

Procedurally, the time period for the Agency Head to render a Final Agency Decision is March 28, 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 November 18, 2022, the Union County Department of Human Services (Union County) granted Petitioner's October 3, 2022 Medicaid Long Term Services and Support (MLTSS) benefits application effective October 1, 2022. However, a penalty of three hundred forty-eight (348) days was assessed on Petitioner's receipt of Medicaid benefits. The penalty was imposed based upon transfers of assets, totaling \$130,240 for less than fair market value, during the five-year look-back period. (R-1). The Initial Decision affirmed the portion of the November 18, 2022 decision granting Petitioner's application for MLTSS benefits effective October 1, 2022 but reversed and modified the transfer penalty to six days finding a penalty of only \$2,387.22.¹

The hearing in this matter was conducted on March 22, 2023, with the record remaining open until September 8, 2023, due to the need to reconstruct testimony following a recording device failure. Specifically, the hearing began at approximately 9:00 a.m. and the recording device failed at about 12:30 p.m. Accordingly, the afternoon testimony, which continued to anywhere from 1:30 p.m. to 2:35 p.m., including that of Petitioner's spouse, R.P., and daughter, K.P., was not preserved and instead reconstructed by the ALJ. Through their exceptions, Union County objects to the reconstructed testimony arguing that they have no knowledge of how the reconstruction was conducted, especially given the large gap in time, and that the Initial Decision failed to properly consider Union County's pertinent afternoon testimony. Union County further argues that the ALJ's reconstruction introduced inaccuracies and inconsistencies into the record, potentially impacting the fairness and

¹ The AJL inadvertently noted a figure of "\$2,3387.22"

reliability of the hearing. Union County identifies various discrepancies in the Initial Decision, particularly regarding the factual discussion and interpretation of evidence related to the transfer penalties assessed.

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. Further, there are limited exceptions to the transfer penalty rules. N.J.A.C. 10:71-4.10(b)(8) excludes from transfer penalties “a transfer of assets . . . for the sole benefit of a spouse . . . arranged in such a way that no individual except the spouse . . . can, in any way, benefit from the

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assets transferred either at the time of the transfer, or at any time in the future.” In determining whether an asset was transferred for the sole benefit of a spouse, child or disabled individual as defined in N.J.A.C. 10:71-4.10(b)(8), the transfer shall be accomplished via a written instrument of transfer, such as a trust document, which legally binds the parties to a specific course of action and which clearly sets out the conditions under which the transfer was made, as well as who can benefit from the transfer.” N.J.A.C. 10:71-4.10(f).

In the present matter, the ALJ’s findings included several determinations as delineated below:

- In-law Suite Construction Costs

Petitioner was institutionalized at Spring Grove Rehabilitation and Healthcare Center on March 31, 2021. Prior to institutionalization, Petitioner and R.P. resided in their marital home which was later sold on 7/13/2021. A significant portion of the transfer penalty, totaling \$115,000 is attributed to transactions related to the construction on a property owned by Petitioner and R.P.’s son, J.P., and his spouse, D.P., These transactions are detailed as follows:

- 10/28/2020 \$15,000 was paid to CMG² from BOA #2245 via check #1925
- 10/30/2020 \$15,000 was paid to D.P. from BOA #2245 via check #1924
- 11/12/2020 \$15,000 was paid to D.P. from BOA #2245 via check #1931
- 11/23/2020 \$20,000 was paid to D.P. from BOA #2245 via check #1932
- 8/2/2021 \$50,000 was paid to CMG from BOA #7282 via check #101

Petitioner contends that these transfers were intended for the construction of an in-law suite for R.P., enabling them to reside in a newly built living space after the sale of their marital home. However, despite the funds being allocated for this alleged purpose, R.P. never occupied the newly renovated in-law suite, claiming a dispute arose over adding R.P. to the deed of the home, leading to the estrangement of R.P. from J.P. and D.P. Thereafter,

² CMG Construction LLC is the builder retained by J.P. and D.P.

R.P. refrained from taking any action, legal or otherwise, against J.P. and D.P. to reclaim the transferred funds, preferring to avoid further complications. (R-1).

The Initial Decision concluded "as the in-law suite came closer to completion, a major dispute arose concerning the transfer of the one-third interests in the property from J.P. and C.P. to R.P. C.P. refused to transfer any interest in the property to R.P. and J.P. informed his father C.P. would not change her mind." Even assuming that the ALJ intended to reference D.P. instead of C.P., there is no documentary evidence supporting that the in-law suite was constructed with the purposes of R.P. residing there, or that R.P., D.P. or J.P. initially agreed to such a transfer of ownership in exchange. Further, there is no documentary evidence confirming the actual cost of the construction for the in-law suite. It is Petitioner's burden of proof to demonstrate that they received fair market value for the transfers. N.J.A.C.10:71-4.10(j).

In addition to not pursuing the return of the transferred funds, R.P. persisted in making payments to J.P. and D.P.'s construction company, CMG, even after being denied occupancy. On remand, these continued payments should be further explored in detail to better understand the nature and rationale behind the ongoing payments. Furthermore, discrepancies in the payment dates specified in the Initial Decision raise concerns about the accuracy of the Initial Decision. The ALJ determined that an initial payment of \$50,000 was made on 7/30/2021 to CMG toward the construction costs of the in-law suite while the record reflects an initial payment to CMG was made on for \$15,000 on 10/27/2022. Further, the ALJ concluded that the 11/23/2020 payment to CMG was returned to R.P. on 1/26/2022 and accordingly reduced the construction costs to \$95,000. However, Fidelity account #5526 indicates a \$20,000 return to R.P.'s account on 1/26/2022, seemingly linked to another payment with no documentary evidence of the return by CMG. A remand is necessary to address these discrepancies and ascertain the true circumstances surrounding construction

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costs and whether in fact there was a return of these funds. (R-1).

