homes in the immediate area, made his adjustments, and assessed the value of the property at \$120,000. Ibid. While Middlesex County used the 2020 tax assessed value of the property of \$188,700 as the fair market value of the house, Tavaréz testified that a tax assessment is simply a mass appraisal of an entire area where little time is spent on the individual property. Conversely, Tavaréz actually went to the property to conduct his appraisal. Ibid. He further testified that the town's records showed that the home had not been renovated or updated since the family purchased the property in 1960, and that the home was built in 1900. Importantly, Tavaréz had photographs from the property record from when the home was sold on February 14, 2019. These picture revealed the “economic age,” as Tavaréz explained, which related to the long-lived items such as the roof, furnace, and boiler. Ibid.

In the Initial Decision, the Administrative Law Judge (ALJ) found the testimony of D.N. as credible as to the condition of the property. Id. at 6. The ALJ also found the testimony of Tavaréz as credible, as Tavaréz was an experienced professional in the real-estate industry and his explanations of the market analysis and assessment of the property's fair market value was rational and reasonable. Ibid. The ALJ further found that Tavaréz had no connection to petitioner or D.N. beyond his professional relationship, and there was no motivation or bias to misrepresent the facts. Ibid. Based on the condition of the property, Tavaréz estimated the value to be \$120,000. Ibid. It was sold to a developer for \$120,000, which the ALJ found was reasonable. Ibid. I agree with the Initial Decision. Ibid.

In D.H. v. DMAHS and Camden County Board of Social Services, initial decision, 2017 N.J. AGEN LEXIS 164 (March 16, 2017), adopted, 2017 N.J. AGEN LEXIS 1474 (April 24, 2017), an administrative law judge reversed a transfer penalty and determined that a petitioner had rebutted the presumption that a property was transferred for less than fair market value. The ALJ found that the home in that case was in need of substantial repair and renovation, and that the fair market value was confirmed by a certified real-estate appraiser. The Director of DMAHS adopted the initial decision and noted:

While the tax assessed value of a home is not necessarily an accurate reflection of the price that the property "can reasonably be expected to sell for on the open market in the particular geographic area" absent credible independent evidence, the regulation provides for a uniform determination of the value of property, which can be a subjective art.

[2017 N.J. AGEN LEXIS 1474 (emphasis added).]

The Director found that the property appraisal and the corroborating testimony of the certified real-estate appraiser provided sufficient evidence to overcome the tax assessment and establish that the property sold for fair market value. Ibid.

The property in this matter sold for \$120,000, which is the fair market value of the property confirmed by the experienced certified real-estate appraiser. Id. at 11. The retroactive appraisal was based not only on information from D.N., but also the photos of the interior property, a drive-by view of the exterior of the property, and the appraiser's independent market analysis of comparable homes. Ibid. Middlesex County assessed the property's fair market value at \$188,700 using the Table of Equalized Valuation. Middlesex County did not take into account that at the time of sale the property needed substantial repairs. According to N.J.A.C. 10:71-4.1(d), the equity value of a property is "the price that the resource can reasonably be expected to sell for on the open market in the particular geographic area minus any encumbrances." A certified real-estate appraiser established that the property was valued at \$120,000 at the time of sale, which is congruent to the price the property actually sold for. As such, it was transferred at the fair market value. Therefore, I find that the petitioner successfully rebutted the presumption that the property was transferred for less than fair market value to establish Medicaid eligibility, and should not be subject to the \$34,957.73 transfer penalty.

Thus, for the reasons set forth above and those contained in the Initial Decision, I hereby ADOPT the Initial Decision in this matter.

THEREFORE, it is on this 31st day of July 2024,

ORDERED:

That the Initial Decision is hereby ADOPTED.



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