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

M.S.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES AND
MIDDLESEX COUNTY BOARD
OF SOCIAL SERVICES,
RESPONDENTS.

ADMINISTRATIVE ACTION

ORDER OF RETURN

OAL DKT. NO. HMA 07196-24

As Assistant Commissioner for the Division of Medical Assistance and Health Services (DMAHS), I have reviewed the record in this case, including the OAL case file, the documents in evidence, and the Initial Decision in this matter. Petitioner filed exceptions in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is October 24, 2024, in accordance with an Order of Extension.

This matter arises from the Middlesex County Board of Social Services' (Middlesex County) imposing of a \$161,760.93 transfer penalty for Petitioner's receipt of Medicaid benefits. The issue presented here is whether Middlesex County correctly imposed \$161,760.93 transfer penalty under 42 U.S.C. §1396p(c)(2)(B)(iii), N.J.A.C. 10:71-4.10(d), and N.J.A.C. 10:71-4.10(e)(5).

In determining Medicaid eligibility for someone seeking institutional level of care benefits, the counties must review five years of financial history. Under the Deficit Reduction Act (DRA) of 2005, if an applicant transfers assets for less than the fair market value during the look-back period, then those assets are included as eligible resources available to the applicant, and a period of ineligibility is imposed, which is known as the transfer penalty. 42 U.S.C. §1396p(c)(1); N.J.A.C. 10:71-4.10(a).

Congress has, however, created specific exceptions to this penalty requirement. According to 42 U.S.C. §1396p(c)(2)(B)(iii), a parent can legally transfer all of his or her assets to a child of any age who is disabled.

New Jersey Medicaid regulations mirror the applicable federal statute. Under New Jersey Medicaid 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).

However, under New Jersey Medicaid regulations, an individual shall not be ineligible for Medicaid because of the transfer of his or her equity interest in a home which serves (or served immediately prior to entry into institutional care) as the individual's principal place of residence and the title to the home was transferred to a child of the institutionalized individual who is under the age of 21 or a child of any age who is blind or

totally and permanently disabled. In the event that the child does not have a determination from the Social Security Administration (SSA) of blindness or disability, the blindness or disability shall be evaluated by the Disability Review Team of the Division of Medical Assistance and Health Services, in accordance with 10:71-3.13. N.J.A.C. 10:71-4.10(d)(2).

The regulation provides that a parent can transfer all or a portion of the assets to a child of any age as long as that child is either blind or permanently and totally disabled. N.J.A.C. 10:71-4.10(e)(1) and (5).

On September 15, 2023, Petitioner filed an application with Middlesex County for the New Jersey FamilyCare Aged, Blind, Disabled Program. (R-1.) Petitioner submitted a property deed with their Medicaid application. (R-3.) Per the property deed, Petitioner transferred a home to their adult children, F.S. and T.S., with each receiving a 50 percent equity interest, as joint tenants with right of survivorship on January 13, 2022. Ibid. Petitioner also submitted proof that T.S. is permanently and totally disabled and receives disability benefits from the SSA. (P-1.) Petitioner provided an SSA benefit letter from 2022, showing that T.S. continued to receive disability benefits at the time of the house transfer occurred. (P-2.) By letter dated March 6, 2024, Middlesex County granted Petitioner's September 15, 2023 application. However, a penalty of 420 days was assessed resulting from Petitioner's transferring of \$161,760.93 for less than fair market value (R-2.) The transferred asset at issue was the portion of Petitioner's home transferred to T.S. for less than fair market value. Ibid. Middlesex County did not assess a transfer of penalty as to F.S.'s 50 percent interest in the home because F.S. was Petitioner's caretaker living in the home. ID at 3. Middlesex County justified that the imposition of penalty was correct because the transfer of Petitioner's home to T.S. was

not for the "sole benefits" of the disabled child pursuant to N.J.A.C. 10:71-4.10(b)(8). ID at 4.

The contested case was transmitted to the Office of Administrative Law (OAL), where a hearing was held on July 3, 2024. ID at 2. The Administrative Law Judge (ALJ) found that the 50 percent equity interest in Petitioner's home that was transferred to T.S. is excludable as a countable asset pursuant to N.J.A.C. 10:71-4.10(d)(2). ID at 10. The ALJ concluded that no penalty should be applied to the amount transferred to T.S. ID at 11. I agree with the ALJ's findings.

In Sorber v. Velez, 2009 U.S. Dist. LEXIS 08799 (D.N.J. October 23, 2009), Plaintiffs initially possessed resources over the amount they would be ineligible for Medicaid benefits. Before applying for Medicaid benefits, Plaintiff transferred about \$203,000 to her disabled child. The state denied Plaintiff's Medicaid application, asserting that only those transfers that were made to an irrevocable trust established for the sole benefits of a disabled child are eligible for an exemption from the transfer penalty rules described in 42 U.S.C. § 1396p(c)(1). The court concluded that the "solely for benefits" clause under federal law applies only to transfers made to a trust, and that transfers of resources made directly to a disabled or blind child are exempt from the transfer of asset penalty.

After the court's ruling in Sorber, the DMAHS altered its policy on this issue permanently and advised the counties that going forward, they should apply 42 U.S.C. §1396 (c)(2)(B)(iii) to permit transfers directly to the disabled or blind child as well as to a sole benefit trust for those individuals, as transfer exempt from penalty for Medicaid applicant.

In this matter, Petitioner's daughter, T.S., is permanently disabled as determined by the SSA. Middlesex County does not dispute that Petitioner's daughter, T.S., is

disabled. The dispute between parties concerns the phrase "solely for the benefit of." As the Sorber court ruled, the "solely for the benefit" clause under federal law applies only to the transfers made to a trust, and 42 U.S.C. § 1396p(c)(2)(B)(iii) had the effect of exempting any transfer of resources made directly to an applicant's blind and disabled child, regardless of whether the transferor makes any special arrangements to ensure that the transfer is for the child's sole benefit. Here, Petitioner's transfer of a portion of their home to their disabled daughter is allowed under N.J.A.C. 10:71-4.10(e) and 42 U.S.C. § 1396p(c)(2)(B)(iii), and therefore, Middlesex County should not impose the transfer penalty of \$161,760.93.

On July 26, 2024, Petitioner filed exceptions stating that while the ALJ ruled in Petitioner's favor, the language in the order might be construed as reversing the eligibility determination as well as the transfer penalty, which was not the intent. As such, Petitioner stated that the order should be interpreted as only reversing the transfer penalty.

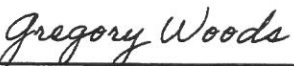
To that end, I hereby ADOPT the Initial Decision's conclusion that Petitioner's transfer of 50 percent of their home to T.S. is not subject to a transfer penalty; and RETURN the matter to Middlesex County to determine Petitioner's Medicaid benefits without the 420-day transfer penalty and issue a new eligibility letter.

Thus, I hereby ADOPT the Initial Decision.

THEREFORE, it is on this 17th day of OCTOBER 2024,

ORDERED:

That the Initial Decision is hereby ADOPTED.



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