While the ALJ concluded that the “record was replete with supporting documentation of R.P.’s true intent prior to the imposition of the transfer penalty”, such supporting documentation is not referenced or further explained. On remand Petitioner should provide testimony and documentary evidence demonstrating the fair market value for the transfer, the intent of the transfer including any promissory notes, communications or correspondences between the parties evidencing intent and refusal to allow R.P. to move into the in-law suite, and any efforts to recover the transferred funds. Further, testimony from other family members with first-hand knowledge of the transfers and in-law suite construction may be valuable. Such testimony and documentary evidence of this nature is crucial for establishing whether the transferred were conducted at fair market value or characterized as gifts for the renovation of J.P. and D.P.’s home. It is important to consider that the property was subsequently sold on 8/25/2023, with R.P. never receiving reimbursement or any benefit from these funds.

- Caregiver Costs

On 3/3/2021 \$3,500 was paid to D.P. from BOA #2245 via check #1937 with a memo line indicating payment was for “Emilia Month of March.” (P-2). The ALJ determined that the check issued was for home care services rendered to Petitioner and was incorrectly included in the penalized transactions. The ALJ found that R.P.’s testimony supported that the check was for legitimate home care services as indicated by the memo notation on the check. However, the record does not substantiate such a conclusion. On remand, Petitioner is to provided documentary evidence validating that the funds from the aforementioned check were indeed distributed by D.P. to Emilia. Further, on remand Petitioner should provide testimony and documentary evidence including pre-existing agreements, records, invoices, contracts, receipts, or logs that documented caretaking services that were allegedly paid by

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Petitioner to Emilia.

- Property Repairs to Marital Home

On 7/27/2021 a \$10,000 check was made out to cash and purportedly allocated for repairs on Petitioner and R.P.'s marital home, which had been sold on 7/13/2021. The ALJ found that receipts and testimony demonstrated that the repairs were necessary for preparing the marital home for sale and were reasonable in cost. Specifically, the ALJ determined that five repair proposals and invoices collectively from Elite Door Company LLC, J & A Arias Painting LLC, and Steven Knapp Home Improvement LLC established payments of \$9,083 for repairs to the home and accordingly only \$917 was penalized. (P-3).

However, the invoices from Elite Door Company LLC and J & A Arias Paints LLC are undated and the records from Steven Knapp Home Improvement LLC are identified as proposals only and dated, 8/1/2021 and 8/10/2021, subsequent to the sale of the marital home. (P-3). On remand, testimony should be taken establishing the specific nature of the purported repairs, when they were executed, the exact cost of the individual repairs, and the timing and method of the payment. Moreover, the remand proceedings should prioritize the production of any available documentary evidence substantiating that the \$10,000 in cash was in fact used for the alleged repairs.

- Unreturned Portion of Transfer to Box Tree Interiors

On 1/31/2022 \$30,000 was transferred to Box Tree Interiors from BOA #7282. During the hearing it was revealed that a portion of transfer to a company owned by Petitioner's child, K. P., Box Tree Interiors was returned leaving a balance of \$1,420.22. The ALJ found that the \$30,000 transfer was for legitimate interior decorating services at the condo in which R.P. resided at after he failed to occupy D.P. and J.P.'s newly constructed in-law suite. There is a need to remand for testimony to clarify the nature of the transactions with Tree Box

Interior, including obtaining testimony and documentary evidence regarding the services provided and the funds transferred.

- Returned Transfers

On 3/17/2021 \$8,500 was paid to D.P. from BOA #2245 via check #1938. On 7/2/2021 \$3/17/2021 paid to D.P from BOA #2245 via check #1942. The ALJ found that two checks totaling \$15,500 were issued to D.P. for construction costs with the full amount later returned to R.P.'s Fidelity account #5526 on 1/27/22. While partial returns are not permitted to modify the penalty period, a return of all the assets may reduce the penalty period. Med-Comms 10-02 and 10-06. Accordingly, on remand it is important to examine the circumstances surrounding these payments made to D.P. and their subsequent return to access whether a reduction in penalty is appropriate.

- Clarification of Union County's Legal Argument

The Initial Decision focuses on the applicability of an exception to the transfer penalty rule as contained within N.J.A.C. 10:71-4.10(b)(8) and N.J.A.C. 10:71-4.10(e) to reach the conclusion that "there was no support presented by the Agency for their position that the expenditures relating to the in-law suit would only be exempt from the transfer penalty if there were made for the benefit of S.P." Further, the Initial Decision states that Union County was attempting to assert that the transfer of one-third interest in D.P and J.P.'s home in return for funding the construction would not be for the sole benefit of R.P. However, in their exceptions, Union County contends that this argument is mischaracterized and instead Union County imposed the transfer penalty amount based on the funds given away without reimbursement. On remand, it is necessary for Union County to provide testimony clarifying the legal argument and supporting citations relied upon in imposing the transfer penalty.

While it is understood that testimony on these critical issues may have been previously provided, the matter remains contested with the record not adequately preserved.

Thus, based on the record before me and for the reasons enumerated above, I hereby REVERSE the Initial Decision and REMAND the matter to OAL for further development of the record.

THEREFORE, it is on this 25th day of MARCH 2024

ORDERED:

That the Initial Decision is hereby REVERSED; and

That the matter is REMANDED as set forth herein.



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